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IMPACT ASSESSMENT REPORT

Accompanying the document

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the transparency and targeting of political advertising

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Table of contents

1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT 3
2. PROBLEM DEFINITION 5
   2.1. Scope and context 5
   2.2. What are the problems? 7
   2.3. How will the problems evolve? 20
3. WHY SHOULD THE EU ACT? 22
   3.1. Legal basis 22
   3.2. Subsidiarity: Necessity of EU action 23
   3.3. Subsidiarity: Added value of EU action 24
4. OBJECTIVES: WHAT IS TO BE ACHIEVED? 25
   4.1. General objectives 25
   4.2. Specific objectives 25
5. WHAT ARE THE AVAILABLE POLICY OPTIONS 26
   5.1. What is the baseline from which options are assessed? 26
   5.2. Description of the policy options 28
   5.3. Options discarded at an early stage 35
6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS? 35
   6.1. The baseline scenario 35
   6.2. Assessment of the options 36
   6.2.1. Economic impacts 36
   6.2.2. Social impacts 42
   6.2.3. Fundamental rights impacts 43
7. HOW DO THE OPTIONS COMPARE? 46
   7.1. Effectiveness 47
   7.2. Efficiency 48
   7.3. Coherence with other initiatives 49
8. PREFERRED OPTION 50
9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED? 53

ANNEXES 56
GLOSSARY AND ACRONYMS 56
ANNEX 1: PROCEDURAL INFORMATION 59
ANNEX 2: STAKEHOLDER CONSULTATION 61
ANNEX 3: WHO IS AFFECTED AND HOW? 78
ANNEX 4: ANALYTICAL METHODS 84

ANNEX 5: CONTEXT, SCOPE OF THE MARKET, AND OTHER ASPECTS RELEVANT TO THE PROBLEM DEFINITION 88
ANNEX 6: INTERVENTION LOGIC 122
ANNEX 7: LEGISLATION ADDRESSING POLITICAL ADVERTISING ACROSS MEMBER STATES 123
ANNEX 8: PRESENTATION AND ANALYSIS OF EU ACQUIS 159
ANNEX 9: ILLUSTRATIVE USE CASES 218

1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

The President of the European Commission, Ursula von der Leyen, announced in her political guidelines[1] that the European Democracy Action Plan (EDAP)[2] '*will include legislative proposals to ensure greater transparency on paid political advertising and clearer rules on the financing of European political parties*.' EDAP, presented by the Commission in December 2020 highlights the *'clear need for more transparency in political advertising and communication, and the commercial activities surrounding it'* and announced that *'the Commission will present a legislative proposal on the transparency of sponsored political content'*, to '*complement the rules on online advertising in the forthcoming DSA, with the aim to have dedicated rules in place sufficiently ahead of the May 2024 European Parliament elections'*. To that end, the 2021 Commission work programme includes[3] a proposal for greater transparency in paid political advertising.

The Commission's initiative on the transparency of political advertising aims to support the functioning of the single market for political advertising services ('political ads') addressing the growing patchwork of legislation in this area and related barriers including in terms of compliance cost and lack of legal certainty. It aims to promote high European standards of transparency in political campaigning and free and fair elections in the EU level, strengthen the resilience of democratic processes in the EU and combat disinformation, information manipulation and interference in elections.

Political advertising is a tool in campaigning to convey political messages to voters. It aims to influence people's views on political subjects and their voting decisions, and is often specifically regulated nationally, with a specific focus on transparency.[4] The traditional media for political ads used to be newspapers, posters, radio and television. Today, these have increasingly been displaced by the digital sphere. Digital technologies have also made political advertising cheaper and increased the number and types of service available to support campaigning. The cross-border nature of online political advertising has challenged the relevance of national rules, which typically included restrictions to ensure democratic accountability and fairer processes and economic operators face difficulties to determine and adapt to applicable rules, limiting their ability to offer advertising services.

Online political ads are commonly targeted at groups of users, based on the processing of personal data[5]. Targeting (directing an ad to a specific group of people based on some shared characteristics) can be very sophisticated. While this can beneficial in addressing political messages to concerned citizens, the *Cambridge Analytica* scandal[6] revealed a need to address

[1] https://www.europarl.europa.eu/resources/library/media/20190716RES57231/20190716RES57231.pdf

[2] The EDAP presents measures to protect the integrity of elections, promote democratic participation and address disinformation https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A790%3AFIN&qid=1607079662423

[3] https://eur-lex.europa.eu/resource.html?uri=cellar%3A91ce5c0f-12b6-11eb-9a54-01aa75ed71a1.0001.02/DOC_2&format=PDF

[4] See Annex 7.

[5] While alternatives such as contextual advertising exist, current prevalent practices are based on track-and-target, i.e. on the processing of personal data. See Panoptykon, "To track or not to track?" (2020). https://panoptykon.org/sites/default/files/publikacje/panoptykon_to_track_or_not_to_track_final.pdf

[6] Personal data belonging to Facebook users were illegally processed. The company developed elaborated psychological profiles and offered its consulting services to various political campaigns, targeting voters without consent with messages designed to influence their vote.

this phenomenon[7]. It brought to light unauthorised interference in elections (including by foreign state actors), exploitation of online social networks to mislead voters, and manipulation of the debate and their choices[8], using psychographic profiling and opaque practices that conceal or misrepresent key information[9]. Other techniques are also used to spread or amplify manipulative political ads. The application of opaque algorithms and the analysis of personal information allow the tailoring and targeting of political ads, which can exploit vulnerabilities of voters, including in another Member State. The volumes of data at stake are important, including data derived from the use of social media and commercial practices (e.g. consumer profiles), combined with offline data.

This initiative will build on and complement relevant EU law[10], including Regulation 2016/679 (GDPR), the recent proposals for a Digital Services Act (DSA)[11] and for a Digital Markets Act (DMA)[12], addressing economic operators and issues identified for political advertising[13]. It is being complemented by other initiatives including the update of the self-regulatory Code of Practice on disinformation[14], based on the recently published Commission guidance[15]. This proposal will also be in synergy with the efforts led by the EU externally, in the field of election observation (EU Election Observation Missions and their follow-up)

Both the European Parliament and the Council have expressed concerns about the lack of transparency in political advertising and the use of (micro)targeting[16]. Different Parliament committees have engaged on this topic, in particular the Constitutional matters (AFCO), the Internal Market (IMCO) committees and the Special Committee on Foreign Interference in Democratic Processes in the EU, including Disinformation (INGE). The Parliament has called for legislative and non-legislative policy measures. The Council has supported

[7] Concerns about the effects of new advertising practices erodes citizens' trust in online ads and digital markets. See 'Online advertising: the impact of targeted advertising on advertisers, market access and consumer choice' Study for the EP IMCO committee: https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662913/IPOL_STU%282021%29662913_EN.pdf.

[8] Including via the spreading of disinformation, in which ads can play an important role. https://www.disinfo.eu/advocacy/open-letter-to-eu-policy-makers-how-the-digital-services-act-dsa-can-tackle-disinformation/?utm Half of Internet-using Europeans say they have been exposed to or personally witnessed disinformation on the Internet. https://fronteirasxxi.pt/wp-content/uploads/2021/06/ebs_507_en.pdf

[9] In particular, the origin and political intent behind political communications, their sources and funding. See the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee – Report on the 2019 elections to the European Parliament, COM(2020)252 final.

[10] See detailed description and analysis in Annex 8.

[11] The DSA proposal includes general transparency obligations on online advertising for online intermediaries, horizontal due diligence obligations for very large online platforms and a governance framework https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12418-Digital-Services-Act-package-ex-ante-regulatory-instrument-of-very-large-online-platforms-acting-as-gatekeepers and https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12417-Digital-Services-Act-deepening-the-Internal-Market-and-clarifying-responsibilities-for-digital-services.

[12] Digital Markets Act proposal: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=COM%3A2020%3A842%3AFIN. This includes non-binding recommendations on tackling illegal content online https://ec.europa.eu/digital-single-market/en/news/commission-recommendation-measures-effectively-tackle-illegal-content-online; as well as a voluntary Code of Conduct against Hate Speech https://ec.europa.eu/newsroom/just/document.cfm?doc_id=42985

[13] This initiative addresses all actors involved in financing, preparing, placing and disseminating political advertising (thus beyond the immediate publishers of ads, political and marketing consultancies, advertising and campaign organisations, and other relevant service providers). For a description of the articulation between the current initiative and other EU acts (DSA, Regulation 1141/2014, etc.), see Annex 8.

[14] https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_19_6166

[15] https://digital-strategy.ec.europa.eu/en/library/guidance-strengthening-code-practice-disinformation

[16] Microtargeting and targeting are often used interchangeably – see Glossary.

initiatives to promote free and fair elections and democratic resilience, and Member States have been involved in preparing the EDAP and this initiative[17].

2. PROBLEM DEFINITION

2.1. Scope and context

There is no EU-wide common concept of political advertising and Member States use various approaches[18]. For the purposes of this impact assessment, political advertising[19] will be understood as the promotion of a message, published by any means, and which is being paid for by, or disseminated by or on behalf of a political actor, or which may be understood as seeking to influence the outcome of the election or the voting behaviour (especially when published during an election period). This includes ads on all media platforms (including online and offline) disseminated in the European Union, 'issues ads', and political advertising which may also have commercial purposes[20]. A broad range of service providers is involved in political ads, online and offline, in their preparation, publication and dissemination.[21]

Issues with regard to political ads online emerged in the public sphere in March 2018, when it was revealed that Facebook data, including Like data, on more than 87 million users was used by political consulting firm Cambridge Analytica to target voters during elections[22].

There are significant differences between political advertising and other forms of advertising in the single market. Misleading commercial advertising is already forbidden according to Directive 2006/114/EC. Addressing political advertising as other commercial advertising would not be possible due the specific context of political advertising and the close relationship with elections, freedom of expression and political pluralism among others. Transparency of political advertising is also linked to accountability and democratic oversight, as an essential democratic principle.

The Commission's report on the 2019 elections already noted the importance of increased transparency of political advertising to ensure resilience and integrity of electoral processes in the EU. It also noted the limited implementation of the 2018 Electoral package recommendation in this respect and the need for further measures. The report highlighted the close connection between a lack of transparency in political advertising, the misuse of algorithmic targeting and the increased risk of interference in and manipulation of democracy in the EU. The Commission's joint Communication on tackling COVID disinformation of June 2020 described the 'infodemic' which accompanied the coronavirus pandemic and the challenges this posed including for democracy and democratic processes, and pointed to concrete measures at EU level to address these challenges.

[17] For more details on the European Parliament and the Council, see Annex 5.
[18] National definitions tend to focus on the actors sponsoring ads or on the political intent of the message.
[19] 'Ads' is defined variously in existing law - See Glossary in the Annexes.
[20] Where this is the case, the rules on commercial communications may also apply. An example is a company promoting its products through an ad which also promotes certain political views (such as a candidate's stance on climate change). See section 6 in Annex 7.
[21] For a full description of the relevant service providers and the different value chains involved, see Annexes 3 and 6.
[22] Other examples have been documented by the literature.

Some Member States have legislated or intend to further legislate in the field of political advertising for reasons of public interest. As a result, a patchwork of national rules is emerging and likely to increase. Heterogeneous national specific requirements on political advertising and related barriers obstruct the exercise of fundamental freedoms with a direct effect on the functioning of the internal market. Member States' regulation on transparency of political advertising goes beyond what applies to other forms of advertising. The aim of such national regulation is primarily to prevent citizens from being misled in their democratic choices, support their genuine political participation and accountability of political actors, contributing to fair and free democratic processes and their oversight, and preventing external interference[23]. Differences concern, for instance, diverse requirements for each media (e.g. TV and radio and online services), transparency related to the funding of political ads, the way ads should be labelled or what must be made public during election periods and oversight. Further, the regulation of issues ads is even more heterogeneous, even as their role in shaping political campaigns and influencing the outcome of elections is more and more recognised[24].

The fragmentation leads to impediments for service providers including when providing cross-border services. It significantly increases compliance costs to adapt to the different jurisdictions and is a source of legal uncertainty on the applicable transparency requirements. It further restricts the possibilities and choice for cross-border campaigning for political actors like European Political Parties.

The heterogonous regulation impacts companies operating in a cross-border context. It prevents some operators, especially SMEs[25], which could offer their political-ads-related services in different Member States from entering the market. There are also many economic actors providing novel ad-related services, such as those providing data-driven analysis and programmatic ads. It may be unclear whether and how these providers are affected by rules designed for traditional campaigning. In the cases where service providers are able to offer cross-border services, the currently heterogeneous legal standards also lead to oversight related issues as affected citizens, the competent authorities and the advertisers and related services providers can be located in different Member States. This results in tensions and barriers in the internal market for services connected to political ads. It also generates poor regulatory outcomes, which combined with the lack of transparency and other issues related to the monitoring and enforcement of relevant rules, undermines the integrity of electoral processes and citizen's confidence in them. National action to address the situation is not fully effective and creates further barriers, and the same applies to private sector policies.

[23] For instance, the Council of Europe Recommendation No. R (99) 15 of the Committee of Ministers to Member States on measures concerning media coverage of election campaigns states that, if paid advertising is allowed, it should be subject to some minimum rules: 1) equal treatment (in terms of access and rates) of all parties requesting airtime, and 2) the public to be made aware that the message has been paid for, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e3c6b For an analysis of the application of key principles including transparency in regulating the political process, and an account of the role of transparency in deterring foreign interference in elections, see Regulating Election Finance, A Review by the Committee on Standards in Public Life July 2021. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/999636/CSPL_Regulating_Election_Finance_Review_Final_Web.pdf

[24] Guidance on strengthening the Code of Practice on Disinformation, p9 (referred to above).

[25] One stakeholder reported that smaller companies may be prevented from entering political advertising markets due to the costs of complying with the applicable regulations. Legal fragmentation presents a higher burden to SMEs.

Although the DSA will strengthen transparency and supervision of online ads, including political ads, it will not address the specifics of political advertising. The DSA provides a set of horizontal rules which apply to information society services[26]. The transparency requirements provided by this new framework will complement those foreseen by the DSA by addressing the entire spectrum of economic actors involved in the preparation, publication and dissemination of political advertising, following a problem-specific value chain approach and imposes corresponding obligations on types of actors. While the DSA requires platforms to disclose the identity of the advertiser (irrespective of whether it refers to political or commercial ads), the political ads initiative will require them to also provide information about the political affiliation and on the funding of the ads.

National rules apply to European political parties (EUPPs) on issues not regulated by Regulation 1141/2014. The Regulation does not address political ads directly – only as regards the rules on the application of EU funds. Accordingly, campaigns by EUPPs are potentially subject to different national rules (e.g., rules on what constitutes political advertising, targeting, and periods in which political ads are restricted), despite the transnational character of EUPPs and the EU-wide character of the issue they campaign on.

2.2. What are the problems?

Summary of key problems	
1 - For cross-border providers of political ads[27]	**2 - For democratic processes and political parties in the EU, linked to internal market problems**
Related to transparency, targeting, and monitoring and enforcement	
a. Additional costs and lack of legal certainty for economic actors (incl. EU SMEs[28] seeking to offer and scale up their services across borders) including when providing multi-medium and multi-Member State campaigns,[29] caused by: i. fragmented rules and definitions; ii. rules and procedures that are not always clear, transparent or easily accessible.	Poor national regulatory outcomes caused by: a. Insufficient transparency and clarity for individuals, 'interested actors'[30] and national authorities, leading to: i. non-recognisability of political ads; ii. reduced accountability; iii. circumvention of relevant rules. b. Negative impacts on citizens' rights and democratic processes, from the use of
b. Regulatory arbitrage and circumvention of relevant rules by economic actors offering political ads services (regulatory failure)[31]	

[26] The DSA takes an horizontal approach vis-à-vis online intermediaries (starting from the actors involved) while the political ads initiative takes an horizontal approach on political ads applying to different actors.
[27] Issues under points 1 and 2 are applicable to online and offline services, albeit in different ways/to different extents.
[28] Large non-EU platforms have a prominent market position in the EU. They establish their policies (e.g. Facebook rules on 2019 EP elections).
[29] As reported in the interviews conducted by the contractor.
[30] 'Interested actors' in this context refers to a subgroup within citizens/individual residing in the EU who play a particular role in the democratic process in ensuring that political actors are held to account. This includes journalists, researchers, elections observers, civil society organisations and other actors. This function is understood to be distinct from the monitoring and enforcement role played by competent authorities, which is treated in another point.
[31] For online and broadcast media, internal market principles which enable the provision of relevant services from another Member State on the basis of that state's rules can mean that relevant rules in the receiving state might not be taken into account. In a few Member States, third country providers are barred by national rules from offering such services (e.g. as in the Irish 2020 proposal for an Electoral Reform Bill). https://www.gov.ie/en/publication/34cf6-general-scheme-of-the-electoral-reform-bill-2020/

driven by differing substantive obligations and enforcement (costs), and different possibilities to provide services (obstacles). c. Additional regulatory burden for offline actors in political ads, caused by the differences between online and offline regulation (itself also driven by limited regulatory capability).	targeting and other techniques with political ads; c. Insufficient possibility for authorities to monitor and enforce relevant rules across borders.
3 – Political parties in the EU	
a. Inconsistent and insufficient transparency of political ads issued by EUPPs, because: i. The legal framework (Reg. 1141/2014) does not provide for sufficient transparency for political advertisements disseminated by EUPPs. Divergent national frameworks apply to their political ads[32]; ii. The regulation at EU level is not consistent (Reg. 1141/2014) with national regulation. It pursues objectives connected to financial rules, not to ensuring electoral standards[33]. Links between national and EU campaigns are not made clear on the face of the ads[34]. b. Inconsistent and sometime insufficient transparency of political ads issued by national political parties especially for the context of European elections,[35] due to the fragmented situation.[36]	

2.2.1. Obstacles to the cross-border provision of online political advertising services in the internal market (Problem 1)

Political ads services in the internal market include political advertising delivered through broadcast media, various online channels (social media, banner ads, video-sharing spots etc.) and through other offline means, including billboards, print media and direct mailing. They can involve a large number of related supporting services, such as data services, copywriting, analysis and financial services, often provided by SMEs[37].

It is challenging to isolate political advertising from other advertising services in market statistics[38]. The study and consultation did not manage to obtain comparable data on the offline publishing sector, outside of the disclosures made in the context of national elections[39]. Regarding online advertisement publishing activity, there is a lack of transparency that makes is almost impossible to obtain accurate, consistent and comparable data. Nevertheless, it is clear that the size and complexity of the political advertising market

[32] Responses to the consultation process did not identify any examples of national rules being enforced in the context of campaigns sponsored by EUPPs, but this could change.
[33] For instance, while political parties make declarations on the money they spent on political advertising, this is not declared *during* the elections but only within 6 months of the end of the fiscal year, and not in sufficient detail.
[34] This is particularly problematic if EUPPs engage in EU-level campaigning to affect the outcomes of European Parliament elections. Or, as mentioned in the draft EP report on the application of Regulation 1141/2014, if EUPPs campaign to influence the outcome of national referenda on European matters, https://www.europarl.europa.eu/doceo/document/AFCO-PR-692733_EN.pdf
[35] In the context of EU elections, candidates and campaigns are mainly sponsored by the national political parties, through campaigns which may also be run in multiple Member State.
[36] This is the case when campaigns target diaspora communities residing in other Member States but who vote in national elections in their Member State of origin, or in connection with campaigns by multi-Member State political parties during European elections, such as Diem25 and Volt.
[37] For a profile of the market, the service providers and value chains involved, see Annex 5, in particular 2.5.
[38] Most agencies providing political ads (including ad tech companies, platforms and marketing consultancies) also work on other kinds of campaigns. There can be specialisation in certain Member States for certain support services, such as political campaign and electorate analysis consultancies.
[39] Only a few Member States provide for these to be published, such as Latvia, and the former Member State.

is increasing both within and outside the EU – particularly online, where the EU market was estimated to be worth over EUR 100 million in 2019[40].

Political advertising services are regulated in diverse ways[41]. When offered across borders in the internal market, certain rules can affect economic actors involved, i.e. those regulating:

1. the availability of political ads (rules banning political ads or banning cross-border provision of such services, setting prices or other issues determining access to the debate, and the period/scope of circulation);
2. the advertisements themselves (rules on content and transparency around them – requiring the publication of logos, sponsor details, spending – as well as prohibiting certain content, such as hate speech).

This initiative focuses on the second category, and particularly on transparency requirements. The initiative does not consider interventions regarding prohibitions of content or of political ads *per se*, except to the extent that transparency supports oversight of such rules. A key aspect of the regulation of political advertising is transparency to enable their easy identification by viewers to prevent manipulation, democratic accountability and oversight by competent authorities.

Moreover, transparency appears to be the key available area for harmonisation, which *de facto* allows for shaping the emerging market for political advertising services in a way that minimises fragmentation, barriers and costs for economic actors.

Stakeholders' views: In the consultation process, Member State authorities and civil society contributions highlighted that the current fragmentation has enabled the circumvention of transparency requirements and drove some activity to less regulated Member States, also away from the more strictly regulated offline services. Further, they noted how recent uncoordinated action by Member States to address these issues has exacerbated rather than corrected this situation[42].

The fragmentation of transparency requirements for political ads, with differences in their substance, scope, implementation and enforcement between Member States, and between the policies applied by leading ad publishers, generates various costs and challenges for economic actors operating across borders or seeking to do so.

2.2.1.1. Additional costs and compliance burden for economic actors (Problem 1.1)

Driven by rules which are not always clear, transparent or publicly available: Reliable information about applicable requirements (including the procedures to be followed) can be challenging for service providers to obtain outside their specific jurisdiction, especially as

[40] However, the varying definitions applied both by regulators and by the economic actors providing such services means that reliable figures are difficult to obtain and to compare between Member States, media and sectors. For a description of the advertising market in the EU with estimated figures, see section 1.2 of the underlying study.

[41] In 2013, the European Court of Human Rights (ECHR) observed there was a lack of European consensus on how to regulate paid political advertising in broadcasting, referring to a patchwork of legislation at national level – as well as a great variety of approaches and requirements – for *online* political advertising. It pointed out that this leads to inconsistent – across national jurisdictions – and unclear obligations especially for actors operating in a cross-border context. ECHR (2013), Judgement 48876/08, *Animal Defenders International v. the United Kingdom*. http://hudoc.echr.coe.int/eng?i=001-119244.

[42] In the consultation process, CSOs pointed to varying levels of regulation in the Member States as contributing to decisions about the location of certain service providers. Cf. also Irish Parliamentary Library and Research Service (2021), Note evaluating the government proposal to regulate online political advertising. https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2021/2021-02-08_l-rs-note-the-regulation-of-online-political-advertising-evaluating-the-government-s-proposals_en.pdf.

they are not always clear and easily accessible. For instance, in some Member States, they are provided by standard-setting bodies or national authorities, rather than in law[43].

Driven by fragmented rules, definitions and requirements:

Operators affected by these rules must invest in separate compliance steps and adapt to the various requirements of the different EU jurisdictions[44] to provide services in the internal market. Fragmentation is exacerbated by the scope of national rules differing, with different actors being covered, and by varying obligations depending on the period, sponsor, medium, content and objective of the ad[45]. As an example of the potential effect of differing definitions, online audio-visual ads prepared in the Netherlands with a political aim but without affiliation to a specific political party would not be subject to the rules applying to political campaigns if disseminated into Denmark, but would be subject to such rules if they were disseminated into Ireland or Cyprus[46]. Publishers and campaign agencies need to ensure that ads are adapted to each jurisdiction's transparency requirements, such as on logos, affiliation and funding, but also to related obligations e.g. connected to access to the media. In this respect, political ads offered across borders in the internal market differ from commercial ads, where such rules are (largely) harmonised[47].

The relevant national rules on transparency of political advertising thus differ depending on what counts as 'political advertising', as per national definitions. This means that what can count as a political advertisement in one state (and thus also potentially engage other rules), might not in another, or vice versa, which complicates cross-border campaigns.

They further differ depending on whether they apply to a specific medium: some Member States have distinct rules for print, radio, television and online media, whereas for others the rules apply to multiple media at once, or regardless of the medium, or explicitly to traditional media and implicitly to other media.[48] Only four Member States have (or will soon have) rules specifically for online media. This kind of fragmentation obliges service providers interested in providing political advertising services to carefully assess the whole legal framework applicable to each media for each Member State where they want to provide their services.

Further, even when two Member States have rules in place for the transparency of political advertising on a given medium, the elements of transparency required to be disclosed may

[43] Such as limits to advertising in specific media, on transparency about sources or separation of advertising from editorial content: these can be found in national law and constitutions as well as in professional standards (for instance among journalists) and guidelines from regulators, such as media authorities. For an overview see 'Internal Media Plurality in Audiovisual Media Services in the EU: Rules & Practices' (ERGA Report) https://erga-online.eu/wp-content/uploads/2019/01/ERGA-2018-07-SG1-Report-on-internal-plurality-LQ.pdf, in particular from p 27.

[44] This was mentioned in the consultation as a potentially significant additional cost in a campaign preparation process, involving the investment of time from regulatory compliance officers or external contractors to determine the specific requirements applicable per jurisdiction in a multi-Member State campaign, as well as the additional work needed from copywriting, design and translation to implement any required differences to the appearance of material prepared, as well as further costs to prepare and make any necessary declarations, e.g. regarding sponsors or costs, where needed.

[45] See Annex 9, which illustrates the various ways that legal fragmentation increases costs and adds compliance burdens to the political ads value chain when services are provided across borders.

[46] In Ireland, such an ad would not be allowed on broadcast media but could be viewed online, while in Cyprus it would in principle merely need to be labelled as paid for.

[47] See Annex 8, especially internal market and consumer protection rules.

[48] For instance, in HU the transparency requirements for political advertising that is allowed only apply to press products and posters, whereas in SK the rules are framed so as to require disclosure of the identity of the sponsor for "broadcast political advertising, published paid advertising, published election posters and all other methods of conducting an election campaign" (emphasis added).

still differ strongly, for instance in terms of the amounts paid for the advertisement[49] or of the actors to be identified in the ad[50]. Having to disclose different elements across Member States requires having different versions of the same advertisement ready (or different transparency notices), and when they are disseminated online it requires controlling carefully the audience to which each version of the advertisement is shown.

Similarly, the few Member States which recently passed or intend to pass rules concerning the transparency of targeting techniques also require different elements to be disclosed, some going much further in terms of the explanation of the process behind the targeting technique[51].

Beyond transparency disclosures in the advertisement itself, some Member States also require some form of transparency through reporting obligations (either only from political actors, or also from service providers) concerning the political advertising services contracted and political advertisements circulated on their behalf[52].

Inconsistent rules not only drive fragmentation in the internal market directly, they also have an indirect effect through private sector policies and service availability. Economic actors, including Code of Practice on disinformation signatories, therefore respond to the increased compliance risk and the uncertainty by applying different commercial strategies in their terms of service regarding political ads, to adapt to the fragmented regulatory context and to limit their liability in terms of compliance with different requirements[53]. Such existing policies can include opting not to provide services to actors established in other Member States (including in the context of EU elections), or not providing services in more than one Member State, for commercial reasons.

It was in this context that Facebook[54], as of the 2019 European parliamentary elections, took the decision to require that political ads may only be disseminated in a Member State if the can advertiser provides identification documentation or a proof of residence issued by the state in question. This rule meant that for EUPPs to campaign online across the EU through one of the main social media platforms, they would have had, on the basis of the contractual

[49] For instance, an online platform in FR only has to disclose the amount paid for the promotion of an online advertisement if it is superior to a specific threshold (€100), whereas a similar obligation of the forthcoming IE law foresees no such threshold for online publishers.

[50] A political advertisement (including online) run in in CZ, LT, FR or FI must bear the name of the sponsor and of the publisher, but in SK their address is also to be disclosed, and the forthcoming IE rules also foresee the disclosure of their email address and, where applicable, the website address of the buyer.

[51] Whereas FI requires information as to why an advertisement is targeted at the person, and the identity of the person responsible for advertising, FR requires information about the methods of distribution, the existence of financial compensation, the extent of the distribution (number of views, type of target population, etc.), and whether they were generated automatically or not. The forthcoming IE rules require the disclosure of information about targeting, including a description of the criteria used and of the characteristics of the target audience.

[52] HR requires political actors to report on donations they received (not only financial, but also in terms of services provided free of charge) and on election campaign costs, requiring them to retain very specific information for each expenditure on the purpose of the cost, the number of media services contracted and performed, the name of supplier, the name of the social network, the OIB of the supplier, the address of the supplier, the date or period of advertising services, the invoice payment date, the amount paid and the market value of the product or service used. In contrast, in RO the electoral competitors more simply report on the description of the online electoral propaganda materials, their production, period and broadcasting space. Moreover, in HR the reporting requirements also apply to providers of media advertising services, which have to retain information on the contracts they have concluded with electoral participants in relation to their election campaigns.

[53] Including Facebook/Instagram, Google/Youtube, Snap, Twitter, and TikTok – see Annex 7.

[54] Snapchat and Microsoft imposed the same requirement as Facebook. Google permitted political ads in Europe for entities established in one Member State. Twitter banned all political advertising. Each large platform applied its own definition of political ads and its interpretation of the obligations applicable to advertisers seeking to use their services.

terms of a company, to be established in each Member State[55] and administrate their campaigns locally. This increased the cost of campaigning and limited the options available to EUPPs[56] and any other actor wishing to campaign on European issues or in more than one EU Member State.

By taking such actions, private actors – in particular if they are gateway intermediaries – act as *de facto* enablers and/or quasi-regulators of political ads[57]. Their decisions can have the effect of further partitioning the internal market or otherwise affecting its functioning[58]. This limits the choice of service providers available to actors wishing to sponsor political ads such as political parties and candidates[59], including EUPPs.

Consequences: service providers can decide to limit the services they offer in some Member States, or across borders altogether, because the costs of adapting their services to the different regulatory requirements makes service provision unattractive.[60]

Stakeholders' views: Feedback from stakeholders suggests that fragmentation of conditions for providing services related to political ads disproportionally affect SMEs[61]. SMEs are viewed as being least able to both resource the legal due diligence necessary to provide services in more than one Member State[62] and comply with the requirement to be established in every Member State where a political ad campaign is to run (as required by some Member States and certain large platforms).

2.2.1.2 Regulatory arbitrage and circumvention of relevant rules by providers offering political ads services (regulatory failure) (Problem 1.2)

In the consultation, Member States' competent authorities indicated that a concern in their oversight of political ads during national electoral campaigns was the circumvention of national rules. This happened through the delivery of political ads services, particularly online, across borders within the internal market[63].

This problem is driven by differences in the:

[55] Under Regulation 1141/2014 on the statute and funding of European political parties and foundations, EUPPs are only required to be established in one Member State, and most are established in Belgium only.

[56] Seven EUPPs co-signed a letter (https://europeangreens.eu/news/co-signed-letter-european-political-parties-addressed-facebook-new-advertising-rules) asking Facebook to drop its advertising policy preventing cross-border advertising. The conference of presidents of the European Parliament expressed concerns underlining that the measures imposed by the companies ignore the pan-European nature of the EU institutions, European political groups and parties, which all operate in the whole EU (see for instance https://www.politico.eu/article/facebook-european-elections-advertising-political-social-media-europe/).

[57] Political advertising is moving increasingly online and handled through services operated by a few very large platforms, predominately Facebook and Google. This includes the ads published on their social media, video sharing and other services, as well as programmatic advertising and other up and downstream services that they also provide. The key figures and trends are presented in Annex 2 and in the underlying study.

[58] Indeed, they are implemented on the basis of different private definitions of political ads, and may reduce transparency, as platforms implementing such bans do not provide transparency about how they apply them, nor about the ads that they do publish. See e.g. https://privacyinternational.org/long-read/3703/apart-google-facebook-and-twitter-what-are-other-platforms-doing-about-political-ads as well as Annex 7, table 8.4.

[59] Mentioned in the consultations both by political actors wishing to address diaspora communities in national elections, and by political actors campaigning on the same platform in multiple states in the context of EP elections.

[60] As reported in the stakeholder consultations by economic actors and in the interviews conducted by the contractor.

[61] Underlying study.

[62] This was estimated by industry respondents in the consultation to require at least 1 FTE from an appropriately qualified legal advisor for each campaign.

[63] Such activity was described in the consultation. It has also been reported in connection with specific recent elections, for instance: https://www.opendemocracy.net/en/dark-money-investigations/did-dark-money-and-dirty-tactics-swing-scottish-election/.

i. **cost of complying with the transparency obligations** in certain Member States, for instance as regards specific disclosures, information retention or other steps[64].
ii. **monitoring and enforcement of relevant rules**. In certain Member States, the relevant rules are not applicable or are not enforced, either online or outside of electoral periods. Cooperation mechanisms to support enforcement are limited.

Uncertainty about which rules apply and a lack of information about online activity can also drive differences in regulatory outcomes and hence the commercial decisions taken by service providers (including those established outside the internal market) about their political ad services.

Consequences: This tends to direct cross-border services away from more regulated Member States[65] towards less regulated ones, or where enforcement is limited.

The difficulty for Member State competent authorities to monitor ads in their jurisdiction and enforce their rules for political ads originating from abroad is felt to be disadvantaging domestic service providers in some Member States. Restrictions in Member States are being considered to prevent the circulation of political ads from other Member States or from non-EU countries[66].

The legal analysis confirms that such circumvention cannot be addressed by Member States acting individually. While the introduction of the DSA will improve the overall transparency of advertising and support cross-border oversight of the obligations it imposes, issues specific to political ads will remain unresolved, including the need to cover the transparency of programmatic ads, and to provide transparency of political ad spend and financing.

2.2.1.3 Additional regulatory burden for offline operators in political ads (Problem 1.3)

Member States regulate more those political ads which are disseminated through offline media (radio, TV, print etc.) than those distributed online[67].

Offline operators therefore face a heavier regulatory burden than those working with online political ads[68]. This burden is increased if the services are delivered across borders because the relative advantage of the lighter requirements of providing ad services online is multiplied by the fragmentation costs. This also places EU-based service providers at a

[64] This can also concern national regulation of other aspects than transparency, but transparency (or a lack thereof) is key to enabling circumvention. E.g. in Spain, data processing (such as targeting) that attempts to influence [*desviar*] the will of voters is prohibited by the DPA; see Annex 7. Political ads could therefore *de facto* not be targeted online in Spain under certain conditions (for instance in connection with an election, or otherwise where the aim is influence voters), and advertisers would have to ensure that ads do not unlawfully process personal data in Spain for this purpose.
[65] Or from Member States where obligations are based on the applicability of a national electoral period.
[66] E.g. Ireland is considering such a rule – see Annex 7.
[67] The absence or weakness of regulation for online political ads contrasts with the regulation offline, given the increasing shift to online campaigning. In *Animal Defenders*, the ECtHR reasoned that offline political ads could be subject to a stricter regime than online ads on account of their specific characteristics, including their strong impact. The situation has evolved since 2013, and online political ads are becoming more common and sophisticated. Stakeholders reported in the consultation process that there is no level-playing field between offline (extensively regulated) and online (limited regulation if at all). See above (footnote 49 on ECHR) and Annex 2 for details. Also, some Member States ban political ads in certain conditions – see Annex 7. For instance, in Greece and Ireland, the ban is limited to broadcasting services, while political ads in print and online are allowed.
[68] E.g., some Member States regulate the labelling of political ads on broadcast media but do not have, or do not apply such rules to online ads. See Annexes 6 and 8 for an analysis of the applicable framework, and Annex 9 for examples of how these differences work in practice. See also points raised by interested industry associations in the consultation.

disadvantage to online service providers established outside the EU, who can avoid certain compliance costs altogether[69].

Consequences: While not the only factor driving political ads online[70], these issues contribute to the trend for political parties, candidates and groups to use online ads rather than more strictly regulated offline media. This further distorts competition and favours a limited number of large online operators.

2.2.2. Problems for democratic processes linked to internal market issues (Problem 2)

There is a substantial body of national regulation applicable to political ads, including electoral and political party rules, political funding and transparency rules and regarding relevant audiovisual media and other media services. There are also relevant EU rules. As described in Section 2.2.1, in the Member States where political ads are permitted, specific provisions condition the *availability* of political ads (regarding medium, period, actors etc.) and their *content* (transparency and other rules)[71]. These rules are specific to each Member State and reflect their respective democratic traditions[72], which have in common principles such as addressed by the Council of Europe's Venice Commission[73]. They seek to promote free and fair elections and accountability in the democratic debate, including by ensuring that:

- a plurality of political actors have access to the means to communicate their message to voters;
- political actors campaign in the open and can be challenged on the claims they make;
- resources are used transparently[74];
- citizens are provided with the information they need to evaluate the political messages they receive and make their minds up freely; and
- foreign actors and powerful commercial interests are not able to control the political debate.

Citizens, civil society and national authorities have indicated concerns that the monitoring and enforcement of such rules in political ads is being eroded, especially online and across borders, threatening the integrity of democratic processes.[75] Practical examples of this situation, such as those mentioned in the problem definition chapter, occur on an increasingly regular basis. Beyond the EU instruments relevant to the regulation of political ads[76], the European Commission has issued soft-law measures to help respond[77], but concerns remain. These concerns are closely linked to the internal market issues related to the regulation of transparency of political ads. Addressing them in this initiative will improve fundamental

[69] Eurobarometer 25/03/2021 showed that eight in ten Europeans consider that online social networks and Internet platforms should observe the same rules as traditional media in a pre-election period. https://fronteirasxxi.pt/wp-content/uploads/2021/06/ebs_507_en.pdf

[70] The relatively low price and high impact of online political ads, in particular when combined with targeting and other amplification techniques available in the online context, are the main reason. See for instance EPD: A comprehensive plan to innovate democracy in Europe. https://epd.eu/wp-content/uploads/2020/09/a-civil-society-vision-for-the-european-democracy-action-plan-input-paper.pdf

[71] See Annex 7 for a presentation of the availability and content of relevant national legislation in this area.

[72] In particular, the balance between national institutions, political actors, citizens as voters, and other actors such as journalists and civil society more broadly, that contributes to the democratic debate and oversight.

[73] Cf. Venice Commission code of practice in electoral matters, referred above. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-e

[74] This is linked to the fact that access to resources is often regulated.

[75] See also Council of Europe 'Internet And Electoral Campaigns: Study on the use of internet in electoral campaigns' https://rm.coe.int/use-of-internet-in-electoral-campaigns-/16807c0e24

[76] See 2.1 above and Annex 8.

[77] Commission 2018 electoral package; Code of Practice on Disinformation.

rights (see section 6). They are also relevant for problem 2.3. They are summarised below and presented in more detail in Annex 5, section 2.

2.2.2.1. Negative impacts of current framework on regulatory outcomes across borders (Problem 2.1)

The differences and gaps in national regulation and self-regulation (detailed in Annex 7) result in poor regulatory outcomes for cross-border campaigns, in particular regarding ***non-recognisability of political ads by individuals, lack of accountability in the debate and risk of electorate illicit manipulation***.

This problem has the following drivers:

- Societal and political actors lack information to hold political actors and parties accountable on their online political ads activities and thereby play their role in the democratic process.
- Political actors are unable to exercise mutual scrutiny and Member States have difficulties to monitor and enforce relevant rules which they have adopted to protect the public interest.
- Limited legislation providing insufficient information, especially online.
- Insufficient information provided by the various actors, and ineffective collaboration between national authorities and economic actors[78].

Consequences: All stakeholder groups underlined the negative impact of the poor regulatory outcomes on democratic processes and on public trust in political ads. It has prompted some Member States to unilaterally prepare relevant legislation. These Member States and others have also indicated that neither national regulation nor self-regulation are likely to be effective in addressing the cross-border aspect of this problem without a sufficient EU framework to support them.

2.2.2.2 Targeting techniques in online political ads create problems for citizens and for the democratic process (Problem 2.2)

Online political advertising are different from traditional political campaigning due to the actors involved (including foreign-based actors from inside or outside the EU), the type of media being used (by nature not confined to national border) and the possibility to use techniques tailoring the information provided to different audiences without the possibility to consult what other audiences have been exposed to. This allows a political actor to highlight a different issue for each voter, leading to a different perception of the actor's priorities[79]. These techniques altering or tailoring the visibility of ads can be very elaborated, and can be based on extensive knowledge about individuals, including their vulnerabilities, with the aim to impact voters' behaviour. Further, the same tools that allow people to be targeted can also be used to exclude people from messages that, in a democracy, they have a right to hear.

Targeting online greatly differs from targeting offline. While advertisers will aim to promote their information in specific journals, TV channels, locations etc. based on the categories of the groups that gather there (which amounts to a certain form of targeting), online advertising allows for a selection of audience that is both much narrower (to the level of micro-groups, or

[78] See Annex 5.

[79] The future of online advertising, a study by Duncan Mccann, Will Stronge, Phil Jones. https://www.greens-efa.eu/en/article/document/the-future-of-online-advertising

even individuals) and less evident to those exposed to it – also because the targeted groups will be *ad hoc*[80]. Beside the level of granularity that can be achieved and the level of knowledge about each individual targeted, online ads can also be targeted to appear at specific moments in specific places designed to exploit the moments where they will be most sensitive to certain kind of information, hence manipulation.

Online advertising and advanced data processing and analysis thus enable a number of techniques to target and amplify the impact of political ads[81]. The personal data can come from a number of sources, such as online activity, surveys, the electoral roll etc., and is used for a number of purposes, including to plan campaigns and shape messages, as well as to establish the criteria for the targeting of programmatic ads, etc.

Recent elections in the EU have shown that the impact and the use of targeting is increasing[82], and targeted ads account for an increasing proportion of overall political campaign spending[83]. Despite the existence of comprehensive common EU data protection rules and guidance, transparency on the use of such targeting techniques remains insufficient. This includes for instance the amounts being spent in such techniques and publically available information on the techniques used[84]. Political ads can avoid scrutiny by being narrowly targeted to (and hence only visible by) certain audiences or profiles, allowing political actors to make irreconcilable promises to different segments of the electorate and manipulate the public[85]. The absence of due transparency about the targeting behind a political ad exposes individuals to a greater risk of being manipulated. More details of such abusive and sometimes unlawful practices related to these techniques are documented in the literature[86] and public concerns have been expressed[87] – with targeting of political ads being argued to be problematic per se[88], even in the absence of psychographic profiling techniques such as used by Cambridge Analytica. The use of sensitive categories of personal data is also considered problematic and liable to misuse; the public in particular is opposed to microtargeting that is about certain content, including political advertising, or based on

[80] While a reader of a left-wing magazine will understand that all readers of this magazine are deemed of interest, and therefore exposed to the promotional information of specific advertisers because the reader base of this medium, targeting online focuses on ad-hoc groups which share specific, often apparently unrelated characteristics, and based on (sometimes extensive amounts of) information about the individual – with ads which may reach (or follow) the individual throughout the web regardless of the website visited.

[81] For a summary, see for instance Council of Europe 'Internet And Electoral Campaigns: Study on the use of internet in electoral campaigns' https://rm.coe.int/use-of-internet-in-electoral-campaigns-/16807c0e24, section 4.

[82] IDEA (2020), Online Political Advertising and Microtargeting: the latest legal, ethical, political and technological evolutions. Webinar Series Report https://www.idea.int/publications/catalogue/online-political-advertising-and-microtargeting-latest-legal-ethical; and UNESCO report Elections and Media in Digital Times. https://unesdoc.unesco.org/ark:/48223/pf0000371486/PDF/371486eng.pdf.multi

[83] See underlying Study.

[84] This is increasingly a focus for standards-setting bodies and civil society. See for instance Council of Europe Toolkit for Civil Society organisations: Monitoring Of Media Coverage Of Elections' https://rm.coe.int/monitoring-of-media-coverage-of-elections-toolkit-for-civil-society-or/1680a06bc6

[85] IDEA (2020). Online Political Advertising and Microtargeting: the latest legal, ethical, political and technological evolutions (referred to above).

[86] (Micro)Targeting can easily conceal its intent and nature, making difficult to estimate the size and scale of the problem. See underlying study.

[87] Kozyreva, A., Lorenz-Spreen, P., Hertwig, R. et al., Public attitudes towards algorithmic personalization and use of personal data online: evidence from Germany, Great Britain, and the United States. Humanit Soc Sci Commun 8, 117 (2021). https://doi.org/10.1057/s41599-021-00787-w

[88] Dobber, T. & Ó Fathaigh, R. & Zuiderveen Borgesius, F. J. (2019). The regulation of online political micro-targeting in Europe. Internet Policy Review, 8(4). https://policyreview.info/articles/analysis/regulation-online-political-micro-targeting-europe

certain sensitive attributes including political affiliation[89]. Watchdog organisations and national authorities appear unable to oversee this activity effectively, and are calling for action to revise rules on political ads to address the implications of targeting[90]. **These practices create particular horizontal problems for citizens and the democratic process.**

National rules on political ads can also be engaged by targeting activity, and new national measures are being considered, but they will not address the cross-border nature of this issue and are unlikely to be effective. Annexes 7 and 8 present the relevant national and EU provisions, and point to the gaps and challenges.

Consequences: The way targeting (and amplification) techniques are used with political advertising, and the limited transparency and control applied to them undermines trust in the use of such services among citizens and government authorities, and has a knock-on effect on perceptions of the integrity of elections and the democratic process. Member State and private sector actions in response have been driven by the association of targeting of political ads with foreign interference and disinformation. While these actions have limited the availability of services, they have not provided effective solutions to the problems associated with using targeted political ads. Proposals in the European Parliament[91], the EDPS[92] and at national level have included banning targeting.

2.2.2.3. Member States are unable to monitor and enforce transparency of political ads, and other relevant rules (Problem 2.3)

National competent authorities encounter challenges with monitoring and enforcing relevant rules connected to political ads, particularly online and across borders driven by:

Lack of resources, capacity, competence regarding political ads: The lack of appropriate powers and resources is raised by both civil society and international organisations[93]. The

[89] Kozyreva, A., Lorenz-Spreen, P., Hertwig, R., Lewandowsky, S. & Herzog, S. M. Public attitudes towards algorithmic personalization and use of personal data online: Evidence from Germany, Great Britain, and the United States. Humanit. Soc. Sci. Commun. 8, 1–11 (2021).

[90] See Joint Report of the Venice Commission and of the Directorate of Information Society and Action against Crime of the Directorate General of Human Rights and Rule of Law (DGI), on Digital Technologies and Elections, adopted by the Council of Democratic Elections at its 65th meeting (Venice, 20 June 2019) and by the Venice Commission at its 119th Plenary Session (Venice, 21-22 June 2019) CDL-AD(2019)016-e; and Declaration of the Committee of Ministers of the Council of Europe. https://ccdcoe.org/uploads/2019/09/CoE-190213-Declaration-on-manipulative-capabilities-of-algorithmic-processes.pdf

[91] European Parliament resolution of 20 October 2020 with recommendations to the Commission on a Digital Services Act: adapting commercial and civil law rules for commercial entities operating online, paragraph 17 https://www.europarl.europa.eu/doceo/document/TA-9-2020-0273_EN.html

European Parliament resolution of 20 October 2020 with recommendations to the Commission on the Digital Services Act: Improving the functioning of the Single Market (2020/2018(INL)), paragraph 33 https://www.europarl.europa.eu/doceo/document/TA-9-2020-0272_EN.pdf

[92] https://edps.europa.eu/system/files/2021-02/21-02-10-opinion_on_digital_services_act_en.pdf

[93] This confirmed by a review of OSCE reports on elections in Member States in the past years. For example, in Italy, Regional Electoral Guarantee Boards reported a lack of capacity to verify candidate's campaign finance reports. Furthermore, it was mentioned that competent bodies lack the power and resources to conduct an efficient supervision, investigation and enforcement of political finance regulation: OSCE/ODIHR (2018), Italian Republic Parliamentary elections 4 March 2018 ODIHR Election Assessment Mission Final Report. https://www.osce.org/files/f/documents/9/5/383589_1.pdf. Similar issues were mentioned for Portugal, Bulgaria, Latvia and Slovenia: OSCE/ODIHR (2020), Portugal Presidential Election 24 January 2021, ODIHR Needs Assessment Mission Report. https://www.osce.org/files/f/documents/c/a/473994_1.pdf; OSCE/ODIHR (2021), Republic of Bulgaria Parliamentary Elections 4 April 2021 ODIHR Needs Assessment Mission Report. https://www.osce.org/files/f/documents/6/0/476866_0.pdf; OSCE/ODIHR (2019), Republic of Latvia Parliamentary

legal mapping in Annexes 8 and in the underlying study shows that only few national authorities and bodies are empowered to supervise online political ads.

Extraterritorial nature of the enforcement of online political ads: National authorities and bodies reported insufficient capabilities for oversight of political advertising across borders, while the market for political ads is becoming increasingly cross-border. National rules cannot easily be enforced across borders. With the exception of the voluntary exchanges of information and practices in the European cooperation network on elections (ECNE), Member States reported little cooperation among authorities on these specific topic. EU law provides for oversight mechanisms related to specific aspects of activity relevant to political ads (see Annex 8).

Insufficient coordination on political ads among national authorities: Outside of EU-coordinated governance, including under the GDPR or as envisaged for the DSA, the legal mapping describes the diversity of existing authorities and bodies in the different Member States, all playing a role based on different legal acts. The OSCE reports on EU Member States' elections provide various examples of insufficient coordination in this area.

First impact: Fragmented enforcement of rules and fragmentation of sanctions applicable at national level: The lack of capacity and knowhow by national competent authorities to properly enforce legislation, as well as the insufficient coordination between these bodies, affect enforcement at national level.

Second impact: Use of undeclared sources and interference by foreign actors: Difficulties exist with the lack of transparency including the financing used to conduct political advertising across borders. This enables foreign state and non-state actors to manipulate and interfere in the democratic debate and elections in the European Union.

2.2.3. Political parties in the EU: insufficient and inconsistent transparency (Problem 3)

Political parties in the EU do not provide enough information about their advertising for citizens to recognise them as political advertising, to know how much money was spent on them, what techniques were used to target and amplify them, or to identify which parties and campaigns they are affiliated with. Insofar as this problem relates to the activities of national political parties, it is already discussed in problem 2 (especially on targeting and on the enforcement of national rules), and the rest of problem 3 will therefore focus on EUPPs.

This issue is relevant for EUPPs as their campaigning activity grows[94] and they increasingly campaign cross borders on 'European political issues'[95]. The main driver for this is that EU

Elections 6 October 2018 ODIHR Election Assessment Mission Final Report. https://www.osce.org/files/Latvia%202018%20parliamentary_final%20report_17.01.2019.pdf; OSCE/ODIHR (2018), Republic of Slovenia Early parliamentary elections 3 June 2018 ODIHR Election Assessment Mission Final Report. https://www.osce.org/files/f/documents/0/d/394106.pdf.

[94] Annual funding for EUPPs has increased from under EUR 10 million in 2004 to around EUR 50 million in 2021. Both the individual party audit reports on the EP's DG Finance website and the EUPPs' annual financial statements indicate that advertising activities of various kinds (on print, audiovisual, telecommunications and online media) account for a significant part of expenditure. This point was also reflected in the consultation. EUPPs' expenditure on these various kinds of ads is compared over time in Annex 5, section 2.6. (referred websites: https://www.europarl.europa.eu/contracts-and-grants/en/political-parties-and-foundations/audit-reports-and-donations and https://www.europarl.europa.eu/groups/accounts_en.htm).

[95] As reported in the Commission's 2019 European Parliamentary elections report, p 13.

rules applicable to EUPPs do not provide for specific transparency for political ads, when disclosed to citizens. Further national rules are heterogeneous and generally not enforced for political advertising sponsored by EUPPs. This may be related to a focus placed by national oversight bodies on national campaigns. EUPPs and European political foundations are regulated by Regulation 1141/2014, with national law otherwise being applicable[96]. The Regulation regulates the statutes and funding of EUPPs[97] and does not directly address the transparency of political ads. It obliges European political foundations to use their funding activities only for a closed list of tasks, which does not include political advertising as such[98]. The Regulation also prohibits EUPPs from (i) directly or indirectly funding other political parties, and in particular national parties or candidates, and (ii) financing referendum campaigns[99]. The Regulation provides for verification of compliance with certain registration conditions and requirements[100], and on infringements of rules on the protection of personal data[101].

Regulation 1141/2014 includes transparency obligations in relation to financing and expenditure for electoral campaigns, published in annual financial statements[102]. It also requires the Authority competent for EUPPs to provide on its website information about contributions and donations collected from EUPPs[103]. The Authority does provide some non-binding recommendations[104], however without follow-up monitoring of compliance. Further, the Recommendation accompanying the Commission's 2018 Electoral package recommended that EUPPs take steps to provide a range of information about their advertising, including about targeting[105].

Consequences: In the 2019 European Parliamentary elections, the EUPPs did not effectively deliver the level of transparency recommended in the 2018 elections package[106]. While most

[96] This Regulation is evaluated within the scope of another Commission initiative (https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12811-European-political-parties-and-foundations-review-of-rules-on-legal-status-and-funding_en), which also takes into account the European Parliament's ex-post evaluation of the regulation (https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662646/EPRS_STU(2021)662646_EN.pdf). Neither consider the operation of the Regulation from the perspective of political ads, and this aspect is detailed here.

[97] This concerns in particular their registration and financing, which are overseen by a specially established Authority and DG Finance of the European Parliament.

[98] In other words, European political foundations are prohibited from running political ads. European political parties, however, are not.

[99] Entities bound by Regulation must observe in their programme the values for which the Union is founded including democracy and respect for fundamental rights.

[100] Article 10 of the Regulation. This includes to observe the values on which the Union is founded.

[101] In 2018 the Regulation was amended to include a procedure under Article 10a to enable the Authority to take note of such violations notified by a national competent authority and refer such case to a committee of independent eminent persons established by Article 11, for a potential recommendation for the application of sanctions.

[102] In which EUPPs usually distinguish between expenditure on print, audiovisual and online ads. They have to be made available to the public by the European Parliament https://www.europarl.europa.eu/groups/accounts_en.htm.

[103] This obligation is provided in Article 32(1)(e) and (f) of the Regulation, and such information is accessible via this dedicated website: Donations and contributions / Authority for European political parties and European political foundations – European Parliament http://www.appf.europa.eu/appf/en/donations-and-contributions.

[104] The Authority for EUPPs prepared a number of principles for the scope, content and transparency of political campaigns organised by EUPPs. See for instance the Authority's 2020 activity report, which sets out these principles, and indicates them as inspiration for legislative reforms to the current framework. http://www.appf.europa.eu/cmsdata/238104/2020_AnnualActivityReport_AuthorityEUPPsEUPFs.pdf

[105] Which included the labelling of political ads to enable a person to recognise them as such, the publication of their logo or name in an ad, and information about the amounts spent, the circulation of the ads (impressions, distribution), and information on the use of targeting or other methods: https://ec.europa.eu/info/sites/default/files/soteu2018-cybersecurity-elections-recommendation-5949_en.pdf

[106] Commission's 2019 European Parliamentary elections report. Only the logos on online and offline political ads by some of the larger parties were made accessible to citizens. The Logos project further reports that national member parties largely

political advertisements sponsored by the EUPPs merely aimed to raise awareness of the European elections and promoted electoral participation, the EUPPs did make increased use of targeted political advertising to cover substance issues like climate change[107].

For the future, the European Parliament has indicated its intention to further strengthen the European dimension of the European elections. On this basis, it is to be expected that the proportion of political ads sponsored by EUPPs that address European political themes will increase. In this context, the need for transparency of political ads to ensure accountability in the democratic process would increase, which may prompt Member States to seek to enforce national rules in connection with political ads at European level.

A parallel revision of Regulation 1141/2014 proposes substantive rules to strengthen the European dimension and protection of rights and values in the European political process, including issues identified in the overall governance. That initiative and the one considered for EUPPs in the present impact assessment reinforce each other, with the former clarifying among other rules on how EUPPS can receive funding, and the latter increasing transparency and accountability on the origin of the funds and spending in the context of political advertising.

2.3. How will the problems evolve?

An increasing number of internal market issues are expected to be identified in the provision of cross-border political ads services. Offline political ads will continue to be seen as more burdensome and less attractive. The proportion of political ads which will be published online and which could *a priori* be provided by cross-border operators is likely to increase. Cross-border services will continue to be affected by the costs of fragmentation, and this will continue to further concentrating advertising business towards the limited number of very large providers able to absorb the compliance costs and/or position themselves to benefit from the lighter regulation in certain Member States. This, together with the fact that increased fragmentation and costs will affect the possibilities for SMEs to enter in this market, was reported by stakeholders as problematic.

The cross-border dimension of political ads should further increase, as the number of mobile EU citizens exercising their electoral rights across borders is on the rise. Political parties will increasingly conduct cross-border campaigns, for instance on European themes like climate change. These trends will make more acute the problematic regulation of political ads services as well as inconsistencies and gaps in the regulation of ads, especially political parties. Additional enforcement of national political campaigning rules on political ads sponsored by political parties, would further increase fragmentation and deter European political campaigns. In light of the Parliament's explicit request to strengthen respect for democratic principles including transparency[108], political parties may act voluntarily to

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fail to implement the Regulation's display requirement and ensuring the necessary visibility of their link to their European party of affiliation. https://eudemocracy.eu/logos-project

[107] See Commission's 2019 European Parliamentary elections report, p. 13. https://ec.europa.eu/info/sites/default/files/com_2020_252_en_0.pdf

[108] See draft report of the AFCO Committee on the reform of the Electoral Law of the European Union (2020/2220(INL)) at: https://www.europarl.europa.eu/doceo/document/AFCO-PR-693622_EN.pdf The draft includes a draft recital that 'the goal of more transparency in political advertising and communication should also be reflected in the provisions of the Electoral Law'; see also the European Parliament resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights https://www.europarl.europa.eu/doceo/document/TA-9-2020-0251_EN.html

implement the 2018 transparency recommendations for their political ads. Efforts could be made to apply national (in most cases Belgian law[109]) provisions to European parties in this respect, though national provisions would only apply within their national scope.

As political ads move increasingly online, regulatory outcomes from national legislation will continue to be poor. The disparity of the national requirements in the internal market is likely to increase[110] together with inconsistent across national jurisdictions or ineffective enforcement. This will add legal uncertainty and costs for service providers.

As indicated in Section 2.1 above, while its scope is different, the DSA will already significantly enhance the transparency of ads on online platforms[111]. The DSA will not, however, regulate political ads displayed on other services or provided and produced by other services, nor on offline political ads. The information that it requires to be published with all ads will not include spending information and other elements identified as relevant to political ads.

Signatories of the existing Code of Practice on Disinformation provide information on ad spend in their political ad repositories[112]. While it will continue to evolve under the Guidance of the Commission, the Code needs to be complemented with relevant binding obligations related to the specific area of political ads to ensure a level playing field in the internal market, consistent regulation and the protection of rights[113].

While the DSA represents a significant step forward in the governance of many relevant online activities[114], including the collection of information from online intermediaries[115], the oversight it establishes is linked to the substantive obligations in the DSA itself and its addressees, and will thus not cover all the service providers and activities involved in political ads[116].

Unauthorised actors will continue to interfere in the EU's democratic debate and manipulate the information environment, threatening its democratic processes. This is especially harmful during electoral periods. With rapidly evolving technologies and tools that facilitate the

[109] For instance, in this context Belgian law includes a definition of political ads during a pre-election period and certain limits to its use, supervised by a national authority. This authority does not currently oversee the campaigning activities conducted by EUPPs.

[110] The rapid spread of targeting and its potential to affect democratic discourse have also triggered Member State actions to complement the existing legal frameworks. Ireland in particular is preparing a law which could impact the cross-border provision of services, i.e. the placement of ads by non-Irish EU citizens and companies. General Scheme of the Electoral Reform Bill 2020, pp233-261. The Netherlands is also preparing specific rules focused on transparency in advertising, and other Member States, such as Sweden, are considering options: see for instance https://www.academia.edu/37352763/CYBER_SECURITY__How_can_the_Swedish_Government_prevent_Political_MicroTargeting_from_threatening_the_Electoral_Process_A_Policy_Memo_Security_Policy_and_Strategy_in_Cyber_Space Member States are likely to reserve certain activities for national providers or to impose specific national requirements.

[111] See section 5.1 on the baseline scenario, and Annex 8 for more details on the DSA, where the overlap and differences with this initiative are laid out.

[112] With the proposed DSA, the Code of Practice will be complemented with regulatory oversight.

[113] Assessment of the Code of Practice on Disinformation.

[114] The Member State where a service provider is mainly established would be in charge of monitoring and enforcement of the DSA. Each Member State would designate one or more competent authorities to do this. Designated national authorities for monitoring and enforcement would be coordinated by an EU level Board. The DSA also provides for joint investigations and inter-Member State cooperation, as well as corresponding obligations on service providers to provide duly ordered information to competent authorities.

[115] Where they already enjoy a power to order that such information be provided.

[116] Notably ad intermediaries involved in programmatic advertising.

manipulation of the debate online, in particular artificial amplification and engagement, increased transparency of political ads is crucial to safeguard the integrity of EU elections.

Finally, competent authorities will have increasing difficulty in exercising oversight due to the lack of accessible data from service providers, to support their interventions in case of unlawful behaviours affecting electoral campaigns in their country. Problematic activities will continue in areas where gaps exist, and the risk of interference in elections through the misuse of political ads will persist. The existing cooperation structures among competent authorities at European level on their side will be unable to sufficiently address the problems identified[117].

What are the consequences of the problem? The above-described issues are crosscutting and would continue to affect negatively the Internal Market for political ads and fair democratic processes in Europe.

3. WHY SHOULD THE EU ACT?

3.1. Legal basis

Any legislative intervention at the EU level must relate the competences of the Union legislator.

Article 114 of the Treaty on the Functioning of the European Union (TFEU) enables measures for the approximation of the provisions laid down by law, regulation or administrative action in the Member States which have as their object the establishment and functioning of the internal market. It is the appropriate legal basis for an intervention covering service providers in the internal market and address differences between Member States' provisions which obstruct the fundamental freedoms and have a direct effect on the functioning of the internal market[118]. Differences in national laws exist and the national laws develop, given that some Member States have legislated or intend to legislate on political ads. By harmonising requirements applicable to transparency and the targeting of political ads on the basis of Article 114 TFEU (approximation of laws for the improvement of the internal market), the initiative will remove certain existing obstacles and genuinely enhance the functioning of the internal market.

Article 114 TFEU does not presuppose the existence of a link with the free movement of services in every situation covered by the measures founded on that basis[119]. It permits additional objectives to be pursued[120]. It is logic that measures based on Article 114 TFEU

[117] The main available structures are ECNE and ERGA, which provides coordination for the implementation of the AVMSD – but the authorities composing ERGA may not have been tasked nationally with the oversight of electoral rules, which means ERGA could be partly useful, but will not assuredly be able to always provide the necessary information. The coordination mechanism under the GDPR, in turn, includes the One-Stop-Shop and lead authorities, cooperation among DPAs and under the EDPB, as well as a dispute-resolution mechanism; it is more effective, though it, too, faces structural issues. Its center of gravity however covers the processing of personal data.

[118] See, e.g., Case C-547/14, *the Queen, on the application of:Philip Morris Brands SARL,Philip Morris Ltd British American Tobacco UK Ltd v. The Secretary of State for Health,*, EU:C:2016:325, paragraph 58

[119] See Joined Cases C-465/00 and C-138/01 *Österreichischer Rundfunk and Others*, EU:C:2003:294, paragraphs 41 and 42. In this case, the Court of Justice ruled that the Data Protection Directive 95/46/EC (at that time based on Article 100A of the Treaty establishing the European Community) could be applied even though it applied to a wholly internal situation. See also Case C-101/01 *Lindqvist* EU:C:2003:596 , paragraphs 40 and 41.

[120] Case C-158/96 *Kohll v. Union des caisses de maladie*, EU:C:1998:171; Case C=120/95 Decker v. Caisse de maladie des employés privés, EU:C:1998:167, Case C-377/98 *Netherlands v Parliamen*t, ECLI:EU:C:2001:523, paragraph 27 and Case C-300/89, *Commission v Council*, ECLI:EU:C:1991:244, paragraph 13.

touch upon many different areas, because the economic and the non-economic aspects are many times closely intertwined. As confirmed by the Court, the EU legislature cannot be prevented from relying on that legal basis on the ground that the protection of other policy objectives is a decisive factor in the choices to be made[121]. What is relevant is that the measures adopted on that basis be actually intended to improve the conditions for establishment and functioning of the internal market[122]. In its settled case law on the use of Article 114 TFEU[123], the Court does not engage in weighing the importance of the internal market and the other objectives pursued. What the Court focuses its analysis on is on the fulfilment of the conditions for the use of Article 114 TFEU, i.e., that the measure in question effectively pursues the internal market objective. Some examples in the EU acquis in which Article 114 TFEU has been used as a legal basis for measures that pursue other objectives apart from the improvement of the internal market include, for instance, Regulation 1007/2009 on trade in seal products[124], Directive 98/44 on the legal protection of biotechnological inventions[125], and the Consumer Credit Directive 2008/48/EC[126].

Article 114 TFEU is also relevant to provide obligations on service providers established outside the EU where their service provision affects the internal market, when this is necessary for the desired internal market goal pursued.

Article 16 TFEU permits the Union legislator to enact rules relating to the protection of individuals as regards processing personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities falling within the scope of Union law, and rules related to the free movement of such data. As the current initiative seeks to address problems specific to the use of personal data in political ads (in particular regarding their targeting), intervention will also be based on this provision.

Article 224 TFEU is also relevant to provide for transparency standards applicable to EUPPs. On this basis, regulations governing EUPPs at EU level can be laid down

3.2. Subsidiarity: Necessity of EU action

According to the principle of subsidiarity laid down in Article 5(3) of the Treaty on European Union (TEU), action at EU level should be taken only when the aims envisaged cannot be achieved sufficiently by Member States alone and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the EU. Several Member States have legislated or are about to legislate in the field of transparency of political ads to protect their electoral processes[127]. As these rules diverge in their scope, content and effect, a patchy framework of national rules is appearing and risks to increase. This jeopardises an effective exercise of the freedom of establishment and the freedom to provide services in the EU. Only

[121] See C-491/01 *The Queen v Secretary of State for Health, ex parte British American Tobacco (Investments) Ltd and Imperial Tobacco Ltd*. EU:C:2002:741, where the policy objective at hand was public health protection.
[122] Ibid, paragraph 60.
[123] Ibid.
[124] Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products (Text with EEA relevance)
[125] Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions
[126] Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC
[127] Ireland, the Netherlands and Sweden in particular (see Annex 7). Further, already today, a number of Member States, such as Germany, Austria, Denmark or France, have adopted or are in the process of adopting new laws to regulate digital services in relation to political advertising.

intervention at European level can solve this problem, as regulation at national level is aimed at ensuring transparency and protecting the electoral process, with therefore little concern for the barriers erected to cross-border political advertising services in this exercise of otherwise national competence. Furthermore, the cross-border nature of activities, including in the online environment, creates significant challenges which purely national regulation in this domain would not be able to address. It is unlikely that Member States acting independently would be able to effectively address the identified problems, except eventually if they (like Ireland does) decide to prohibit cross-border political advertising – something which further fragments the internal market. The Commission already highlighted the need for EU action in this area ahead of, and following the 2019 European Parliamentary elections, in the framework of the 2018 elections package.[128] This need for EU action was also demonstrated by the action of certain economic actors providing political ads and related services and of the political actors making use of them. During the European elections, some large online platforms took steps to address the challenge presented by legal uncertainty and fragmentation of the internal market, by only servicing discrete Member State markets, essentially partitioning it. This proved a significant issue for political parties seeking to publish political ads EU-wide[129].

The competence to lay down regulations governing EUPPs resides with the EU.

Further, the envisaged policy options do not go beyond what is necessary to achieve the identified objectives not affecting the competence of Member States to organise elections. Subsidiarity is not only respected, but proportionality as well.

3.3. Subsidiarity: Added value of EU action

The initiative will only address activities where EU action is necessary for the functioning of the internal market, for a high standard of data protection in targeting practices, and to specify the transparency requirements for EUPPs. EU common standards for political ads and related services would bring enhanced legal certainty especially for service providers. The incremental compliance costs of delivering a service across borders would be removed, and the non-compliance risk reduced. This in turn would remove the incentive for economic actors to partition the internal market, provide a fresh incentive for the provision of cross-border services and for the development of new ones. EU rights, including fundamental rights would also be protected more effectively.

In contrast, the effects of any action taken under national law would be limited to a single Member State and would risk being circumvented or difficult to oversee in relation to service providers from other Member States, and could conflict with the internal market. This does not address the EU-wide problems identified, and can also exacerbate the effects of fragmentation. An EU system would also help competent authorities in their oversight functions, other stakeholders to exercise their role in the democratic process and increase the

[128] https://ec.europa.eu/commission/presscorner/detail/en/IP_18_5681

[129] This was reported by economic actors, EUPPs and national political parties which campaigned in more than one Member State, such as Diem-25 and Volt.

overall resilience of the European Union to information manipulation and interference in electoral processes, including disinformation[130].

4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

4.1.General objectives

There are two general objectives:

1. Facilitate the provision of political advertising and related services in the internal market while supporting fair democratic processes based on high and harmonised transparency standards and lawful use of targeting techniques[131].
2. Provide for high transparency standards for political parties in the EU supporting free and fair elections.

4.2. Specific objectives

General objective 1: Facilitate the provision of political advertising and related services in the internal market while supporting fair democratic processes based on high transparency standards and lawful use of targeting techniques
Specific objectives[132]:
1) Reduce legal fragmentation, **limit circumvention of regulation** and **regulatory arbitrage** and **remove obstacles** and **reduce costs** for the provision of cross-border services;
2) Define high transparency standards for political ads (including issues ads), in particular to ensure that: i. **Individuals** are sufficiently aware of the nature of online political ads and can recognise online political ads and distinguish them from other types of online content; ii. **Interested actors** – civil society organisations, academia, elections observers, journalists and political actors – have sufficient information to hold political actors accountable; iii. **Member States competent authorities and EU authorities[133]** have sufficient information on online political ads activities to take informed decisions on online political ads; iv. **Societal trust** in the internal market for political ads increases.
3) Address specific data protection risks emerging from the use of some targeting and amplification techniques, also in order to support fair elections and a fair democratic debate, and to ensure that the newly harmonised market for political advertising is not fragmented by rules regulating targeting.
4) Ensure the effective **oversight** of the envisaged obligations and **strengthen regulatory outcomes**;
General objective 2: Provide for high transparency standards for political parties in the EU, supporting fair democratic processes

[130] The EU could act as a standard-setter for measures to promote democracy as a key value in the EU and the transparency of political ads globally and improve cooperation with like-minded third countries and international organisations.
[131] Standards on the use of targeting will also be coupled to the objective of achieving a high protection of personal data in political advertising practices.
[132] Note that reaching these objectives will also increase resilience against foreign information manipulation and interference.
[133] E.g. in the enforcement of the GDPR or the DSA. A lead authority should be designated for the monitoring and enforcement of the provisions of this initiative where more than one could be competent without prejudice to the provisions on independent supervisory authorities and cooperation in Chapters VI and VII of the GDPR.

Specific objectives:

5) Promote stronger **transparency** and **free and fair elections** through compliance with relevant rules among **political parties in the EU**, through binding rules, where the EU has competence (i.e. for EUPPs), in particular to ensure that:

i. **transparency and accountability** in political campaigning is promoted among political actors;
ii. **resilience to manipulation** and interference in the democratic debate is strengthened;
iii. the **European dimension of European parliamentary elections** is supported through the establishment of clearer rules for cross-border political ads;
iv. **public awareness** of political ads, of the techniques associated with it and of the applicable rules governing it, **is promoted**.

The Intervention Logic (relations between drivers, problems, consequences, general and specific EU objectives, options and expected impacts) is depicted graphically in Annex 6.

5. WHAT ARE THE AVAILABLE POLICY OPTIONS

5.1. What is the baseline from which options are assessed?[134]

Under the baseline scenario, the EU regulatory framework will evolve, particularly as regards information society services, though specific legislation to fully address the issues identified would not be introduced. Once the DSA enters into application, it will clarify responsibilities and accountability for providers of intermediary services, and in particular online platforms, such as social media and marketplaces. Certain intermediary services[135] would be subject to additional due diligence requirements, including notice-and-action procedures for illegal content – including illegal ads. Online marketplaces would be obliged to collect, store and partially verify and publish information on traders using their services to ensure a safer and more transparent online environment for consumers[136]. Further, ads published on online platforms will be clearly distinguished from other content, would directly disclose the advertiser as well as 'meaningful information about the main parameters used to determine the recipient to whom the advertisement is displayed'. VLOPs will also publish ad repositories, including 'whether the ad was intended to be displayed specifically to one or more particular groups of recipients of the service and if so, the main parameters used for that purpose', making this information available for e.g. vetted researchers or authorities. Further access to data by vetted researchers would also be possible. No information will be provided about the the political affiliation of ads, the money spent on them and its source. The chain of actors involved in the preparation, placement and dissemination of the ads will remain obscure, preventing the effective oversight by public interest actors and authorities into the spending of political actors and other national rules relevant to electoral processes. Transparency about the more detailed elements on targeting will remain merely implicit (in the GDPR) or indicated as desirable (in EDPB Guidance). There will not be public scrutiny of the use of political ads online, except to a limited extent for actors in the DSA's scope. The Commission will continue its monitoring of the implementation of the Commission's Electoral package recommendation on transparency and combatting disinformation and the coordination within the framework of ECNE[137]. In line with the Guidance on strengthening

[134] Based on the public consultations conducted for EDAP and this initiative, the findings of the report on the 2019 European elections and underlying studies and questionnaire, the underlying study performed to support this initiative, as well as specific elements from the impact assessment for the DSA and other relevant sources (Annex 8).
[135] Including the majority of online service providers in the scope of this initiative, and naturally not offline actors – see Annex 8 for a description of categories of actors to which measures under the DSA and the current initiative will apply.
[136] See Annex 3.
[137] https://ec.europa.eu/info/sites/info/files/soteu2018-cybersecurity-elections-recommendation-5949_en.pdf.

the Code of Practice of Disinformation the Commission expects the signatories of the Code to step-up the Code's measures on the transparency of political and issues ads. The Code will evolve from a self-regulatory approach to a co-regulatory framework with the adoption of the DSA[138]. While the Code of Practice aims to deliver industry-led solution regarding specific issues related to the transparency of political ads, it would not address all the specific areas related to political ads. Monitoring and enforcement of EU data protection rules would continue, as well as guidance on the consistent application of the GDPR[139].

The baseline would also benefit from measures set out in EDAP. Further, research would continue to analyse the impact of these voluntary measures and unilateral legislative measures being adopted by Member States.

The problems identified in this impact assessment would continue to evolve as described in section 2.3. Political activity will move increasingly online, making cross-border service provision a developing market, including in the context of European elections. The costs and obstacles affecting service providers (ad agencies and publishers) when providing their services across borders or in multiple states will persist. Issues identified for the democratic process related to the circulation of political ads in the internal market, will remain. Despite expected improvements, the lighter online regulation[140] will continue to contribute to driving political ads services online. This move online will cause national rules to become increasingly difficult to monitor and enforce. Member States will continue to respond with diverging national solutions aiming to increase transparency and the possibility for oversight, without the coordinated enforcement. Large platforms with a presence across the internal market will continue to control compliance risks through actions which partition the internal market. Obstacles will continue to prevent smaller companies from scaling up. The problems outlined above resulting from the non-transparency in political ads and regulatory failure will continue to evolve, including as regards the lack of power for citizens to inform themselves on political ads and hold political actors to account.

In the context of European elections, EUPPs intend to increase their campaign activity, for instance on transnational issues such as climate change.[141] Member States might seek to enforce national rules in connection with political ads targeting their citizens. This, and related obstacles to cross-border campaigning may significantly reduce the possibility for transnational parties and movements to conduct their campaigns. Similar obstacles could affect the right to campaign in multiple Member States for some national elections in Europe with diaspora constituencies. The existing, largely *ex ante* oversight framework will address

[138] The proposed DSA will provide a regulatory backstop to the Code, elevating the current self-regulatory regime to a co-regulatory regime. The Code of Practice on Disinformation is also foreseen to become a Code of Conduct under the DSA, with a framework for monitoring, oversight and enforcement with respect to very large online platforms.

[139] In particular through recent Guidelines of the European Data Protection Board on the targeting of social media users https://edpb.europa.eu/system/files/2021-04/edpb_guidelines_082020_on_the_targeting_of_social_media_users_en.pdf. These guidelines expressly refer to targeted political ads ("available online targeting mechanisms enable political parties and campaigns to target individual voters with tailored messages, specific to the particular needs, interests and values of the target audience"). See also Commission guidance on the application of Union data protection law in the electoral context. https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52018DC0638

[140] This light regulation will continue being of concern to citizens. Already four in five Europeans are today in favour of the rules observed by traditional media before elections being applied to the more lightly-regulated online media. https://fronteirasxxi.pt/wp-content/uploads/2021/06/ebs_507_en.pdf

[141] As reported in the Commission's 2019 European Parliamentary elections report, p13. https://ec.europa.eu/info/sites/default/files/com_2020_252_en_0.pdf

EUPPs' transnational campaigning activities, and the proposal to reform the regulatory framework may expand their scope.

5.2. Description of the policy options

The objectives are addressed by two packages of options, which differ in terms of level of intervention proposed. The packages differ in their approach to intervention, but share common elements, especially those soft measures when not replaced in option 2 by binding measures. They address the problems identified regarding the internal market for political ads as they concern transparency rules, the use of targeting and manipulative amplification techniques, oversight, and the problems identified concerning EUPPs and political parties more generally. They build on the 2018 elections package and the experience gathered from it, other related EU policymaking, input received in the consultation and the guidelines and reports published by relevant standard setting bodies. The legislative elements build on the findings of the mapping of the relevant Member State frameworks (see Annex 7) and are consistent with the acquis.

Each internal market option aims to complement and not amend existing EU legislation applicable to offline and online political ads and services, including the DSA, EU consumer and data protection rules, audiovisual media rules and the digital single market.

In turn, the options concerning EUPPs are prepared in close alignment with the initiative to reform the regulation on the statute and funding of EUPPs and foundations.

The options addressed to economic actors in the *internal market* are as follows:

1. **Limited binding measures** to align certain definitions and provide for information retention, and soft measures and standards **to promote transparency** in the use of political ads online and offline and support further interventions, including self-regulation. The soft measures also cover the use of **targeting** techniques.
2. **Binding measures to harmonise transparency requirements** for political ads accompanied by soft measures and standards. The binding measures also address the use of **targeting** techniques in political ads.

The options addressed to *political parties* are as follows

1. **Limited binding measures to adapt the existing framework** on EUPPs to introduce an obligation for parties to support transparent use of political ads; and
2. **Extending the existing framework** to introduce complementary obligations on EUPPs to provide meaningful and transparency obligations for the use of political ads.

Further non-legislative measures are envisaged to incentivise and promote equivalent standards nationally in European elections.

Table 1 – Summary of measures addressed to economic actors in the *internal market*

	Option 1: Limited measures to promote transparency, address issues with targeting and support oversight	**Option 2: Measures to harmonise transparency, address issues with targeting and strengthen oversight**

Obligations on economic actors related to transparency of political ads	**Limited common framing** of political ads based on existing national definitions, to provide clarity to economic actors, incentivise compliance with relevant rules, and facilitate accountability and oversight. **Passive[142] obligation on all actors to retain information** about political ads, in addition to existing EU common obligations[143] (e.g. the amounts spent, source of funding, the scope of distribution and period of circulation of the ad). **Soft measures addressed** to Member States and parties to address the provision of political ads to citizens with tailored and adequate transparency, to facilitate accountability and oversight and address the issues for democratic processes associated with non-transparent ads. **Obligation on relevant services providers to cooperate** with competent authorities, within the scope of the initiative.	**Harmonised framing** of political ads using a combined approach based on existing national definitions **as well as self-identified** political and issues ads. **Passive obligation on all actors to retain information** about political ads, in addition to existing EU common obligations. **Obligations** tailored to the relevant actors **to provide** citizens, interested actors and public authorities **specific information** on political ads, to clarify obligations, facilitate accountability and oversight and address the issues for democratic processes associated with non-transparent ads. **Obligation on relevant service providers to cooperate** with competent authorities, backed by provisions to empower authorities within the scope of the initiative.
Specific measures on targeting and manipulative techniques	**Soft measures addressed** to Member States and political parties to ensure that adequate and specific transparency is provided about the use of targeting and other manipulative techniques, so that voluntary commitments among economic actors on the points raised in the specific objectives are tackled including within the Code of Practice.	**Binding EU-wide limits** to targeting with two sub-options detailed below. **Soft measures addressed** to Member States and political parties on further steps to limit other manipulative techniques, such as buying of fake engagement and inauthentic accounts/networks.
Powers of oversight bodies	**Soft measures addressed** to further empower competent bodies to request and obtain relevant information. **Further support**, including for capacity building, joint action and the exchange of good practices in particular in the framework of ECNE.	**Powers for competent authorities to request information** and to enable the exchange of information among competent bodies, within and across Member States, relying on existing national and EU governance frameworks. **Further support**, including for capacity building, joint action and exchange of good practices among authorities in particular in the framework of ECNE.

Table 2 – summary of measures addressing *political parties*

	Option 1: Limited amendment to the	**Option 2: Extending the Regulation 1141/2014 framework to introduce complementary obligations on EUPPs and active**

[142] The relevant information is normally already available as part of the business process. It merely needs to be retained. The obligation is passive in the sense that economic actors do not have to proactively make that information available to interested actors – only upon request.

[143] This is additional to and without prejudice to harmonised obligations under EU laws such as the GDPR and DSA (see below). Not all concerned operators will be subject to the DSA, or the AVSMD. The GDPR will not apply to all activities as the processing of personal data is not *per se* at stake, even for online ads.

	Regulation 1141/2014 framework	**oversight**
European parties	**Amend the existing framework** to include the requirement that EUPPs take steps to promote the transparent use of political ads and address targeting as a condition for receiving funding.	**Elaborated rules** for EUPPs to ensure transparent management and disclosure of political ads, including obligations to ensure that information is published with the political ads, to limit the use of targeting techniques, as well as to retain and disclose further information (including in the repository below) to provide accountability around the electoral period. Support an independent platform and party-neutral repository of information about political ads activity in European elections, accessible in by all citizens.
National parties	**Soft measures** addressed to Member States and national parties to have high transparency standards consistent with to those for EUPPs	
Political parties in the EU	**Promotion of** a fair campaigning pledge among political actors, based in particular on high transparency standards, including on targeting, and a level playing field in the EU.	

Providing identical transparency requirements at EU level is the element available for harmonisation that would most obviously make the biggest difference for service providers in the internal market. However, providing identical standards on the use of targeting in the political ad context is closely linked to this harmonisation objective. Indeed, while the policy options could be bundled differently, a package combining hard standards on transparency with soft measures on targeting would not address appropriately the objective of the Article 114 TFEU legal basis that is the primary motive for the proposal aimed at economic actors. Indeed, efforts to harmonise the market for political advertising by focusing on high standards of transparency without also harmonising on high standards regarding the use of targeting would soon be met by new fragmentation from Member States determined to protect themselves from the risks emerging from the targeting techniques afforded by online media[144]. Further, even in the consultation, no genuine alternatives to a ban capable of addressing the issues were suggested[145].

Policy option 1 – Limited harmonisation

Transparency: The first option provides for **limited mandatory common transparency requirements** for political ads (both online and offline) **including on targeting**. **It relies on national definitions of political ads,[146]** which **for the most part *a priori* do not cover issues ads**. This would provide a common reference point for service providers in their contractual terms, and for competent authorities to exercise their oversight functions as well as for other stakeholders to play their role. A **specific obligation** on all economic actors involved in these political ads to retain relevant information about political ads (and provide

[144] E.g. the Netherlands and Sweden, see Annex 7.
[145] There are a number of reasons, including limitations of competence for the Commission to intervene, political feasibility, the political aims expressed in the Democracy Action Plan, and the existing policy initiatives (e.g. the Code of Practice) and the framing of any approach by the acquis (the DSA, the GDPR, the AVMSD and Regulation 1141/2014).
[146] A fuller account of such elements of national definitions is found in Table 8.1. in Annex 7.

it upon request) is provided to facilitate the oversight of relevant rules and democratic accountability[147].

Targeting: Under this option, Member States would be specifically invited to provide for standards on the use of targeting techniques. This would support voluntary commitments fostering democratic accountability among economic and political actors, including those within the Code of Practice. This would be without prejudice to existing legal information obligations under the GDPR.

Oversight: Option 1 foresees limited **measures to support oversight and audit** including soft measures to support cross-border cooperation on these matters and enforcement. It promotes common standards (e.g. Application Programming Interfaces ('APIs'), data retention protocols) for interoperable ad repositories, the 'know you client' data for the disclosures to support interoperable information systems and processes, and allows for the effective oversight of, and research into, the circulated ads[148].

Stakeholders' views: Most OPC respondents, across all stakeholders, supported specific measures to increase oversight of competent authorities (73.7%). Stakeholders with an interest in monitoring political ads would welcome a system based on interoperability through which data from multiple platforms could be easily accessed and common tools used across platforms.

Political parties: Option 1 introduces mandatory transparency standards for political ads in Regulation 1141/2014, building on the recommendations in the Electoral package. EUPPs would have to provide *ex ante* to the Authority reassurances that they will take the necessary measures including through their own websites and via explicit commitments.

Soft measures would be addressed to Member States and political parties to promote high transparency for national political parties equivalent to those to be introduced for EUPPs. Political actors would be invited to join, and Member States to support, a fair campaigning pledge, building on national models, to promote high standards of transparency and accountability in political ads, in particular on the use of targeting.

Stakeholders' views: Member States have shown a high interest regarding the creation of soft measures such as code of conducts, without excluding more binding measures. The Dutch Code of Conduct established in 2020 between political parties and online platforms is considered a positive precedent serving as a good example of best practice for other national authorities[149], and will be complemented by the announced NL Law on Political Parties (discussed in Annex 7). In Germany, there has been call for a regulation for political actors that ensures the complete transparency of digital communication[150] and, in various Member States, some parties have developed their own code of conduct in this respect (see Annex 7, section 7). Also, stakeholders consulted as well as some sources in the literature[151] agree that the existence of an ad repository[152] could increase the recognisability of online political ads.

[147] They could be required to make this information public or available to public authorities and relevant stakeholders in line with applicable rules – see below.

[148] These standards would be aligned to and as far as possible include standards set by the DSA proposal (Article 34).

[149] Drawing on the ECNE meeting on political advertising held on 25 March 2021.

[150] D64, the German "center for digital progress" calls for a regulation for political actors that ensures the complete transparency of digital communication. Until this regulation is in place, D64 urges democratic parties to: commit to fair dealings online in a common Code of conduct for all democratic parties in view of the election year 2021: https://d-64.org/themen/code-of-conduct/

[151] Such as A comprehensive plan to innovate democracy in Europe. https://www.youthforum.org/comprehensive-plan-innovate-democracy-europe. See also DisinfoLab and 49 other non-profits' open letter

5.2.2. Policy option 2 – More extensive harmonisation

Transparency: Under policy option 2, **a common approach to the concept of political ads would be defined.** It would cover **ads connected to a political actor, campaign or aim as defined nationally, and self-declared political ads**[153]. This would **include issues ads**[154].

Option 2 includes **harmonised transparency requirements.** Beyond the transparency obligations vis-à-vis those directly exposed to the political ad, further requirements (proactive for VLOPs, upon request for others in the value chain) would apply vis-à-vis interested actors[155] and authorities.

Stakeholders' views: Stakeholders requested clearer and more uniformed concepts and definitions. In particular, private sector companies and in particular major online platforms suggest adopting harmonisation legislation that would define political ads and clarify responsibilities.

The publishers of online and **offline political ads** would have to **make available information** (provided in a transparency notice within or easily retrievable from each political advertisement) about the amounts spent in an advertising campaign and their source, any relevant (nationally defined) campaign/party registration information as well as (where relevant) a link to official information sources about the elections, the sponsor's identity, whether and how the advertisement was targeted or amplified, the scope[156] and period of circulation of the advertisement, the data sources, and the criteria used for targeting[157]. VLOPs would also have to proactively provide this information in their publicly accessible ad repository, in addition to the information they already provide about ads under the DSA[158].

Ad publishers[159] would have to **issue** standardised **periodic reports**[160] on the amounts received for the services they have provided connected to political advertisements and their targeting, aggregated to campaign or candidate.

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https://www.disinfo.eu/advocacy/open-letter-to-eu-policy-makers-how-the-digital-services-act-dsa-can-tackle-disinformation/

[152] As put forward in the Commission Guidance on strengthening the Code of Practice on Disinformation. Examples of ad repositories include Google's: https://transparencyreport.google.com/political-ads/region/EU?hl=en and Facebook's: https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=ES

[153] National definitions of political party, campaign, campaign period, political aim, or any other relevant definition used to establish the link with political ads would not be affected.

[154] Self-declaration would be incentivised through the legal certainty of inclusion within this EU framework, including the provisions on targeting. There is also political value in compliance.

[155] See specific objective 2ii. 'Interested actors' is intended as a privileged category of beneficiary of transparency; it would include actors playing an important role in the political debate (such as oversight on behalf of the public) and build on the idea of vetted researchers under Art. 31 DSA.

[156] The scope is the demographics (segments and numbers) targeted and expected to be reached.

[157] These obligations are in addition to and without prejudice to the obligations under the GDPR and DSA. They would complement existing legal information obligations under the GDPR, and codify elements of the guidance provided by the European Data Protection Board by making mandatory in the context of political advertising information to be provided to the data subject (source of the data and logic involved) to be provided to the data subject. Where there is overlap, the obligations are complementary: i.e. they make the relevant information available to the public, beyond the individual exposed to the ad, and they cover either political ads for which the GDPR is not involved (no personal data) or actors not already covered by the DSA. Under the GDPR, individuals must already know how they have been profiled, what data is processed (what for, its origin, etc.), who is targeting them, what criteria are being used and what segments they are placed into (see Annex 8); not all this information currently need to be provided directly with each ad, however, nor is it to be made available to the wider public.

[158] To ensure appropriate oversight and scrutiny of advertising practices, ads that were taken down (because they were judged unlawful or for other reasons) still need to be retained, although in the repositories this should be made available only in a distinct space available to the authorities and interested actors.

[159] Except those under a defined size (e.g. SMEs).

Other economic actors involved in the political advertising value chain would have **to retain (keep record of) information** on transactions, including amounts, parties, services provided and (where applicable) on the use of targeting, the relevant mechanisms, techniques and parameters used and the source(s) of personal data used. They would also have to provide this information down the chain toward the eventual ad publishers to support the latter's respective proactive obligations, or to provide the information themselves upon request to interested actors.

Additional measures on transparency could be provided through soft measures.

Stakeholders' views: The majority of respondents to the OPC supported the retention of information. On ads repositories, 71% of respondents would like that publishers of political ads retain at least a minimum of information from those placing the advertisements. 67% considered that service providers involved in political ads should also have obligations to retain and provide information. 68% stated that beyond competent authorities, all political ads should also be made available to individuals through a repository.

Targeting: Two sub-options are envisaged in policy option 2 for targeting. Elements of these two sub-options could be combined. Under *sub-option 1*, common standards would **prohibit during reference periods**[161] **the use of defined targeting that is based on sensitive data**[162].

Under *sub-option 2*, common standards would **similarly limit the use of some targeting** techniques such as micro-targeting and targeting based on certain categories of personal data[163], but **also beyond electoral periods.** However, the limitation to targeting techniques would not apply under certain conditions and when ads are clearly labelled as political ads (thus complying with the other specific transparency requirements above) and when the service provider implements and publishes a policy for political ads, with specific reporting in the annual report.

Stakeholders' views: 57.7% of OPC respondents consider that there should be additional limits on targeting and amplification methods, besides compliance with existing data protection rules. Among these 57.7%, respondents favoured either a ban of targeting and amplification (especially offline publishers, individuals and CSOs), or opt-in by user.

Monitoring and enforcement: Option 2 would build on established European governance frameworks including those foreseen for the DSA[164] and for the GDPR[165]. It would provide for the identification of a specific national contact point on the obligations envisaged by the

[160] As a part of annual reporting and to a format developed in cooperation with relevant economic actors and modelled on the framework provided in the Non-Financial Reporting Directive. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095

[161] i.e. the critical period ahead of elections, established nationally or on the basis of common standards. See for instance the Irish Parliamentary Library and Research Service's *Note evaluating the government proposal to regulate online political advertising* (2021), pp 10-12. https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2021/2021-02-08_l-rs-note-the-regulation-of-online-political-advertising-evaluating-the-government-s-proposals_en.pdf

[162] This EU-wide prohibition would not affect the possibility to target based on broad or non sensitive categories, e.g. on the approximate place of residence of citizens or the rough age group they belong to, and could be calibrated to the electorate. Besides targeting based on sensitive data, other techniques with a potential negative impact on democracy, such as the elaborated psychographic techniques used by Cambridge Analytica, could also be prohibited.

[163] This could include the special categories of personal data provided in Article 9 of the GDPR.

[164] The DSA governance would apply to actors in its scope for transparency requirements provided by this initiative.

[165] The GDPR framework would apply to actors in its scope for requirements under this proposal related to data protection, and in particular targeting techniques.

initiative[166]. It would impose specific cooperation obligations to economic actors involved in the political ads value chain.

With regard to the objective of achieving a 'clear line of sight'[167] and automated reporting in the monitoring of the political ads value chain, policy option 2 would specify headline requirements for interoperable information systems based on the required outcome (established on the basis of the transparency needs). This would enable the transparency obligations to be delivered efficiently for both their beneficiaries and for the addressees of the obligations.

Additional measures would support the coordination of oversight of the envisaged measures at EU level, as well as strengthen national coordination and oversight capability among competent authorities, and foster pooled resources, joint action and the exchanges of good practices (including in the framework of the ECNE).

Political parties: Policy option 2 would provide transparency obligations on political ads and limitations to their use of targeting techniques. EUPPs would be obliged to label their ads and to publish or otherwise make available additional information[168], including to actively provide timely disclosures during the electoral campaign period[169]. Further obligations would ensure that parties retain sufficient information to support reporting and oversight functions.

This option would include an independent, platform and party-neutral repository of information about political ads activity in elections to the European Parliament, accessible in real time by all individuals and with corresponding obligations on EUPPs to upload their political ads and provide relevant disclosures[170].

Soft measures would be addressed to Member States and national political parties recommending introducing equivalent standards for all political actors and to support the establishment of a fair campaigning pledge.

5.3. Options discarded at an early stage

Some options were discarded at an early stage, especially based on competence (subsidiarity) and proportionality criteria.

1. Any **ban on cross-border political advertising**. This was discarded as being likely to disproportionately restrict legitimate activity and impact on fundamental rights while being unlikely to effectively address most problems identified.

[166] Existing authorities competent under EU law on (at least one aspect of) political ads are described in Annex 8. Option 2 provides additional powers to competent authorities to request relevant information but would not create an additional governance structure. The increased transparency mandated by the present initiative will enable competent authorities to exercise their existing powers better and more efficiently, especially in cross-border and/or online cases.

[167] To enable information to be provided forward through the value chain to publishers, to support the provision of meaningful information on the political ads they publish, in particular as regards spend, which needs to be aggregated and could include information from several sources.

[168] Following the requirements in this initiative, i.e. information to be provided on the face of the ad, on the EUPP's dedicated space in the repository, and on its website.

[169] For elections to the EP. A common campaigning period may need to be provided, it would apply for these purposes.

[170] Political ads of all forms should be included in this repository; this means not only 'visual' ads, but also paid-for amplification in news feeds and search rankings, for instance. There the inclusion of a kind of ad is not straightforward due to its format, the authority in charge of the repository shall decide on the best technical means to include it.

2. A **general ban on the use of targeting** was discarded as likely disproportionate[171]. It would increase the cost of political advertising and may unduly affect lawful communications outside of electoral periods and during which the main parties affected would be CSOs. Such a ban would advantage well-resourced parties able to afford untargeted online campaigns.
   Options based on opt-in and opt-out have been discarded on targeting as this is already largely addressed by the GDPR, does not address the fact that use is made of people's vulnerabilities, and that manipulation can be at stake when targeting and amplification techniques are being used to disseminate political advertising.
3. **Extensive harmonisation of essential terms in the electoral process**, such as political party or political actor, or campaign periods versus silence periods. These concepts are essential parts of the organisation of elections, which remains largely a national competence[172], raising issues in terms of subsidiarity and proportionality (necessity and EU added value).
4. **Extensive harmonisation of substantial requirements for the electoral process other than transparency.** It would not be possible with this initiative to harmonize all the requirements applicable to political advertising across EU (e.g. who may sponsor an ad or how much they may spend), because the organization of elections and of political activity is a competence of Member States. There are specificities, traditional and historic characteristics accompanying the advertising in political context that have to be taken into account and, in contrast, horizontal transparency and measures applicable to economic operators was indicated as something Member States would be willing to support.
5. Amending the '**country of origin' principle** for political ads, whereby providers of online services are subject to the law of the Member State in which they are established, by creating an horizontal elections-related carve-out to enable the direct application of national relevant rules on services in the internal market affecting national elections. This was rejected as being likely to undermine the internal market and its development, including for services unrelated to political ads, and reducing legal certainty for economic actors.

6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

6.1. The baseline scenario

The impact of the baseline scenario is assessed under the problem definition.

6.2. Assessment of the options

The policy options were evaluated for the following economic, social, fundamental rights and other impacts. No environmental impacts are expected and are not considered further.

6.2.1. Economic impacts

6.2.1.1.Functioning of the internal market

Both options would have a positive effect on the functioning of the internal market.

[171] However, it was noted that not all forms of a ban would necessarily be disproportionate, as clarified by the ECHR in 2013 regarding the UK ban on political ads on broadcast media previously cited.
[172] A uniform procedure or common principles can be established at EU level in the context of European Parliamentary elections, the procedure provided by Article 223 TFEU. The right of initiative belongs to the European Parliament.

Option 1 would partially reduce the costs resulting from legal fragmentation and uncertainty for economic actors, thereby facilitating the offering of political ad services across borders. By supporting coordination among competent authorities, it would contribute to improving regulatory outcomes and reduce the possibility of economic actors obtaining an unfair advantage by offering services from specific Member States.

Option 2 would further remove costs resulting from the legal fragmentation and uncertainty[173], also facilitating the offering of services across borders. By clarifying and harmonising the rules on the retention and provision of information for the purposes of oversight and accountability, it would remove a key driver of compliance costs in multi-Member State and cross-border campaigns. In addition, it would add legal predictability for intermediary services active in several Member States, contributing to the good functioning of the internal market[174]. This option would also improve regulatory outcomes as competent authorities increasingly struggle to enforce the current legal framework. Competent authorities from Member States other than the one where the provider is established will be in an improved position to monitor ads affecting their electoral and democratic process – a currently complex and costly practice[175]. This should in turn improve trust and transparency in political ads services, removing the justification for national market segmentation, thereby increasing opportunities for cross-border services to develop.

The measures on targeting would address the most problematic targeting techniques[176] while also providing for the use of targeting in a manner which incentivises good practice. Tailored restrictions would limit the availability of certain elements of such services. This would be outweighed by opportunities for economic actors resulting from increased trust among citizens and regulators in the technique and from greater legal certainty of compliance in its use in the political context.

In addition, this option would reduce the advantage derived from regulatory fragmentation by providers of services for online ads compared to offline media[177]. It would limit unfair advantage being derived from offering political ads services from outside the internal market, and help ensure that all such services comply with norms established to protect the integrity of democratic processes.

6.2.1.2.Competitiveness, innovation and investment

Both options are expected to have a positive impact on the competitiveness, innovation and investment in cross-border political ads services. Both are proportionate and neither would impose dissuasive requirements on service providers. The removal of the obstacles resulting from legal uncertainty and fragmentation will foster the development of a European industry of rights-compliant services, and will enable existing national enterprises to scale up.

Option 2 would have a greater positive impact on competitiveness, innovation and investment. It would reduce legal fragmentation and help create a stable market to support

[173] Illustrated in Annex 9.

[174] Many consulted stakeholders underline the importance of a common definition and clear rules to foster legal certainty for both consumers and economic operators.

[175] A consulted national authority for example stated that the effective enforcement of transparency obligations is not possible without common rules. Further illustrated in Annex 9.

[176] Using sensitive data, sophisticated profiling and reaching too narrow a proportion of the electorate.

[177] A stakeholder representing audio visual media outlets states that there is a need to address the regulatory asymmetry between online and traditional media services.

investment, enable national SMEs to scale up their operations and stimulate the development of new services offered at EU level. Both sub-option of option 2 could slightly limit the choice in such services. Both sub-options incentives the development of an accountable and fair market for political ads targeting services.

Costs and administrative burden on economic and political actors

Both options would add compliance costs for economic actors providing services which are in scope and not currently regulated (or to be regulated by the DSA) – mainly online adtech and related service providers, though some smaller online intermediaries could be affected despite the specific mitigation foreseen for SMEs. These are also expected to be compensated by the efficiencies realised from the removal of legal fragmentation that facilitate the cross-border provision of services. The net expected result is a cost reduction against the baseline. The measures in common to both options on establishing a common framing and passive transparency for political ads would not involve more than one-off adaptation costs, especially as the retention of the information can be automated.

Option 2 introduces some additional specific obligations over option 1 and the baseline which require business process adaptation and technical design costs. However, the provision of information can for the most part be automated. The costs can be offset against the benefits of streamlining oversight and compliance and the removal of costs associated with regulatory fragmentation.

Estimates of costs for obligations addressed to economic actors

Type of obligation	**Option 1:** Limited measures to promote transparency, address issues with targeting and support oversight	**Option 2:** Measures to harmonise transparency, address targeting and strengthen oversight.
Obligations on economic actors related to transparency of political ads	Common framing of political ads *All economic actors* are expected to derive cost efficiencies when offering services through a common framing of political ads, with online intermediaries each saving around EUR 400,000 per annum[178]. This is expected to proportionately benefit SMEs more than VLOPs, as they will be enabled to offer their services in the internal market. Passive obligation to retain information relevant to political ads oversight *All economic actors* would be required to retain transaction data on political advertising from existing business process and management information systems, to enable reporting and disclosures, and compliance with the obligation to cooperate with competent authorities. Additional ongoing costs are not expected, but limited one-off costs may result to adapt information systems, including for SMEs. Obligation to cooperate with competent authorities *All economic actors* would be expected to have an officer[179] (or legal representative) responsible for interaction with national authorities. SMEs would not need to recruit additional staff and their costs are expected to be absorbed.	

[178] Estimation for companies present in three Member States, assessment based on the comparable DSA impact assessment SWD(2020) 348 final. See Annex 4.4 for details.
[179] Based on the feedback from stakeholders.

	Online intermediary services will already have a single point of contact for authorities under the DSA, and *VLOPs* in particular will also under the DSA already require a compliance and engagement officer. Data protection officers will already been designated under the GDPR as required by it. Costs would vary according to the number of requests – potentially 0.5-1 FTE (full-time equivalent) per political ad campaign[180].	
	Soft measures to introduce national rules on transparency *Ad publishers* would incur one-off data handling and process adaptation costs where national rules change between EUR 3,000 to 5,000 per enterprise[181], but these would only be offset by fragmentation reduction if all Member States implemented the soft measures fully and in an aligned way.	Obligations to publish and otherwise provide information *All actors* would incur costs of providing information to interested actors, depending on the number of requests. *Ad publishers* would have to make one-off data handling and process adaptation costs to obtain and publish the necessary data on the face of the advertisements. These costs may be comparable to costs currently incurred by companies that voluntarily disclose information, estimated at around EUR 10,000 to 15,000 per annum[182]. *VLOPs* may need to make additional costs to adapt their ad repositories (provided under the DSA). These costs would be offset by the fragmentation reduction savings.
Specific measures on targeting	Transparency on targeting Soft measures (option 1) and binding measures (option 2) would imply limited additional cost as they complement other transparency requirements. VLOPs and other operators are expected to incur costs to implement national measures in the absence of harmonisation[183].	
		Limits to targeting of political ads *Suboption 1: ban during reference period* It is unclear whether the estimated increase in the cost of running online political ads campaigns would result in a reduction in overall activity, or drive activity to different media[184]. *VLOPs* would incur some compliance cost and potentially foregone revenue. *Adtech companies* would be limited in their possibilities to provide sophisticated political ads services in the EU

[180] Due to the limited data available for this market, it is currently not possible to estimate how many economic operators would be affected. Further information in Annex 5.
[181] The underlying study bases this estimation on stakeholder consultations.
[182] This estimation is based on the feedback from stakeholders and refers to costs incurred by an average company based on the AdChoices self-regulatory program.
[183] It is challenging to estimate these. No information was provided on costs of the steps taken (if any) to adapt processes to the French requirements, currently the only national provisions to have specifically addressed this point. No estimate of costs has been published for the Irish bill that would introduce some obligations in this area. See Annex 7 for details. In France for example, online platforms must provide users with information on the identity of promotion sponsors and the remuneration received for such content. This information must be publicly available in a register.
[184] The underlying study estimates that equivalent online advertising would be almost 3 times as expensive as current targeted online ads.

		during elections periods. This would affect SMEs involved in this aspect of the market (data brokers, consultancies and other intermediaries etc.). *Suboption 2: conditional limits at all times* *VLOPS* and *ad tech companies* administrating the conditional restrictions would make one-off process adaptation costs. Costs under this sub-option would be significantly compensated through the establishment of a common approach[185].
Powers of oversight bodies		Powers for national authorities to request information *All economic actors* could bear some administrative costs, depending on the scope of the powers required and the number of requests. This may be offset against the streamlining of the applicable regimes, and is mitigated by reliance on existing frameworks. Framework to enable the exchange of information The costs of designing and implementing necessary APIs and adapting business processes can be absorbed into the general IT maintenance cycle.

SME test[186]

It is not possible to fully exempt SMEs from the transparency requirements as they are important actors in political ads. However, some support measures are foreseen[187], as well as an exemption. SMEs would have the possibility to appoint an external person as contact point. On the basis of a *de mimimis* threshold, enterprises would not have to conduct annual public reporting.

Legal fragmentation in the internal market for political ads services is a significant barrier for SMEs, amounting to prohibitive legal and costs obstacles to such enterprises[188]. SMEs are also more affected by policies established by private sector actors and some Member States

[185] It would have a greater positive impact on competitiveness, innovation and investment. It will reduce legal fragmentation and help create a stable market to support investment, enable national SMEs to scale up their operations and stimulate the development of new services offered at EU level.

[186] SMEs are usually technological service providers, engaged in analysis and planning of political campaigns, the provision of 'amplification and targeting services' or 'financial support services' connected to the publication of political ads. SMEs raised certain concerns in the consultation, incl. the need to make sure that what is forbidden offline is also forbidden online, the need to define "political ads", and some concerns on targeting and the use of political data.

[187] Incl. with potentially EU supportive intervention to co-fund public authorities and CSOs via financing programmes.

[188] Adapting to multiple regulatory regimes was described as requiring 1 FTE for a compliance officer merely to determine the relevant obligations, in addition to making any necessary changes.

which limit the possibility to run campaigns to entities which are established in the Member State where the political ads would be published.

Both options foresee changes that would impose one-off costs. The obligation to provide information to the authorities and specific actors (including other enterprises in the value chain) involve an ongoing compliance cost. Support to compliance to transparency requirements should be offered by Member States, professional associations and external consultancies. While the ongoing costs depend on the volume of requests, the one-off costs described affect SMEs proportionately more than other actors.

Option 2 offers more opportunities for such costs to be offset by savings resulting from simplification of the rules and the elimination of the need for multiple adaptations when offering services across borders. This would increase cross-border activity in particular for SMEs, which could offer their services to clients outside their Member State of establishment and would have the opportunity to scale up to operate at EU level.

The ban on targeting based on sensitive data or specific techniques during reference periods under suboption 1 of option 2 would affect SMEs which process data for political ads purposes just like other economic actors. Suboption 2 is designed to rebalance the impact of limiting targeting for political ads by incentivising high standards of transparency and accountability, also demonstrable to the wider public. Providing a common framework for the legitimate use of targeting in political ads could increase opportunities for SMEs to introduce new services and enter the market.

Estimates of costs for obligations addressed to political actors

	Option 1: Limited amendment to the Regulation 1141/2014 framework	**Option 2:** Extending the Regulation 1141/2014 framework to introduce complementary obligations on EUPPs
European parties	Obligations on political parties to ensure that political ads are published transparently. The changes in campaigning processes are expected to be offset against reduced compliance risk and increased certainty and possibilities to campaign resulting from greater clarity about obligations similar to audit requirements estimated at around EUR 75,000 to 150,000 annually[189].	
National parties	Should political parties follow similar transparency obligations to EUPPs' (following the soft measures), the relevant parties could incur similar costs to the ones described above, proportionate to their own size.	
Political parties in the EU	All parties in the EU are expected to face small additional recurring administrative costs related to complying with the obligations voluntarily acquired through participation in a fair campaigning pledge. There would be respective one-off costs to elaborating the fair campaigning pledge should they wish to make their own.	

6.2.1.3.Costs for public authorities of measures addressed to economic actors

Both options would aim to streamline oversight, providing better access to needed information, more opportunities for coordinated action and resource-sharing and clarity about

[189] The underlying study estimates this aspect of compliance costs to amount to around 5% of the overall audit.

the responsible authority. This would result in more effective regulatory outcomes, especially between online and offline political ads.

Option 2 would harmonise transparency requirements for all political ads and establish certain limits to how online political ads may be targeted. It also provides support to Member State authorities to request information to support their tasks,[190] to facilitate cross-border oversight. It could result in some costs for national authorities: one-off costs for training administrative staff and ongoing costs of monitoring compliance transparency and targeting obligations. These costs are expected to be offset against the efficiency savings expected from the harmonised obligations and streamlined and strengthened oversight process, but given the low levels of current enforcement, particularly online, they may not yield a net saving in this respect.

Costs for public authorities of measures addressed to political actors: Given the low level of oversight currently reported, impacts would be modest. Option 1 is not expected to require significant investment by the Authority, except for one-off training costs following a change in the scope of conditions considered.

Option 2 would require the Authority to ensure the technical design, operation and maintenance of a suitable platform for the submission of these disclosures and the publication of relevant information for individuals.[191] Considering that the Authority was reinforced in 2019, the mentioned tasks could be integrated into current workflows and this option does not propose a drastic change to the Authority's tasks.

Costs similar to those in option 1 or 2 (depending on which is adopted) would be incurred by national parties and national authorities in the Member States that align national political parties' transparency obligations to those introduced for EUPPs. These costs would be similar in kind, but proportionate to the parties' size[192].

6.2.2. Social impacts

6.2.2.1.Stronger transparency for economic actors

Both options enhance transparency in the use of political advertising and hence their recognisability, with a likely reduction of disinformation and other manipulations. This would make it harder for unauthorised actors to use tactics such as the inauthentic amplification of certain advertisements (or other tactics uncovered in the *Cambridge Analytica* scandal). Such activities, conducted with or without the knowledge of the sponsor of the ad, have the potential to unduly influence democratic debates and elections within the EU.

Transparency of political ads would improve under both options above the expected levels compared to the baseline scenario. Increased transparency and accountability of involved actors should foster a culture of open and honest political campaigning. There would be equally a small positive reputational impact for economic actors resulting from facilitating transparency. Providing identical transparency requirements at EU level on the basis of harmonised standards would make the biggest difference for service providers in the internal market.

[190] Especially the DSA, the GDPR and the AVSMD.

[191] The study estimates this as requiring between 2 FTE, potentially up to 7 FTE during the period around elections (three months), see underlying study.

[192] This reasoning also applies to the social and fundamental rights impacts discussed below (insofar as the impact involves political parties and authorities), and hence will not be repeated

Option 2 increases the scope of the measures and includes further harmonisation of the transparency requirements which should make it easier for citizens to recognise more political advertisements, and support oversight by competent authorities as well as scrutiny from interested actors (including CSOs, political actors, researchers, elections observers and journalists) to monitor online political ads in the EU and hold their sponsors to account. The strengthening of the quality of information available to interested actors can help enrich the political debate too,[193] and the possibility for NGOs to sponsor informational ads is being preserved.

By fostering a culture of open and fair political campaigning, these measures should enhance trust in the use of political ads, and more generally in the political debate and the integrity of the electoral process. It would contribute to a higher resilience of the EU electoral system to information manipulation and interference.

6.2.2.2.Stronger transparency for political parties

Both options would complement the impact of the measures addressed to economic actors, and increase the transparency provided by political actors as sponsors of political ads. This would be achieved at EU level by introducing concrete elements that EUPPs should ensure that are included in their political ads, replacing the existing and rarely applied patchwork of national rules with a common standard. At national level, political actors would be encouraged to comply through peer and political pressure, as well as through potential future national legislation to make best use of the strengthened EU-level framework.

Under option 2 the likely impact of information standards in EUPPs' political ads will be reinforced by the strengthening of the governance framework to provide ongoing, active supervision, as well as through the provision of an independent platform and party-neutral repository of information about political ads activity in European elections, accessible in real time by all individuals.

6.2.2.3.Enforcement and supervision by authorities

Both options entail improvements over the baseline, in strengthening regulatory coordination among competent authorities especially via the designation of contact points as well as via more operational coordination in this area making best use of existing frameworks. This would ensure that oversight building on a common set of transparency requirements is better coordinated among national authorities.

Option 2 introduces specific powers for competent authorities to request the rapid transmission of *additional information* from economic actors and provides for monitoring and enforcement structures, building on existing oversight frameworks. This should improve the effectiveness and consistency of the oversight among Member States. Enabling the exchange of information among market actors to ensure that transparency is meaningful and conducive to compliance with relevant electoral rules also supports effective oversight.

6.2.2.4. Address abusive use of targeting

[193] It was observed in the national elections in the Netherlands in 2020 that the provision of information about political ads stimulated awareness on them and a national debate on their use.

Both options would lead to improvement in the use of targeting in online political advertising, which would be more transparent and accountable. Improved transparency measures in coordination with existing self-regulation would be expected to increase awareness, and potentially trust. More transparency around currently opaque targeting techniques is likely to indirectly limit targeting or make it more accountable.

Option 2 on targeting and its suboptions introduces restrictions and conditions on the use of targeting (at all times or during specific critical periods).

While a certain level of transparency on targeting practices is already provided under EU law, the increased mandatory level of transparency and accountability toward individuals and toward society at large is likely to produce greater awareness among citizens of different techniques used to target and amplify the effectiveness of political messaging they see. It will allow for greater public scrutiny of differentiated political campaign messaging and will empower citizens to hold political actors more accountable for their different messages and promises.

The proposed regulation could also reduce the perceived and actual legal and reputational risk for political actors of cross-border campaigning, increasing opportunities for campaigns to reach diaspora communities and mobile citizens, as well as for transnational campaigns in the European elections. By clarifying the obligations of EUPPs, this option strengthens the EU dimension of the European Parliamentary elections.

6.2.3. Fundamental rights impacts

All options have a positive impact on fundamental rights, and are not expected to have significant negative impact on fundamental rights.

6.2.3.1.Freedom of expression and information[194]

Both options enhance transparency and hence accountability[195] and *a priori* do not negatively affect freedom of expression[196]. The issuance and disclosure of political ads as such, and their content, remain regulated on the basis of relevant national and EU law. The initiative does not interfere with the content of political messages. Option 2 could cover issues ads disclosed by CSOs or individuals. This could impact such actors which could become more reluctant to intervene in the political debate if their anonymity is affected. However, this should be balanced with the importance for citizens to get a fair access to information, understand where information comes from and not be subject of manipulative anonymous content. Both options positively impact such access to information with a more beneficial impact for option 2. Such transparent and accountable disclosure of political ads also has spill-overs on users' freedom of assembly and association, as well as on the protection of vulnerable groups from manipulation.

[194] Article 11 of the Charter of Fundamental Rights.

[195] Current fragmentation and additional registration requirements currently imposed by private companies can limit freedom of expression and access to information by citizens.

[196] See European Court of Human Rights' judgment *Animal Defenders International v. the United Kingdom* cited previously. In that case, the ECHR ruled in 2013 that the UK ban of political advertising on broadcast media did not violate Article 10 (freedom of expression) of the European Convention on Human Rights. The court weighed the right to impart information and ideas of general interest which the public is entitled to receive, against the protection of the democratic debate and political process from distortion by powerful financial groups with advantageous access to influential media. One of the main considerations in determining that the ban did not go too far was that the applicant had access to alternative media. This applies here too, as advertisers will retain access to alternatives.

A limitation of targeting techniques under sub-option 1 could impact on freedom of expression. This impact would be proportionate if limited in scope and balanced with impact to other fundamental rights. This option would significantly address the risk of manipulation of the democratic debate while respecting the freedom and pluralism of the media.

6.2.3.2.Private life, secrecy of communications and data protection[197]

Both options are expected to impact the rights to the secrecy of communications and to private life set in EU legislation. This is balanced by an overall positive effect on democracy and electoral rights. Measures which would identify the sponsor of a political ad and the amount of money spent on an ad impact the protection of personal data and have to be proportionate to the policy aim sought: to ensure that individuals engaged in the political debate use political ads in a transparent manner[198]. The enhanced transparency, conditions and restrictions on targeting should also benefit the right to data protection.

Where option 2 requires from large online platforms facilitating data access for audits and investigations by interested actors (furthering the freedom of the arts and sciences)[199], such measures would not provide for any derogations from the EU data protection acquis. Only the relevant data should be made accessible to stakeholders including to conduct research on practices affecting the democratic debate and elections. Access would be designed in a non-invasive way (e.g. through the use of anonymized data when feasible, and secure or protected access)[200].

Similarly, where option 2 requires further reporting to national authorities, this can entail communication of personal data of users of platforms placing the ads (and of users flagging the ads). This is a necessary measure for protecting the public interest at stake[201] and would respect proportionality requirements by limiting it to data already collected by the platform. It would imply in any way requirements for citizens using online services to identify themselves.

6.2.3.3.Right to property and freedom to conduct a business

Option 1 does not affect these rights.

In providing for obligatory limitations to the possibility to provide targeting of political ads on the basis of certain data or techniques, option 2 could limit the freedom to conduct a business. This impact is mitigated using two approaches detailed in the suboptions, which narrow the effect of the proposed limits to the most problematic targeting.

6.2.3.4.EU electoral rights

[197] Respectively Articles 7 and 8 of the Charter of Fundamental Rights.
[198] This issue has been considered in comparable national legislation: The Joint Committee on Housing and Local Government of Ireland, which examined the Irish draft Elections reform bill, requested the national deputy Data Protection Commissioner's view on the definitions for political ads and transparency obligations provided in that bill, and the latter indicated they were proportionate:
https://www.oireachtas.ie/en/debates/debate/joint_committee_on_housing_local_government_and_heritage/2021-03-30/2/
[199] EUCHR Article 13.
[200] See the European Digital Media Observatory Working Group on 'Access to Data Held by Digital Platforms for the Purposes of Social Scientific Research': https://edmo.eu/2020/11/24/call-for-comment-on-gdpr-article-40-working-group/ Further, the access should be direct, real-time, both granular and in aggregated/bulk form, and the data should not be 'doctored' or modified (except to the extent necessary for pseudonymisation / anonymisation).
[201] If personal data is part of the data, processing would be under Article 6(1)c and e) of the GDPR. This provision requires Member States to specify in their national framework the conditions for data processing by the requesting authorities.

Both options will support the exercise of electoral rights[202], They will also support free and fair elections and a fair democratic debate, by facilitating transparent cross-border political ads achieving a high level of rights protection, including as regards the protection of personal data and ensuring that citizens are able to make informed political choices without manipulation or coercion. The options addressed to political actors are expected to have a positive impact on fundamental rights including electoral rights, access to information and data protection. Furthermore, the limitations to targeting practices of policy option 2 are coherent with, and have a positive impact on electoral rights as protected under international standards[203].

Table 1: Summary of *Internal Market* impacts for each option considered (compared to the baseline)

Impact assessed	Baseline	Option 1	Option 2
		Limited measures to promote transparency, address issues with targeting and support oversight	**Measures to harmonise transparency, address issues with targeting and strengthen oversight**
Economic impacts	~	+	++
Functioning of the internal market	~	+	++
Competitiveness, innovation and investment	~	+	++
Costs and administrative burdens on economic operators (+SMEs)	~	>	>>
Costs for public authorities	~	>	>>
Social impacts	~	+	++
Enforcement and supervision	~	+	++
Fundamental rights impacts	~	+	++
Freedom of expression and information	~	+	++
Private life and privacy of communications and data protection	~	++	++
Right to property and freedom to conduct a business	~	~	+
EU electoral rights	~	+	+
Other impacts (coherence, etc.)	~	+	++
Overall	~	+	++

Table 2: Summary of *Political parties'* impacts for each option considered (compared to the baseline)

Impact assessed	Baseline	Option 1	Option 2
		Limited amendment to the Regulation 1141/2014 framework	**Extending the Regulation 1141/2014 framework**
Economic impacts	~	+	++
Functioning of the internal market	~	+	++

[202] Article 39 of the Charter of Fundamental Rights. EU electoral rights include the right for every citizen of the Union to vote and to stand as a candidate at elections to municipal and EU elections in the Member State in which he or she resides, under the same conditions as nationals of that State.

[203] The International Standards of Elections of the UN Committee on Human Rights, ratified by all EU Member States, entitle citizens to "be able to form opinions independently, free of […] compulsion, inducement or manipulative interference of any kind," as well as to vote "*without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will*". See UN Committee on Human Rights, General Comment 25, "The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service," 1510th meeting (fiftyseventh session). https://www.osce.org/files/f/documents/4/a/19154.pdf

Competitiveness, innovation and investment	~	+	+
Costs and administrative burdens on economic operators (+SMEs)	~	>	>>
Costs for public authorities	~	>	>>
Social impacts	~	+	++
Enforcement and supervision	~	+	++
Fundamental rights impacts	~	+	++
Freedom of expression and information	~	+	++
Private life and privacy of communications and personal data protection	~	++	++
Right to property and freedom to conduct a business	~	~	+
EU electoral rights	~	+	++
Other impacts (coherence, etc.)	~	+	++
Overall	~	+	++

The tables above should be read in vertical**: '~' means 0 for the baseline. '+' pointing to a better performance of the option than the baseline, and '++' to the best performance among the options; the '>' symbol is used to indicate higher costs than the baseline, and '>>' the highest cost among the options. See Annex 4 for a detailed description.**

7. HOW DO THE OPTIONS COMPARE?

The options were compared on the basis of the following four criteria:

- **Effectiveness**, including to:
  1. Reduce legal fragmentation, limit circumvention of regulation and regulatory arbitrage and remove obstacles and reduce costs for the provision of cross-border political ads services in the internal market;
  2. Increase transparency in political ads;
  3. Regulate the use of targeting and other manipulative techniques;
  4. Ensure the effective oversight of the implementation of envisaged obligations and strengthen regulatory outcomes; and
  5. Promote stronger transparency and free and fair elections through compliance with relevant rules among political parties in the EU.
- **Efficiency:** relating the anticipated costs of the measures against the expected benefits of increased effectiveness.
- **Coherence** with existing and planned initiatives.
- **Proportionality:** relating effectiveness against efficiency and any negative impacts.

Table 3: Comparison of options against baseline

Option	Effectiveness					Efficiency	Coherence	Proportionality
	1	2	3	4	5			
Baseline	≈	≈	≈	≈	≈	≈	≈	≈
Option 1	+	+	+	+	+	+	+	+
Option 2	++	++	++	++	++	++	++	++

7.1. Effectiveness

1. *Reduce legal fragmentation, limit circumvention of regulation and regulatory arbitrage and remove obstacles and reduce costs for the provision of cross-border political ads services in the internal market;*

Both options would increase legal certainty over the baseline. Option 1 would be a partial step towards reducing fragmentation, but it would leave the majority of the substantive changes needed to convergent Member State regulation and self-regulation. Option 2 would increase legal certainty and reduce the scope for divergent regulation. It would provide a clear basis for effective oversight, increasing incentives for legitimate market entry and reducing the incentives for circumventing relevant rules.

With the soft measures proposed by some stakeholders and taken into account in option 1, no tools sufficient for effective oversight are provided, and further fragmentation will a priori not be preventable. Large platforms typically call for self-regulation and soft measures, and participate in self- and co-regulation such as the Code of Practice on Disinformation; however, as discussed in the annex, their efforts (e.g. to label political ads) are done inconsistently. In particular, in the case of providing researchers with access to their data, their measures are indicated to be insufficient, inconsistent and non-transparent.

2. *Increase transparency in political ads*

Both options increase transparency over the baseline. Option 1 is less likely to be effective: experience with the Electoral package recommendation and current national legislative plans do not suggest that convergent regulation is likely. Option 2 would ensure that relevant advertisers provide with all political ads the information necessary for them to be recognised as such, for their sponsors to be held to account in the political process, and for competent national authorities to carry out their oversight functions to ensure that rights are protected and the democratic processes are not undermined.

3. *Regulate the use of targeting and other manipulative techniques*

Both options will support self-regulation aiming to ensure more transparent targeting and the existing transparency and personal data protection framework. Option 2 aims to introduce restrictions to how and when targeting can be used. Suboption 1 would prioritise legal certainty and the effectiveness of protection during nationally established reference periods. Suboption 2 would promote transparency and accountability toward society at large and would address further the (e.g. sensitive) data types and limit the scope of misuse. Both suboptions of option 2 would include common rules on transparency around targeting practices regardless of the targeting limitations.

4. *Ensure the effective oversight of the implementation of envisaged obligations and strengthen regulatory outcomes*

Both options aim to support capacity building, cooperation and the strengthening of the existing and planned governance frameworks at EU and national levels. Option 1 focuses on supporting with soft measures the best use of these frameworks where they provide for cross-border enforcement. Option 2 would also aim to ensure that the gaps in these governance frameworks[204] are closed by providing powers for national authorities to request the

[204] Relevant economic actors and services are outside the scope of the e-Commerce Directive/DSA and the AVMSD – see Annex 8 for details on the existing relevant governance frameworks and where activities are beyond their scope.

information necessary for their oversight activities for political ads, and to be enabled to cooperate in investigation and enforcement action. Economic actors would be supported to enable oversight by ensuring interoperability of information system in the political ads value chain through the development of common APIs and automation in the provision of the data needed by publishers to comply with transparency obligations.

5. *Promote stronger transparency and free and fair elections through compliance with relevant rules among political parties in the EU*

Both options aim to ensure that EUPPs use political ads transparently and to support all political actors in achieving high standards of compliance in political campaigning. Option 1 relies on the existing Regulation 1141/2014: supervision would be passive after the moment of registration and application for funding, and review would be conducted significantly after campaigning ends. Option 2 would provide obligations for active and timely disclosures for EUPPs.
In parallel to both options is the soft measures to Member States to align transparency standards for their national parties to those introduced for EUPPs, which would have a similar impact on free and fair European elections nationally.

7.2. Efficiency

The efficiency of the options weighs the qualitative cost-benefit analysis described in Annex 3, as well as in the description of the impacts in section 6 above.

For both options, online service providers would face non-negligible but variable compliance costs for the obligations related to the retention of information and its supply to competent authorities, with the highest likely exposure being for ad publishers.

Option 1 would impose fewer direct costs on economic actors and national authorities. Economic actors would continue to be exposed to many of the indirect costs of fragmentation described in the baseline scenario.

Option 2 brings with it additional compliance costs for economic actors to implement the specific transparency and oversight related obligations, with both one-off adaptation costs and ongoing compliance administrative costs. Overall costs on service providers are expected to be lower, however, as reduced fragmentation yields efficiency gains.

7.3. Coherence with other initiatives[205]

Both options are complementary to the objectives of the horizontal instruments establishing the single market for digital services, and align with the objective of empowering users and improving the opportunities for innovation and the supervision over digital services. Option 2 would in particular strengthen opportunities for the development of an EU political services market, especially for online services.

Option 2 also supports EU and Member State policies to combat interference and strengthen the resilience of democratic processes. Both options apply to the offline context in addition to online political ads. Member States already regulate offline political ads strictly on the basis of the UCPD and on the basis of their respective electoral and media regulation. Online

[205] The coherence of the present initiative with each relevant EU legislation and forthcoming initiative is described individually in greater detail in Annex 8, under 'space for action' subheadings.

advertising is addressed to an extent by the ECD, and more so by the DSA proposal. The measures considered in this proposal will therefore close gaps of substance and scope and ensure coherence in the approach between media to addressing the specific issues raised by political ads.

Similarly, targeting activities[206] are already regulated by data protection rules (the GDPR and the ePrivacy Directive[207]), both online and offline.[208] The measures assessed would frame the use of targeting for political advertising purposes, by mandating specific additional transparency obligations around its use and by banning certain forms of political ad targeting. Another initiative coherent with, and relevant for the present initiative is the DMA (Digital Markets Act), which would apply to Core Platform Services designated by the Commission as gatekeepers, including their ad services.

Proportionality: Both options apply the principle of proportionality and necessity. This is based on the assessment that the fragmentation of the relevant regulatory framework cannot be addressed by independent action and requires intervention at EU level. All proposed measures are proportionate to the objectives set, though the first suboption of option 2 regarding targeting goes further in restricting economic activity to protect rights. A fragmented approach across Member States is unable to ensure an appropriate level of protection to citizens across the Union, and the supervision of services would remain inconsistent. However, the effectiveness and proportionality of the second option in reaching the objectives is superior, not least in preventing future re-fragmentation of rules (something which no other option is able to do).

8. PREFERRED OPTION

Against this assessment, the preferred option is a package comprising option 2 for the internal market with suboption 2 on targeting, and option 2 for political parties (see table under point 5.2 above.). This preferred set of options would best meet the general objectives of the intervention and would mutually establish a coherent and proportionate framework for political ads in the EU. Further, the preferred option limits the impact on the electoral systems as established by Member States in line with their respective traditions, focusing on the cross-border dimension of the transparency of political ads. The limitations on the targeting of political advertising are proportionate because they are strictly limited in scope to the specific targeting activities in the political context that have been identified as posing a significant risk to individual's fundamental rights.

The choice of legal basis is justified by the need for a uniform application of the new rules, such as the definition of political advertising and the transparency obligations that economic operator must fulfil when preparing or disseminating political advertisement. It will reduce legal fragmentation and provide greater legal certainty by introducing a harmonised set of

[206] See also Blasi and Vermeulen, "Reflections on the murky legal practices of political micro-targeting from a GDPR perspective," International Data Privacy Law, 2021. https://doi.org/10.1093/idpl/ipab018 On offline activities, cf. also the UK Information Commissioner's Office (ICO) decision in the "Emma's Diary" case, where the Labour Party profiled and sent targeted direct mail to mums living in areas with marginal seats –which was incompatible with the purpose for which personal data had initially been collected https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/08/emma-s-diary-fined-140-000-for-selling-personal-information-for-political-campaigning/

[207] Targeting often requires tracking individuals' online activities, which in turn often implies processing information on the individuals' terminal – e.g. with cookies. This implies requiring prior consent. A proposal for an ePrivacy Regulation is being negotiated. Its content is consistent with the *transparency in political ads* initiative.

[208] See the guidance issued by the Commission in 2018 as part of the elections package, referred to above.

key elements for the provision high transparency standards for political advertising, which will provide legal certainty for economic operators and prevent divergences hampering the free provision of the relevant services within the internal market.

Specific objective	**Preferred option**
<u>Measures addressed to economic actors in the internal market</u>	
Transparency	
Establish clear common standards in political ads which provide market actors: • clear common framing for political advertising; • Clear, proportionate specific obligations for each category of actor and defined conditions under which obligations are incurred, on the basis of clearly defined key terms; • streamlined and proportionate reporting and oversight requirements and support for collaboration in the establishment of technical interoperability standards; **Ensure common obligations and clear common framing at EU level to provide:** **1. Viewers of political ads with sufficient transparency to enable them to:** • recognise a political advertisement as such, • understand the wider context of the political advertisement and its aims, • know the identity of the actors and interests which have sponsored the advertisement, and the other information such as period of dissemination or amounts spent. **2. 'Interested actors' of political ads with sufficient transparency to enable them to further determine:** • the chain of actors involved, including the sponsor's identity, the amounts of money spent on the advertising and its sources, linked to any wider associated campaign or interest group; **3. Member States with sufficient information (through enhanced transparency) to enable the monitoring and enforcement of relevant rules on the financing, preparation, placement and dissemination of political advertising, including those which regulate:** • expenditure; • financial or material political	**Common framing** of political ads using combined approach, building on existing national definitions as well as self-identified political and issues ads. **Passive obligation to retain information**, without prejudice to the proactive information obligations toward targeted data subjects under the GDPR and DSA. All economic actors in scope retain relevant information regarding transactions, including amounts, parties and the use of targeting, where relevant. All economic actors in scope provide extracted information forward through the value chain to the eventual ad publishers. **Obligations tailored to the relevant actors** to (proactively) provide citizens, and (upon request) interested actors and public authorities with **adequate information** on political ads (this, in order to clarify obligations, facilitate accountability and oversight and address the issues associated with non-transparent ads). These are considered to include: • Ad publishers label political ads as such on the face of the ad (regardless of medium), and information to enable the wider context of the political advertisement and its aims to be understood (or clear indication as to where this may be found), including on the identity of the sponsor, the period of dissemination, the amounts spent, or meaningful detail about the targeting or amplification techniques used where applicable; • Ad publishers which are VLOPS under DSA provide the relevant additional information in ad repositories, and include on the face of the ad a link to its location in the repository; • Ad publishers provide additional relevant information in a suitably aggregated form, to interested actors on request (e.g. on the value chain, or aggregated information on a specific advertisement campaigns). • Online ad publishers enable access to

contributions; • equality between candidates (e.g. regarding parity of resources and airtime during election campaigns); • silence periods and the periods during which ads are permitted; • the nature of participants (e.g. third-country corporate entities); • the profiling and targeting of voters, including through the use of personal data;	information regarding relevant elections (link to official site). • Ad publishers disclose to the wider public ex ante information on processing of personal data involved in the service of an ad by the ad publisher, other relevant intermediaries or the entity on whose interface the ad appears. • Ad publishers publish information in their periodic reports on the services provided, for whom and for how much, including on targeting services, aggregated to campaign or candidate. • **Obligation to cooperate** with competent authorities, backed by provisions to empower relevant authorities to support the implementation of the initiative.
Targeting and other manipulative techniques	
Establish common rules which impose **proportionate limits on the use of targeting techniques** for political ads, including • enhanced transparency requirements; • framing their use. **Recommend standards** for specific manipulative techniques, e.g. unlawful amplification.	Establish common rules for political ads which: - **limit some targeting techniques** – targeting based on the special categories of personal data provided in Art. 9 GDPR – **unless specific conditions are met**, including: • implementing and publishing a policy for the targeting of political ads; and that • keeping records on the use of targeting (the relevant mechanisms, techniques and parameters used and the source(s) of personal data used). Promote common standards to limit the use of manipulative techniques.
Powers of oversight bodies	
Common standards should support oversight and audit, and the application of sanctions. Adequate powers to enable public authorities to monitor and enforce the measures envisaged in this initiative Framework to enable the exchange of information among economic actors in the ad value chain to facilitate transparency	**Powers** for national competent authorities to request information and to enable the exchange of information among competent bodies within and across Member States, to oversee the compliance with this regulation. **Framework** to enable the exchange of information among authorities and market actors in the ad value chain to ensure that transparency is meaningful. **Further support**, including for capacity building, joint action and the exchange of good practice
<u>Measures addressed to political parties</u>	
Establish rules for **EUPPs** which promote the fair and transparent use of political ads, including: • real time and meaningful provision of information on expenditure;	**Elaborated rules** for EUPPs to ensure transparent management and disclosure of political ads, including obligations to publish information with the political ads, to limit the use of targeting techniques, as well as to retain

• meaningful **ad labelling and the provision of information about the use of targeting techniques;** • limitations to the use of certain characteristics or levels of granularity of targeting. Participation in 'clear line of sight' initiative to support transparency in the political ads industry. Preparation of and/or commitment to a 'fair campaigning pledge'. Promote awareness about the Commission's transparent political ads policies**.**	and disclose further information (including in the repository below) to provide accountability around the electoral period. **Support** an independent platform and party-neutral repository of information about political ads activity in European elections, accessible in real time by all citizens.
Soft measures addressed Member States to adopt standards for their **national political parties** aligned to those for EUPPs, and to support fair campaigning pledges based on transparency, open information and level playing field.	

9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

The table below summarises tentative indicators proposed to monitor the achievement of the operational objectives[209]. An evaluation of the new legislative proposal should be conducted within two years after the coming elections to the European Parliament, based on the proposed indicators, and every five years thereafter. Dedicated reports and surveys launched by the Commission including Eurostat and other entities will be used to monitor the situation.

Data on the following items will be collected through Eurobarometer and other surveys directed to citizens. The existing oversight coordination mechanisms under the GDPR, the AVSMD, and as foreseen for the DSA will be used to collect data. This will also be addressed specifically in the work programme for the ECNE. The implementation of the elements of the initiative will be assessed following each European Parliamentary election on the basis of specific data collection conducted with the support of external contractors.

Operational objectives		Proposed indicators	Data sources
Establish common transparency standards in political advertising which provide **economic actors** with:	• Clear common framing for political ads • Clear and proportionate specific obligations for each category of actor and defined conditions under which obligations are incurred, on the basis of clearly defined key terms; • Streamlined and proportionate reporting and oversight requirements and support for collaboration in the establishment of technical interoperability standards; • Reduced costs and risk for	• Access to the cross-border political ads market (the baseline being the evaluation and figures reported in this impact assessment). • Increase in the completeness of information provided on political advertising (e.g. labelling, targeting techniques, paid content, funding); inclusion of such	Data shared by Member States Stakeholders' reports Eurostat (market trends)

[209] From the underlying study.

	providing political advertising services in the EU; • A level playing field for all relevant economic operators.	information in the relevant publicly available tools including ad repositories (textual analysis, media monitoring and survey).	
Ensure that the common standards established at EU level provide **individuals** with sufficient transparency to enable them to:	• Recognise a political ad as such; • Know the identity of the actors and interests which have sponsored the political ad and; • Where relevant and in addition to the transparency obligations under the GDPR, know that the political ads was **targeted** to them and have access to meaningful information the targeting or other technique being used and its democratic impact[210.]	• Estimates of political ads labelled as such (baseline unknown); • Percentage of users that interacted with labelled political advertisement and/or read the disclaimer accompanying political ads.	Data shared by Member States or by publishers. Surveys (the baseline is the respondents' response to the OPC Q4).
Ensure that the common standards established at EU level provide '**interested users**' (**researchers, journalists and other interested actors** in the political process) of political advertising with sufficient transparency to enable them to determine:	• The full chain of actors involved; • The amounts of money spent on the advertising and its sources, and link this to any wider associated campaign or interest group; • Meaningful and precise details about the targeting used (where relevant), including the amounts spent on it, and the sources of data used; • The scope and period of circulation of an advert, including meaningful information about variants and organic distribution.	• Compliance with the transparency standards as reported by interested stakeholders (mainly qualitative).	Stakeholders' reports Surveys (the baseline is the respondents' response to the OPC Q4)
Establish common standards to **limit the use** of **targeting** techniques for political ads during certain periods or for certain actors;	• Enhanced transparency requirements would permit the precise characteristics used to be understood as well as the role played by the platform's prioritisation algorithms, and; • Demonstration to the wider public of the measures taken	• Level of compliance with EU standards based on feedback from Member States including data protection authorities and citizens. • Amounts and quality	Data shared by Member States Surveys (the baseline is the respondents'

[210] To be interpreted as an obligation in addition and cumulative to the obligations under Articles 13 and 14 GDPR.

unless certain conditions are met. Recommend standards for specific **manipulative techniques**, e.g. unlawful amplification.	to minimise the risks posed by targeting practices to individuals' rights and to democratic societies at large.	of policies and other information made available by companies and parties on targeting and manipulative techniques.	response to the OPC Q4) Stakeholders' reports
Ensure that the common standards established at EU level provide Member States with sufficient transparency to enable **oversight and enforcement** of relevant rules as regards the financing, preparation, placement and dissemination of political advertising, and to support **oversight**, and the application of sanctions.	Including rules that regulate: • Expenditure; • Financial or material political contributions; • Equality between candidates (e.g. regarding parity of resources and airtime during election campaigns); • Silence periods and the periods during which ads are permitted; • The nature of participants (e.g. third-country corporate entities); • The processing of personal data, including the profiling and targeting of voters.	• Change in political advertising: completeness of such information provision (e.g. labelling, targeting techniques, paid content ranking). • Compliance with the EU level standards. • User interaction with targeted advertisement; key characteristics used for targeted advertisement; compliance with transparency principles of political advertisement; existence of standards aligned with the EU level ones.	Data shared by Member States Surveys Stakeholders' reports (including EUPP annual reports, where the baseline the current level of expenditure on online ads)
Establish rules for **EUPPs** which promote the transparent use of political advertising, including: Promote transparent political ads policies. Soft measures addressed to Member States to adopt standards for their national political parties aligned to those for EUPPs.	• Real time and meaningful provision of information on expenditure; • Meaningful ad labelling and the provision of information about the use of targeting techniques; • Limitations to the use of certain characteristics or levels of granularity of targeting; • Participation in 'clear line of sight' initiative to support transparency in the political ads industry; • Preparation of and commitment to a 'fair campaigning pledge'.	• Compliance with EU standards based on feedback in particular from the Authority for political parties. • Self-reporting of compliance with EU rules by the EUPPs (based on questionnaire).	Data shared by Authority Data available in the Authority's ad repository for EUPPs Survey for EUPPs

Annexes

Glossary and acronyms

Term or acronym	*Meaning or definition*
Ad / advertisement[211]	'Advertisement' (or 'ad') means – for the purpose of this impact assessment – information designed to promote the message of a legal or natural person, irrespective of whether to achieve commercial or non-commercial purposes, and generally displayed against a form of remuneration specifically for promoting that information. Advertising can take many forms on any medium, including but not limited to, sponsored targeted messages, sponsored content, sponsored search results, paid-for amplification in news feed or through relevance algorithms, promotion in rankings, promotion of something/someone integrated into content (such as product placement), 'influencers' and other endorsements. The term is defined and applied variously in EU and national law in a political context (see Annex 8), and these definitions and national definitions of political party, campaign, campaign period, political aim, or any other relevant definition used to establish the link with political ads would not be affected.
Ad library / ad repository	Searchable database of advertising made available through application programming interfaces and contains information about each advertisement, which can include[212] the content of the advertisement, the natural or legal person on whose behalf the advertisement is displayed, the period during which the advertising was displayed, whether the advertisement was intended to be displayed specifically to one or more particular groups of recipients, and, if so, the main parameters used for that purpose, the total number of recipients of the advertisement, and the amount spent.
Ad publisher[213]	Entity publishing a political ad: • Offline, the entity which broadcasts, publishes or otherwise disseminates the ad to the public; • Online, the entity which makes an ad available on its own online interface, or via an interface provided by another[214], where the ultimate interface of publication merely displays content served by an intermediary, which is to be considered the effective publisher.
Competent authorities	Authorities designated by Member States to carry out enforcement tasks in line with applicable law.
Disinformation	False or misleading content that is spread with an intention to deceive or secure economic or political gain and which may cause public harm[215].
European political parties (EUPPs)[216]	Political alliance which pursues political objectives and is registered with the Authority for EUPPs and foundations.

[211] Based on Article 2(n) of the proposal for a Digital Services Act (DSA).
[212] The DSA includes specifications for the information to be retained by ad repositories maintained by very large online platforms. Currently various platforms maintain repositories including different information.
[213] See Article 2(n) DSA proposal: https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608117147218&uri=COM%3A2020%3A825%3AFIN
[214] Thus including including ad networks and exchanges which place ads programmatically on third party interfaces.
[215] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European Democracy Action Plan – COM/2020/790 final – 3/12/2020: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A790%3AFIN ('EDAP').

ECNE	European Cooperation Network on Elections
Misinformation[217]	False or misleading content shared without harmful intent though the effects can still be harmful, e.g. when people share false information with friends and family in good faith.
Online platforms[218]	A provider of a hosting service which, at the request of a recipient of a service, stores and disseminates to the public information, unless that activity is a minor and purely ancillary feature of another service and, for objective and technical reasons cannot be used without that other service, and the integration of the feature into the other service is not a means to circumvent the applicability of EU rules applicable to online platforms.
Political ad (political advertising)	Information designed to promote a message, published by any means, and which fulfils at least one of the following conditions: - being paid for by, or circulated on behalf of a political actor or; - being published in a Member State during the period of three months before European parliamentary elections, or during a nationally established reference period which may reasonably be believed as seeking to influence the outcome of the election or the voting behaviour of an individual or a group of individuals or; - being published in a Member State outside a nationally established election period and manifestly seeking to directly impact the outcome of an election, or the voting behaviour of an individual or a group of individuals. Such ads[219] include 'issues ads', and are ads disseminated in the European Union regardless of the medium (offline or online).
Programmatic advertising	Process of automatically buying and selling digital advertising space on the basis of pre-established criteria.
Profiling[220]	Any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements.
Recommender system[221]	A fully or partially automated system used (for instance by an online platform) to suggest in an online interface specific information to recipients of the service, including as a result of a search initiated by the recipient or otherwise determining the relative order or prominence of information displayed.
Targeting[222]	Directing an ad to a particular audience on the basis of certain shared characteristics.

[216] Based on Article 2(3) to Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations. Available over: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32014R1141

[217] Definition from the European Democracy Action Plan ('EDAP').

[218] Based on Article 2(h) DSA proposal.

[219] Defined variously in EU and national law (see Annex 8), but for current purposes to include any form of communication or representation on any medium disseminated in exchange for remuneration.

[220] Based on Article 4(4) of Regulation 2016/679 of the European Parliament and of the Council 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 94/46/EC (hereafter "GDPR").

[221] Based on Article 2(o) DSA proposal. See also the European Data Protection Board (hereafter 'EPDB') guidelines 8/2020. Recommender systems follow a variety of criteria and designs, sometimes personalised for the users. This personalisation is based on, i.e., a user's navigation history, profiles, or ratings they have provided other products, services or businesses they've interacted with in the past on the platform. The prominence of information on a recommender system (news feed, search engine, etc.) can be influenced by payment; this 'amplification' amounts to advertising – possibly political, depending on what or whom is being amplified.

	Targeting can use personal data which is obtained directly from a user, or observed or inferred from the user's online behaviour – about what they like, who they are connected to, what their demographics are, what they have purchased, and more — to tailor the recipients of a message to its intended audience, with the aim of increasing its impact. Targeting is also described as microtargeting, to emphasise the perceived granularity and accuracy of tailoring which can be achieved.
Very large online platforms[223] (VLOPs)	Online platforms which provide their services to a number of average monthly active recipients of the service in the Union equal to or higher than 45 million. Designated by authorities once they reach a user-base of over 10% of the EU population, entailing significant societal risks in the EU. See respectively Articles 24 and 30 of the DSA proposal

[222] EDPB guidelines 8/2020. See also https://blog.mozilla.org/internetcitizen/2018/10/04/microtargeting-dipayan-ghosh/, quoted in Election-Watch-EU and OSCE Policy Paper of April 2021 on Artificial Intelligence's (AI) Impact on Freedom of Expression in Political Campaign and Elections.

[223] Based on Article 25 DSA proposal. The DSA foresees that VLOPs will be designated as such by the competent authority provided under the DSA.

Annex 1: Procedural information

1. Lead DG, D*E*cide Planning/CWP references

The Staff Working Paper was prepared by the Directorate-General for Justice and Consumers.

The *Decide* reference of this initiative is PLAN/2020/8647.

2. Organisation and timing

The Impact Assessment was prepared by DG JUST as the lead Directorate-General.

The Inter-Service Steering Group established for this initiative was associated and consulted several times in the process with meetings on 30 April, 7 June, 30 June and finally on 25 August 2021, under the coordination of the Secretariat-General. It included the following services: DG COMP (DG Competition), DG COMM (DG Communication), DG CNECT (DG Communications Networks, Content and Technology), DG EAC (DG Education and culture), DG FISMA (DG Financial Stability, Financial Services and Capital Markets Union), DG GROW (DG Internal Market, Industry, Entrepreneurship and SME), DG JUST (DG Justice and Consumers), JRC (Joint Research Centre), DG RTD (DG Research and Innovation), SJ (Legal Service), SG (Secretariat-General), EEAS (European External Action Service).

The last meeting of the ISSG, chaired by the Secretariat-General of the European Commission was held on 25 August 2021 (minutes attached).

3. Consultation of the RSB

An upstream meeting took place on 11 February 2021 and the recommendations of the Regulatory Scrutiny Board were duly taken into account. The Regulatory Scrutiny Board discussed the draft impact assessment in the hearing that took place on 29 September 2021.

4. Evidence, sources and quality

The evidence base is drawn in particular from the following:

- The implementation of the Commission's September 2018 electoral package[224], as described in the Commission's report on the 2019 elections[225];
- The experience combatting disinformation and other forms of information manipulation and interference in democracy guided by the Action Plan against disinformation[226], most recently reported on in the Commission and High Representative's joint Communication, "tackling COVID disinformation"[227];

[224] https://ec.europa.eu/commission/presscorner/detail/en/IP_18_5681
[225] https://ec.europa.eu/info/sites/info/files/com_2020_252_en_0.pdf and https://ec.europa.eu/info/sites/info/files/swd_2020_113_en.pdf
[226] https://eeas.europa.eu/headquarters/headquarters-homepage_en/54866/Action%20Plan%20against%20Disinformation
[227] https://ec.europa.eu/info/sites/info/files/communication-tackling-covid-19-disinformation-getting-facts-right_en.pdf

- The Commission's assessment of the first year of operation of the self-regulatory Code of Practice on Disinformation[228];
- The preparatory studies and open consultation for the European Democracy Action Plan[229], the 2020 EU Citizenship Report[230] and the Digital Services Act[231], as well as an ongoing study on the use of digital tools in elections;
- Standard Eurobarometer 94.1 (the fieldwork for which was conducted in December 2020), which included five specific questions on elections relevant to this initiative, and other relevant Eurobarometers[232];
- Other material as necessary, including the substantial research performed by the Joint Research Centre within the Enlightenment 2.0 research programme[233];
- The work of the European Cooperation Network on Elections, including its mapping of relevant national laws and procedures;
- An open public consultation on the present initiative and bilateral meetings with stakeholders (see Annex 2); and
- A dedicated study from VVA with a backward-looking baseline description of the status quo and analysis, including a comprehensive legal and policy mapping of relevant national provisions determining political advertising in general, advertising in political campaigns, as well as the conduct and financing of political campaigning ("the underlying study")[234].

5. Implementation plan

An implementation plan will be prepared, tailored to the policy option pursued. Evaluation of implementation of measures before, during and following the elections will be conducted as a part of the usual reporting process (would be included in the legislative proposal).

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[228] https://ec.europa.eu/digital-single-market/en/news/assessment-code-practice-disinformation-achievements-and-areas-further-improvement - Staff Working Document (SWD(2020)180)

[229] https://ec.europa.eu/info/sites/info/files/report_edap_public_consultation_final.pdf

[230] https://ec.europa.eu/info/files/report-public-consultation-eu-citizenship-rights-2020_en

[231] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12418-Digital-Services-Act-package-ex-ante-regulatory-instrument-of-very-large-online-platforms-acting-as-gatekeepers and https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12417-Digital-Services-Act-deepening-the-Internal-Market-and-clarifying-responsibilities-for-digital-services

[232] Flash Eurobarometer 485 on EU Citizenship and Democracy https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/flash/surveyky/2260 ; The 2019 post-electoral survey https://www.europarl.europa.eu/at-your-service/files/be-heard/eurobarometer/2019/post-election-survey-2019-complete-results/report/en-post-election-survey-2019-report.pdf; Standard Eurobarometer 90 – Media use in the European Union, December 2018 https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/86432; Special Eurobarometer 477 Democracy and elections https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/search/477/surveyKy/2198; Flash Eurobarometer 469 Illegal content online https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/search/online/surveyKy/2201; Flash Eurobarometer 464 Fake News and Disinformation Online https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/search/online/surveyKy/2183; Special Eurobarometer 447 Online Platforms https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/search/online/surveyKy/2183. Special Eurobarometer 507 Democracy in the EU https://fronteirasxxi.pt/wp-content/uploads/2021/06/ebs_507_en.pdf

[233] https://ec.europa.eu/jrc/en/enlightenment-research-programme

[234] For the underlying study see https://ec.europa.eu/info/files/study-preparation-impact-assessment-political-advertising_en; and for it annexes https://ec.europa.eu/info/files/annexes-study-preparation-impact-assessment-political-advertising_en

Annex 2: Stakeholder consultation

1. THE STAKEHOLDER ENGAGEMENT STRATEGY

The Commission conducted wide consultations on issues related to political advertising, digital services and online platforms between January and May 2021. The consultation process built upon other consultation, which helped identify the key issues at stake as well as options and their assessment. An open public consultation ("OPC") from 22 January to 2 April 2021 and a consultation on the inception impact assessment published on 26 January 2021 provided information to develop the problem definition and policy options. The OPC was promoted through the Commission's website, as well as through specific networks. Broad outreach to the wider stakeholder community was organised by Communication services of the European Commission (notably via social media).

The Commission organised meetings with key stakeholders to gather additional evidence and data on the specific problems addressed by the initiative, as well as on the policy approach and its impacts. It also conducted targeted bilateral consultations and analysed numerous position and analytical papers received especially in the context of the preparation of the initiative. The preparation of this impact assessment was also supported by an external study. The contractor also conducted a series of individual consultations with key stakeholders (see section 4 below).

Relevant work in the Council (including in the relevant working parties) and in the European Parliament (including in the Committees in charge of Constitutional Affairs, Legal Affairs; Civil Liberties, Internal Market and Consumer Protection, Justice and Home Affairs and the Special Committee on Foreign Interference) has provided significant input to this process[235].

The stakeholder engagement strategy aimed at gathering the input of the following actors:

1. **Private sector**. The Commission collected the input of businesses involved in the value chain of political advertising:
    a. **Online intermediaries**, including internet service providers;
    b. **Advertisers**, which constitute the link between political actors and service providers;
    c. **Telecommunication services;**
    d. **Publishers Trade and business associations** representing the different interests of the businesses of the above categories, as well as SMEs.
2. **National authorities** including through the European Cooperation Network on Elections;
3. **Political parties at EU level;**
4. **Civil society organisations** advocating for fundamental and democratic rights (such as digital rights) and representing the interests of vulnerable groups;
5. **Journalists and media organisations;**
6. **Academia** and information technology communities;

[235] For example, the INGE and IMCO Committees of the European Parliament had specific meetings on political advertising.

7. **International organisations** working on democratic issues such as IDEA International[236] and the Council of Europe[237];
8. **General public** including citizens themselves through the OPC of which a thorough data analysis has been conducted.

The different consultation tools and an overview of the results are described below.

2. OPEN PUBLIC CONSULTATION (OPC) – 22 January to 2 April 2021

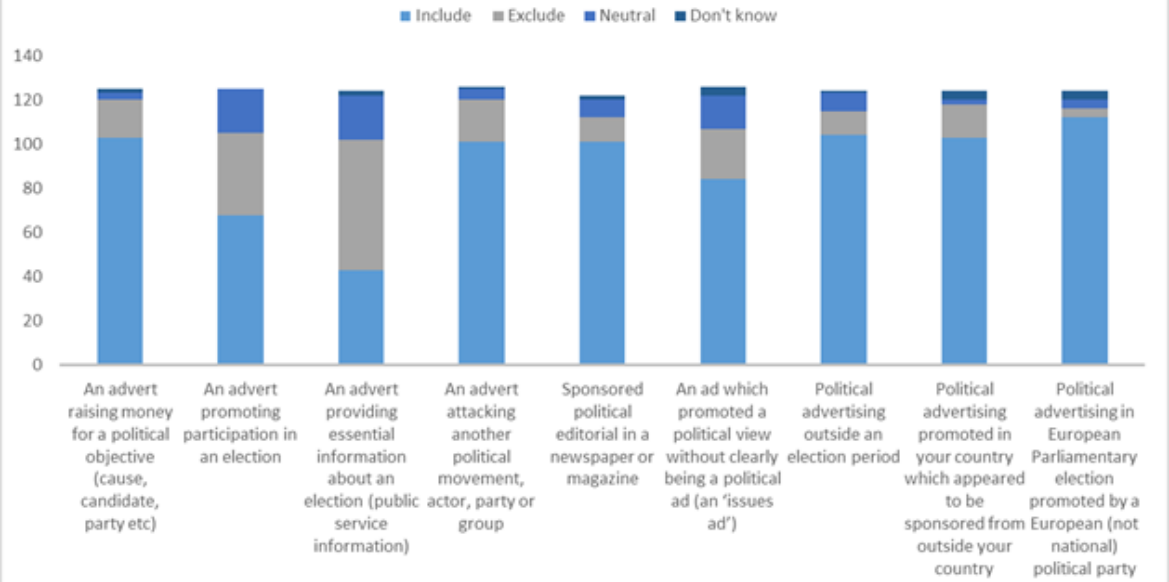
In total 137 responses were received in the context of the OPC. Most feedback was received from citizens (EU citizens 48%, and non-EU citizens 1.4%), NGOs (20.4%), and business associations (9.5%). There were followed by 'Other' (6.5%), private companies (5.8%), public authorities (4.3%), academia (2.1%), consumer organisations (0.7%), and trade unions (0.7%).

The majority of respondents were from the EU. Their six main countries of origin were Belgium (21.1%), Germany (10.9%), Italy (9.4%), France (8.7%), Czech Republic (6.5%) and Spain (6.5%). In addition, 12 position papers were submitted (see point 3.6 below).

2.1 Definition of political advertising

On defining political advertising, the only item that respondents did not consider part of the definition of political advertising was essential information about an election. Respondents were split as to "get out to vote" campaigns should be also covered. A small majority considered issue based ads as political advertising (61.3%).
58.3% of respondents considered that the definition of political ads should be set in law,

FIGURE 1. DEFINITION OF POLITICAL ADVERTISING



while 27% deem that it should be dynamically adaptable. The former state that a legal definition is required to (a) provide legal certainty, (b) prevent grey areas and loopholes, (c) have a strong framework to prevent electoral manipulation and (d) to clearly frame restriction on freedom of expression. The arguments for a dynamic definition are to (a)

[236] https://www.idea.int/
[237] https://www.coe.int/en/web/portal

allow quick modifications due to rapid evolutions in technology, (b) ensure fair competition and (c) that many political contents would not clearly be included in a fixed definition. Some advocated for a legal definition, which should be dynamically adaptable.

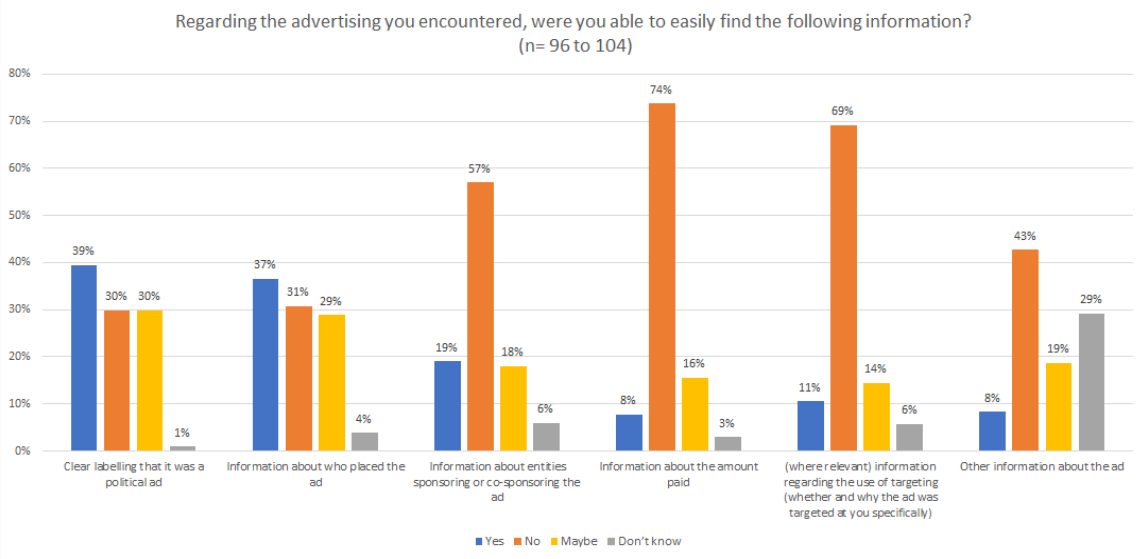
2.2 Prior experience with political advertising

Most respondents had encountered political advertising before, mostly in the form of posters (32.2%), online (26.3%), and on TV (10.9%). 77.4% have seen online political advertising.

Respondents were asked if they consider they can easily retrieve pieces of information in current online political advertisements. The responses clearly indicate a lack of, or unequal transparency in many different categories. The most striking missing items are

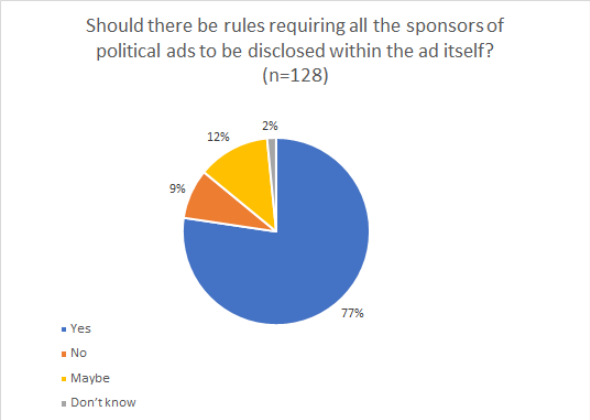
- a) information about who is sponsoring the ad;
- b) information about the amount paid;
- c) information regarding the use of targeting.

The majority of business associations and companies did not provide answers to these questions.



Respondents largely indicated being unable to identify information about the sponsor of political advertising they had encountered**. A large majority of them would favour the disclosure of this information in the ad itself.**

EC public consultation on political advertising – improving transparency: respondents' views on the need to disclose the sponsor of political advertising in the ad itself



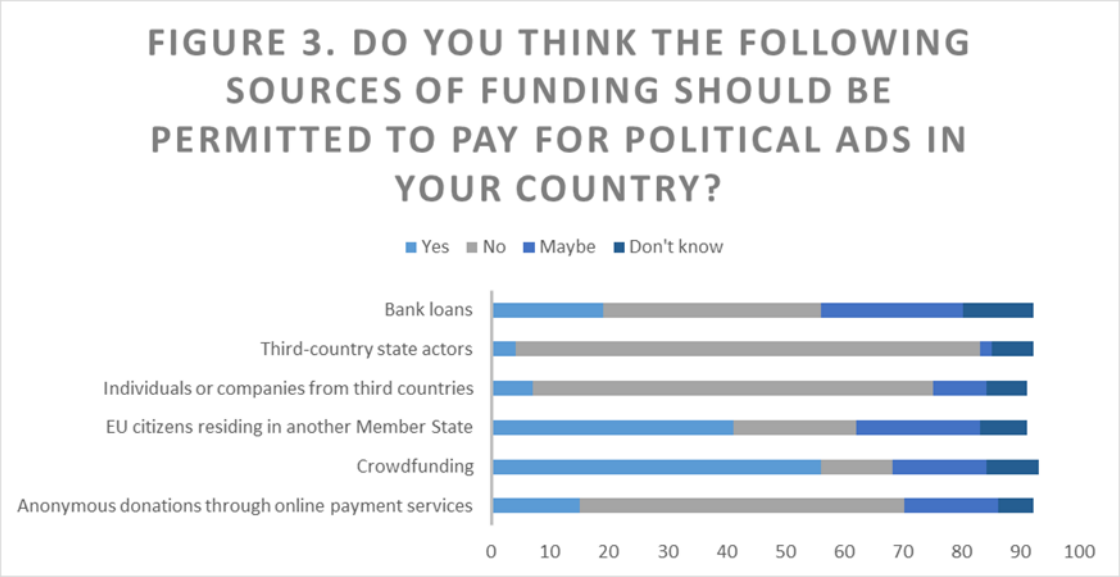
2.3 Potential legislation on online political advertising at EU level

The majority of respondents (62%) were in favour of a legislative action at EU level on the funding of political advertising. It is worth noting that there is a significant number of respondents (29%) who did not position themselves on this issue (11.7% maybe, 5.8% don't know, 11.7% blank), mainly among business associations and companies.

In their comments, several underlined the diversity of legislation across Member States as an issue. Some respondents wrote that harmonised EU legislation would prevent national authorities to circumvent their own rules. For the ones favouring legislation action at EU level, they suggested focusing on transparency of funding of political parties and foreign donations.

For the ones against an EU legislative intervention, the most commonly used argument was that electoral matters is a national prerogative. However, they would support the exchange of best practices and the adoption of guiding principles.

On the sources of funding, the table below clearly shows a trend towards a citizen and participatory approach with preferences for political advertising being funded through crowdfunding and by EU citizens. Most respondents voted against anonymous donations and funding from foreign sources, underlining a will to keep political campaigns outside the reach of external actors. This is confirmed by the fact that 70.1% of respondents are concerned with the influence of foreign actors. In general, business associations, companies, and public authorities did not position themselves on this issue.



Specific questions required the respondents to give their opinion on certain limitations at EU level. 43.8% of respondents (mostly citizens) indicated that the EU should limit the amount of money allocated to political advertising per campaign. All business associations, companies, and public authorities disagreed or did not answer.

46% agreed with the statement that the EU should limit the amount of money that a party, candidate, or campaign can receive from a single source. Again, this is supported mostly by EU citizens, while business associations, companies, and public authorities disagreed or did not reply.

Subsequent questions required respondents to state the desirability of several disclosure requirements. 80.3% agreed that there should be EU rules requiring all political advertising to be clearly and specifically labelled. 72.3% indicated that all sponsors of political ads should be disclosed within the ad itself and 64.2% that there should be rules requiring political ads to be truthful and not misleading. While positive replies were equally spread across stakeholders for the two first questions, business associations and companies showed more reluctance regarding truthfulness requirements.

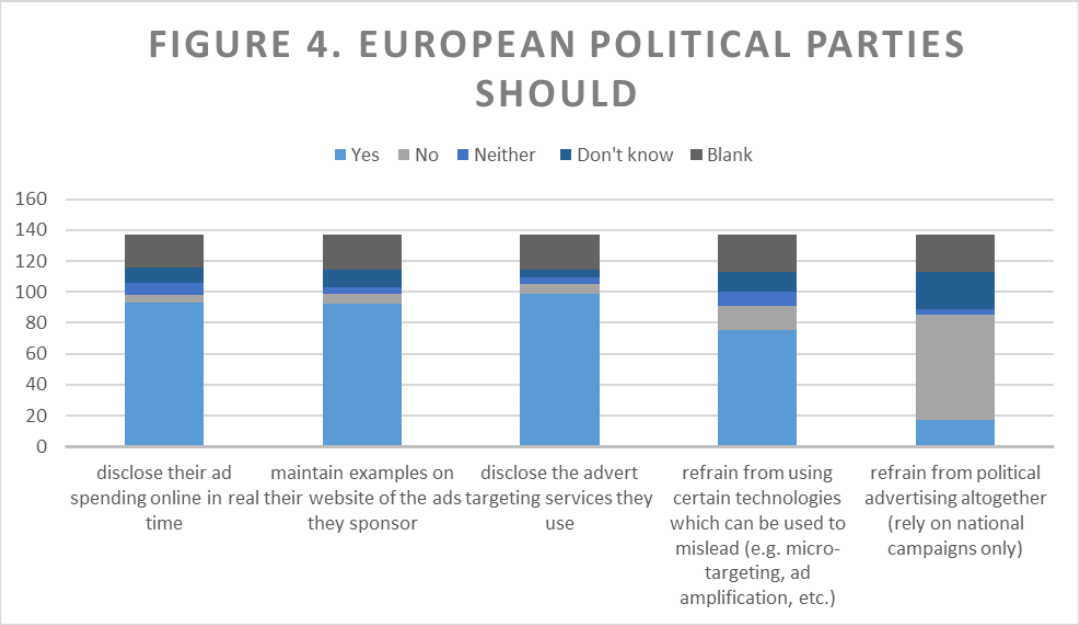
There was more uncertainty with regard to the need to regulate the allocation of online advertising space during election times (47.4% yes, 13.9% no, 19% maybe, 9.5% don't know, 10.2% blank). Positive replies came from EU citizens, public authorities, academia, and NGOs.

2.4 European Elections & online political advertising

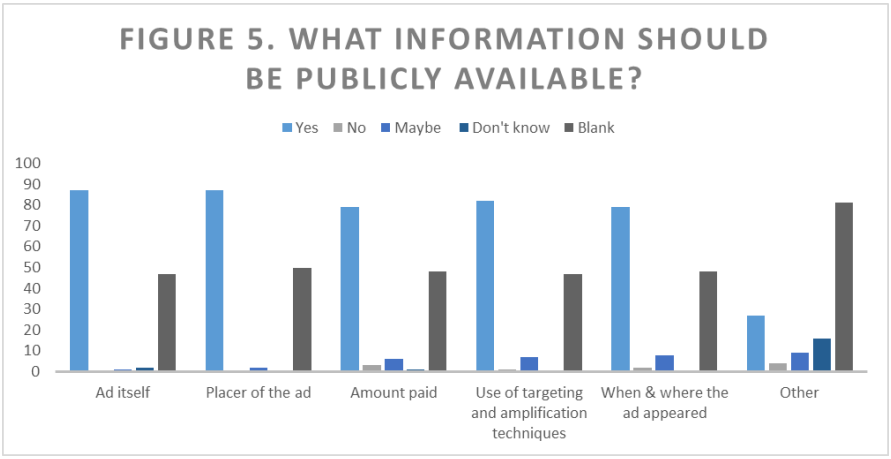
Several questions specifically zoomed in on the aspect of European elections. A majority of respondents (68%) voiced their support for common political advertising rules for European elections. Some of them argued that as Members of the European Parliament are all elected to the same body, they should run under the same conditions. Others reiterated the importance of transparency requirements to ensure the quality of European elections. A majority of respondents, across all stakeholders support specific measures to increase oversight of competent authorities (73.7%).

On the identity of ad placers, a small majority (57%) of respondents favoured residence in a Member State, although disagreeing as to whether it should be limited physical persons or not. A fair share (25%) would prefer to set the Member State where the ad will circulate as the criterion. Most business associations and companies did not reply.

The table below shows that there is a high demand for transparency when it comes to online political advertising sponsored by European political parties (EUPPs) as well as a certain distrust towards certain amplification and data-driven techniques such as targeting. However, political advertising should not be restricted for EUPPs. While again the 'yes' responses come primarily from EU citizens, NGOs have joined the former while major platforms and some business associations have refrained to vote.



2.5 Transparency requirements and advertisement repositories



On ads repositories, 71% of respondents would like that publishers of political ads retain at least basic information from those placing the ads. 67% responded that service providers involved in political ads should also have obligations to retain and provide information. 68% of the respondents stated that beyond competent authorities, all political ads should also be available to citizens. The specific content that should be retained can be found in figure 5. The majority of respondents has shown its support for retaining extensive information. Around 35% left a blank answer for each option, most notably companies, including online platforms and business associations.

2.6 Targeting and amplification methods

57.7% of respondents, mostly EU citizens, NGOs, and public authorities, favoured additional limits on targeting and amplification methods, besides compliance with data protection rules. Few respondents submitted additional comments, proposing limits ranging from stricter data protection rules, stricter transparency requirements, to rules diminish the misleading potential of such techniques. Among these 57.7%, respondents

favoured either a ban of targeting and amplification, or an opt-in by the user. While most business associations and companies did not reply, EU citizens, NGOs, academia, and public authorities further considered that the EU should regulate the following amplification methods: paid for likes, bot software and paid for influencers. 41.6% of respondents, spread across stakeholders, replied that the targeting of political ads could be allowed for certain criteria if relevant data protection rules are complied with.

2.7 Positions of European political parties (EUPPs) and national parties

EUPPs were invited by letter to provide their input on the initiative. Five EUPPs submitted a contribution, the European People's Party (EPP), the Alliance for Liberals and Democrats for Europe (ALDE), the European Green Party (EGP), the Party of European Socialists (PES) and the European Free Alliance (EFA).

All five parties support common rules at EU level. EFA highlighted that if the EU wants to create a stronger European-level democracy, EUPPs must be allowed to operate on a European level. The four other parties mentioned that this is particularly needed because they are concerned by the practice of very large platforms to limit the placement of online ads to the country in which they have a registered office, limiting their ability to reach out to citizens across the whole EU. Consequently, these four parties were in favour of allowing any person or legal person residing in any Member State to place an ad. Specifically, ALDE proposed to establish 'election labels' for political advertising of EUPP in the context of European elections. Regarding definition, PES and EPP supported an extensive definition, which includes 'get out to vote' campaigns, while the EGP preferred to exclude them. Both PES and EGP would set such definition in law. The same two parties agreed that civil society actors should be subject to the same rules as political parties when placing political ads.

PES, EPP, EFA and EGP agreed that there should be rules at EU level regarding how political ads are funded, with the PES only accepting crowdfunding as a valid source. Not all parties agreed that disclosing all sponsors of an ad was necessary - PES and EGP and EFA did. EPP and PES consider that European parties should disclose their ad expenditures in real time. EFA supported the creation of a common database of political advertisements to be kept, with relevant information on who is paying for the ad, the amount spent, target audience, etc. PES, EFA and EGP agreed that such ad repositories should be made available to citizens, while EPP suggested that only competent authorities should have this access. They had different views regarding transparency disclosure. EFA indicated that levels and limits of spending for national elections should be set at national level, and that an EU approach as to how these ads can be funded would be beneficial.

On targeting and amplification techniques, four parties (the fifth one did not take a stance) considered that EU data protection rules would be sufficient to protect EU citizens. EGP was open to a limit the processing of personal data for targeting and amplification, namely via an opt-out for users. EUPPs had different views regarding transparency disclosure on targeting: ALDE and EGP agreed that European parties should maintain examples of ads; ALDE and EPP were in favour of disclosing the targeting services used. .

Furthermore, national political parties were consulted too, albeit indirectly: Member States were requested to transmit the consultation letter to their national parties and consult them, in order that Member States' position in the consultation reflect the national views on the initiative. Very few replies were received from national political parties and could not be considered as representative.

2.8 Position of other stakeholders

Below are the results of the consultation, broken down by category of respondents

Civil society organizations support high transparency around political ads including which adds are shown to whom, why, and who has paid for them[238]. They referred to the fact that the EU Code of Practice against Disinformation (soft measures) was not sufficient in this perspective as information for instance on targeting criteria was missing and many false positive and negatives occurred. They also requested the issue of targeting to be addressed beyond transparency[239]. Some have asked for a ban of targeting techniques for political ads (foreseen, during reference periods, under sub-option 2 of policy option 2)[240]. Some CSOs advocated for an obligation to set up ad repositories (interoperable at EU level)[241], and also underlined that ads that are removed should remain visible in ads repositories[242], as envisaged in policy option 2 for very large online platforms.

Member States welcomed the initiative and agreed with the need to regulate at EU level (online) political advertising[243]. Member States also repetitively supported measures that will enhance the cooperation from platforms (foreseen in both policy options) including access by researchers to more information on political ads (addressed in policy option 2). Certain have highlighted the limits of non-binding measures, the importance of transparency (binding) requirements on funding[244] and support establishing a common definition of political advertising[245] - which is envisaged in policy option 2.

Industry stakeholders have asked for a common EU definition that allow them to determine which ads are political ads[246] and a common approach to provide for proportionate requirements to label sponsored political ads[247], including as regards the identity of the sponsor of the ad. Both the establishment of an EU definition of political ads and the introduction of labeling requirements are measures included in policy option 2. Industry "offline" stakeholders strongly requested a level playing field with online stakeholders[248]. Broadcasters asked for binding minimum standards for political ads on online platforms and supported a ban on online targeting for political purposes – envisaged under suboption 2 of policy option 2[249]. At a stakeholder meeting on 11 May

[238] See, for instance, contribution by Who targets me (NGO) to the OPC, the statement issued by a coalition of 31 civil society organisations and experts (European Partnership for democracy), the position of Transparency international.
[239] For instance, the Association for International Affairs in Prague stated in its contribution to the OPC that targeting should be fundamentally regulated to avoid cases of election manipulations such as Cambridge Analytica.
[240] See, e.g. the contribution to the OPC of Centro per la Cooperazione Internazionale (NGO).
[241] Highlighted by the European Partnership for democracy in its contribution to the OPC.
[242] Dedicated meeting of 31 March 2021 with civil society organisations.
[243] See for instance, discussion in EUROPEAN COOPERATION NETWORK ON ELECTIONS on 25 March 2021.
[244] See contributions of media regulators (ERGA) in the OPC.
[245] See, e.g., German Media Authority (DLM) in the OPC.
[246] E.g. Facebook, Google and Tiktok, among others.
[247] E.g. Tiktok.
[248] E.g. the European Publishers Council and the Association of Commercial Television in Europe. Mediaset (off line operator) stated, for instance, that compliance with all its obligations related to political advertising requires 10 full time employees, which contrasts with the less regulated sector of online ads
[249] Written contribution of EGTA - association of television and radio sales houses

2021, small tech providers requested a clear set of rules clarifying what is political ads, who can sponsor them and applicable transparency requirements.

EUPPs have pointed out that labelling measures that help citizens to identify when they are being exposed to a political ad will contribute to strengthen European democracy[250]. They were particularly concerned about how the policy implemented by Facebook negatively affected their activities at EU/cross border level[251].

For citizens, the OPC shows that when it comes to targeting a majority supports a ban of targeting and or amplification or an opt-in. A minority could accept targeting if framed by criteria and data protection compliance. Besides, most citizens believe that publishers of political ads should retain certain basic information from those placing such ads, something addressed by both policy options.

Other stakeholders: The supporting study by the contractor integrates a literature review in section 2.1. There is an emerging academic consensus on the need for specific transparency for political ads and controls on the use of personal data in connection with political ads online. Guidance from international standard setting bodies such as the Council of Europe also call for specific transparency of political advertising, including in particular on sponsor and funding, and where online, on the mechanism for delivery (algorithms, data).

3. DEDICATED STAKEHOLDER MEETINGS

Stakeholders meetings were conducted with preparatory work ahead of each meeting, including providing stakeholders with guiding questions structured to cover key aspects of the IA, namely: scope and definition, the use of targeting and data-driven technologies, the legal and regulatory framework, and solutions and options. Each group of stakeholders received tailored questions aimed at taking into account their specificities. Meetings were moderated in a way, which allowed each stakeholder, to voice his and her position beyond the questions being transmitted and make comments on the envisaged initiative.

Meetings with private sector actors and civil society organisations were composed 15 stakeholders.

3.1 Dedicated meeting of the Rapid Alert System (RAS)

On 18 March 2021, the Commission presented the state of play of the initiative and called for contributions during a dedicated meeting of the Rapid Alert System. Representatives of Member States were present as well as the European Regulators Group for Audiovisual Media Services. This meeting provided the opportunity to Member States to share their views and raise relevant points for discussion.

3.2 Ninth meeting of the European Cooperation Network on Elections (ECNE)

On 25 March 2021, Member States' experts were consulted in the framework of the European Cooperation Network on Elections. The Commission outlined envisaged

[250] E.g. ALDE.
[251] E.g. the Greens and the EPP.

options for measures as set out in the inception impact assessment.[252] The Commission has shared the legal mapping to the membership of the network beforehand. Each Member State then had the opportunity to complete the mapping as well as present its legal context at the meeting.

Most Member States' experts indicated that political advertising is regulated at national level through legislation on political party financing, broadcasting and print media, and electoral and campaign rules. The discussion showed that there is no uniform approach as to how to define political advertising, which authority is competent, and how to further regulate. Some Member States provide for extensive regulation while others regulate less and emphasise monitoring and oversight. Some noted insufficient cooperation from platforms with national authorities as well as limitations of existing ad repositories. Other underlined the insufficient enforcement of the Code of Practice on disinformation. Experts suggested to limit microtargeting. Online advertising brings some benefits as it is increasingly shifting to the online environment, partly due to the pandemic of Covid-19. Experts underlined the need for complementarity between legislative instruments such as the DSA, the GDPR, the Code of Practice on disinformation, and the envisaged initiative.

3.3 Dedicated meeting with signatories of the Code of practice on disinformation and private sector industry associations

On 26 March 2021, the Commission has organised a dedicated meeting to collect the input of the key stakeholders, signatories of the Code of Practice on disinformation and representatives of industry associations, mainly from the advertising and telecommunications fields. Overall, participants largely welcomed the initiative. There was a general call for clear and long-lasting definitions. Participants underlined that national legislations widely vary across the EU and platforms have different policies for political advertising. Participants supported harmonised legislation across the EU, with platforms emphasising the need to adopt rules, which fit each platform's specificities. Twitter and TikTok indicated that they do not allow political advertising on their platforms. The issue of influencers has been raised as a tricky evolution, which makes proper monitoring of political advertising difficult. Snapchat insisted on the importance of human review of ads as well as the need to provide for regular updates of ad repositories, of which the access should be granted both to researchers and citizens.

On targeting, Google indicated having introduced limitations regarding allowed criteria, being limited to age, gender, location, and general interest. Mozilla and the Association of Commercial Televisions (ACT) called for a limitation of targeting, notably drawing on data protection rules.

ACT suggested that the priority of regulation should be to increase safeguards for citizens rather than facilitating business activities of platforms. ACT also called for standards, which apply offline, to apply to the online environment. Google and ACT had different view as to whether ads that were taken down for policy violation should be disclosed in ad repositories.

3.4 Dedicated meeting with civil society organisations

On 31 March 2021, the Commission held a dedicated discussion with civil society organisations involved in the defence of digital rights and the representation of vulnerable groups' interests. The following international organisations -IDEA

[252] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12826-Political-advertising-improving-transparency_en

International and the Council of Europe- also took part. Overall, the Commission's initiative was largely welcomed by the participants.

As other stakeholders, participants underlined the importance of articulating the initiative with other legislative instruments. Some participants stressed that it might be efficient to address on ad buyers and political parties when it comes to facilitating the enforcement of obligations. Common points with the ECNE meeting were shared such as the need for a stronger cooperation between Member States as well as increased communication between national regulators and online platforms. Participants pointed at weaknesses in the regulatory framework of Member States. Only 5 of them have monitoring mechanisms for online expenditures of political parties during online campaigns.

On targeting and other techniques, several issues were highlighted by participants. Firstly, political parties are increasingly dependent on targeting to compete, and it favours more the affluent parties. Secondly, targeting lacks a clear definition. Thirdly, it is very difficult to know how algorithms work. Lastly, major platforms do not respect data protection rules. Participants largely agreed that users should explicitly allow their data to be used. Ad quotas can help increase accountability of political parties.

Regarding policy options, addressing political party financing was mentioned as a way to increase transparency that would allow to tackle the issue of influencer marketing, which is not covered by the DSA. Most participants agreed with the fact that ads that are removed should remain visible in ads repositories to allow researchers to work, and authorities to make parties accountable. Increasing national authorities' capacities and resources was deemed to be crucial to enforce regulations.

3.5 Private sector

On 12 May, the Commission met with the representatives of the broadcasting sector and SMEs (ACT, AER, EGTA, Schibsted, FEDMA, AIB Europe, News Media Europe, European Newspaper Publishers Association, EASA, EACA, DOT Europe, DDMA, EDAA) where the envisaged initiative was presented with its context, issues addressed and possible options. Most participants mentioned the need to make sure that what is forbidden offline is also forbidden online and that a common "political advertisement" definition is needed. Some concerns on microtargeting and the use of political data were expressed.

3.6 Written contributions and papers[253]

The following stakeholders have submitted, through or outside the OPC, a position or policy paper, shared significant material, or held bilateral meetings with the Commission:

1. ALDE - Alliance of Liberals and Democrats for Europe
2. EGP - European Green Party
3. EPP - European People's Party
4. PES - Party of European Socialists
5. EFA - European Free Alliance
6. AMO - Association for International Affairs
7. ACT - Association of Commercial Televisions
8. Avaaz Foundation
9. Belgian Association for Human Rights and Development
10. CCIA - Computer and Communications Industry Associations

[253] We have received more documents than the number of stakeholders.

11. DLM - The Directors' Conference of the State Media Authorities (Die Medienanstalten - German Media Authority)
12. EACA - European Association of Communication Agencies
13. EDRi - European Digital Rights
14. Election.Watch.eu
15. EPC - European Publishers Council
16. EPD - European Partnership for Democracy
17. EU Disinfo Lab
18. Facebook
19. GISAD - Global Institute for Structure Relevance, Anonymity and Decentralisation
20. Google
21. IAB - Interactive Advertising Bureau
22. IDEA International
23. Institute for Information Law University of Amsterdam
24. Ireland's Department of Housing, Local Government and Heritage
25. Lithuania's Electoral Commission
26. National Electronic Mass Media Council (Latvia)
27. ALIA - Autorité Luxembourgeoise Indépendante de l'Audiovisuel
28. Oana Goga Univ. Grenoble Alpes, CNRS
29. Panoptykon Foundation
30. Newsguard
31. CDT - Centre for Democracy & Technology
32. ERGA - European Regulators Group for Audiovisual Media Services
33. PROVIDUS
34. RESET.tech
35. Snapchat
36. TikTok
37. Twitter
38. Who Targets Me

4. SPECIFIC CONSULTATION CONDUCTED BY VVA

The contractor VVA has been commissioned to provide a study to support the preparation of the initiative. Supported by targeted questionnaires, VVA has conducted an extensive range of individual interviews with a total of 67 stakeholders coming from all relevant categories, indicated in the table below. These interviews and the insights shared therein gave access to VVA to data otherwise inaccessible publicly, and allowed VVA to draw pertinent conclusions or simply to confirm arguments made in the literature.

Type of stakeholder	Number of interviews conducted per stakeholder type[254]
International organisations or EU Institutions	13
Member States Administrations	9
Political parties and candidates	7
Other political actors[255]	3

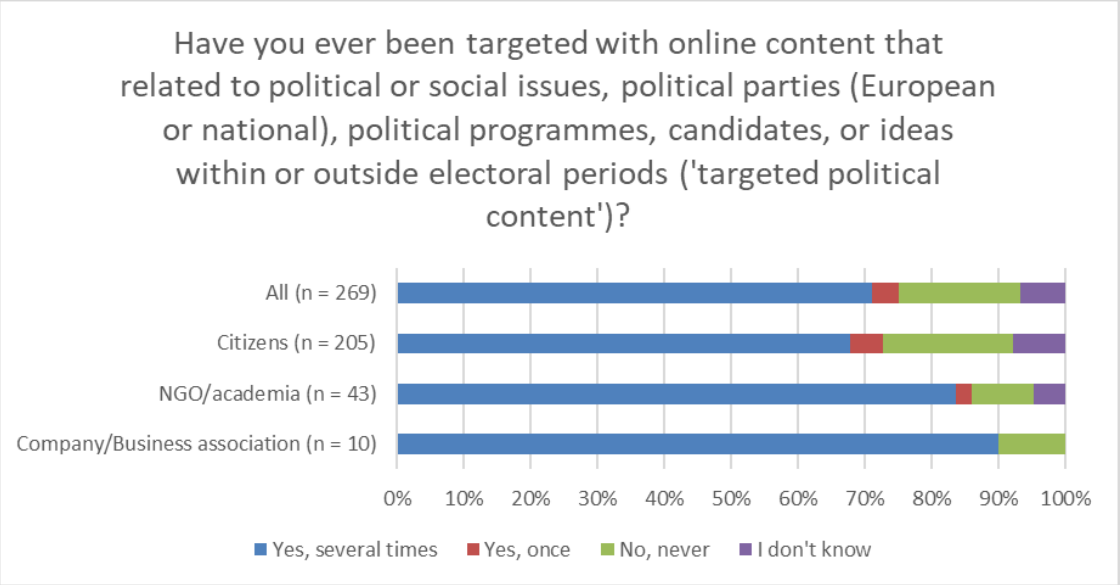
[254] Some stakeholders were consulted twice on different aspects. Different departments of some organisations were contacted too.

Civil society organisations[256]	7
Academia	4
Service Providers[257]	23
TOTAL	**67**

5. OPEN PUBLIC CONSULTATION on EDAP

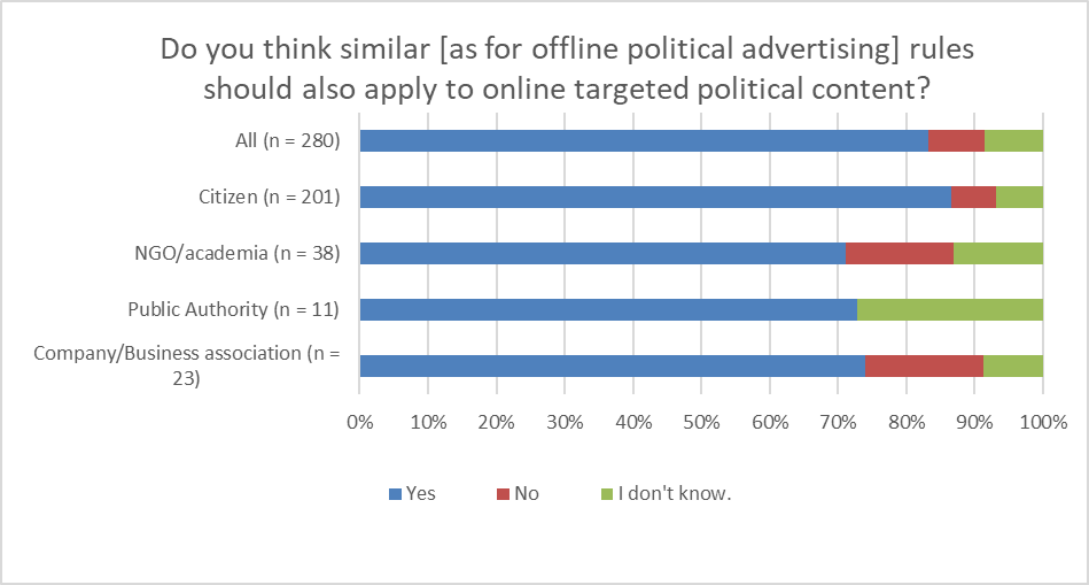
In the public consultation on the European Democracy Action Plan[258], respondents were asked whether they have been targeted[259] with online content that related to political or social issues, political parties (either European or national), political programmes, candidates or ideas within or outside electoral periods [referred to as 'targeted political content']. They have also been asked whether this has occurred only ones or several times.

Out of 269 respondents including individuals, NGO/academia as well as business associations and organisations, 71% have been targeted with such content several times. More specifically, as regards individuals, 72% (out of n=205) were targeted with such content once or several times. Similarly, the majority of companies/business organisations responding to this question were also targeted more than once (9 out of n=10). NGOs/academia also expressed similar experience and the percentage for this category of respondents amounts to 86% (out of n=43) for those targeted ones or several times. The responses received to this question show that most respondents (n=269), whether citizens, NGO/academia or company/business association) answering this question were targeted and the majority of these were targeted several times.

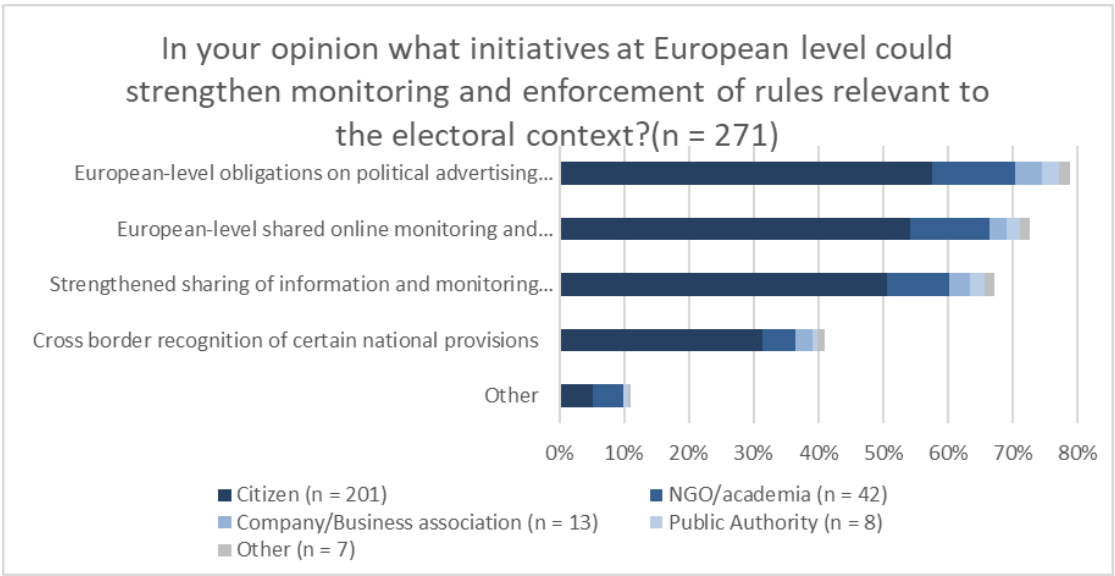


[255] Political actors other than political parties that seek online political advertising services active in issue-based advertisement.
[256] Civil society organisations whose activity revolves around online political advertising.
[257] Including umbrella organisations that represent at least 9000 organisations and 131 000 employers from the digital advertising sector and approximately 5000 broadcasting organisations
[258] Report on the Public Consultation for the European Democracy Action Plan (EDAP) – September 2020, not published yet.
[259] 'Targeted' referring to any paid-for advertisements and any form of personalised content promoted to the user.

Similar rules for offline and online political ads: Also, In the public consultation on the European Democracy Action Plan, 83% (from n=280) of respondents including civil society organisations, national authorities, different associations and some platforms agree that similar rules should apply for offline and online-targeted political content to ensure a certain level-playing field with broadcasters, radios for which the political advertising is strictly regulated.



At EU level the proposed initiatives aimed to strengthen the enforcement of rules relevant to the electoral context receiving most support – during the EDAP public consultation – included: European-level obligations on political advertising service providers (supported by 79% n=271), **European-level shared online monitoring and analysis capability being made available to national authorities** (73% n=271) and **strengthened the exchange of information and monitoring activity across borders and between authorities** (67%). Cross-border recognition of certain national provisions received the lowest percentage (41%).

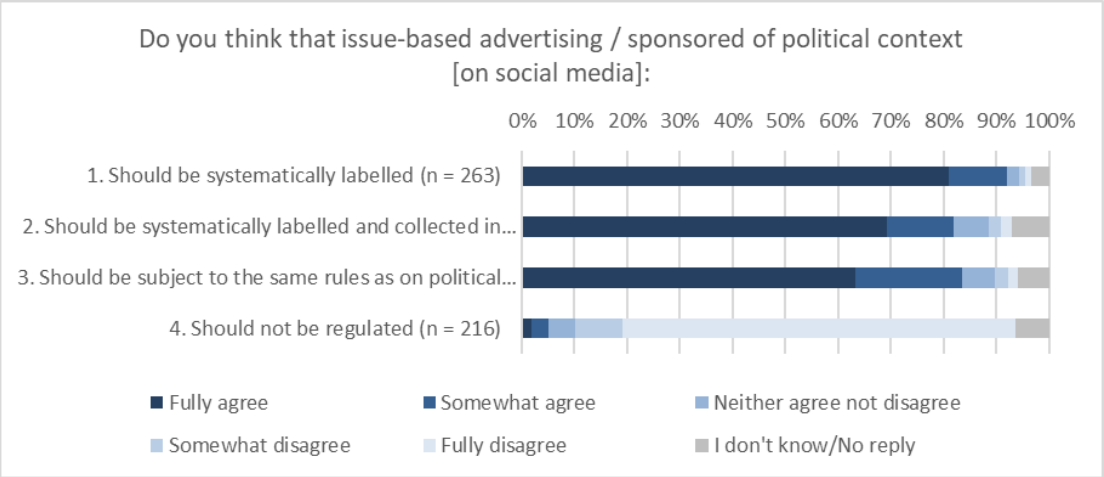


Issue-based advertising and sponsored content of political context

In the public consultation on EDAP, there was broad agreement by respondents, including platforms, civil society organisations and other stakeholders to label sponsored issue-based advertisement (92% support from n=263).

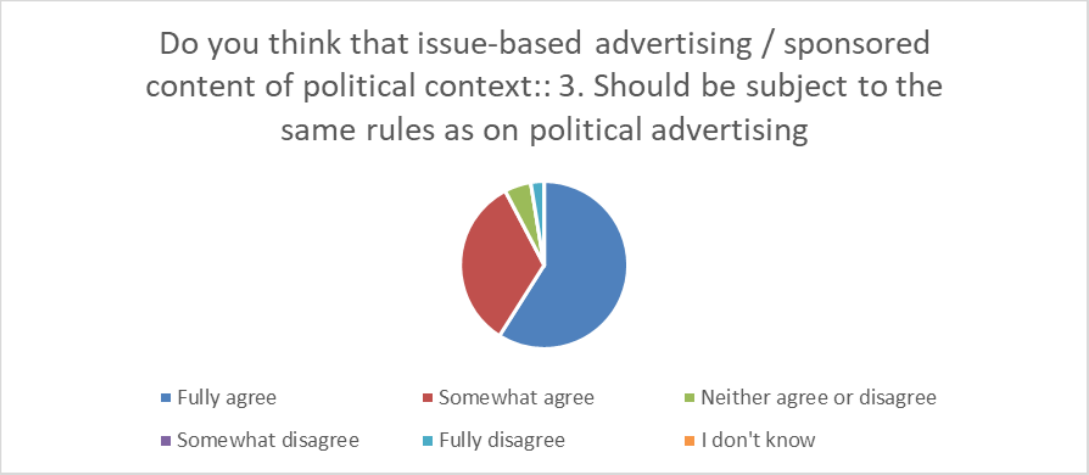
The public consultation revealed some divergence of views on the issue whether issue-based advertisement should be treated the same way as political advertisement, but several stakeholders pointed to the difficulties to distinguish between the different categories of advertisement.

81% (from n= 254) also support mandatory advertisement repositories/libraries for issue-based advertisement.



More specifically, the NGOs responding to the public consultation on EDAP were almost unanimously supporting labelling of issue-based advertising, and almost all the respondents either fully agreed or somewhat agreed that issue based-advertising should be subject to similar transparency requirements as political advertising (see Figure 3: EDAP public consultation civil society responses). All the NGOs disagreed, that issue-based advertising should be left unregulated.

Figure 1: EDAP public consultation civil society responses



In the public consultation on the European Democracy Action Plan[260], initiatives that received the strongest support by civil society organisations, stakeholders as well as individuals include:

(i) disclosure rules supported by 96% (from n=279) of respondents (supporting 'absolutely' or 'a lot') including civil society organisations, stakeholders and individuals.

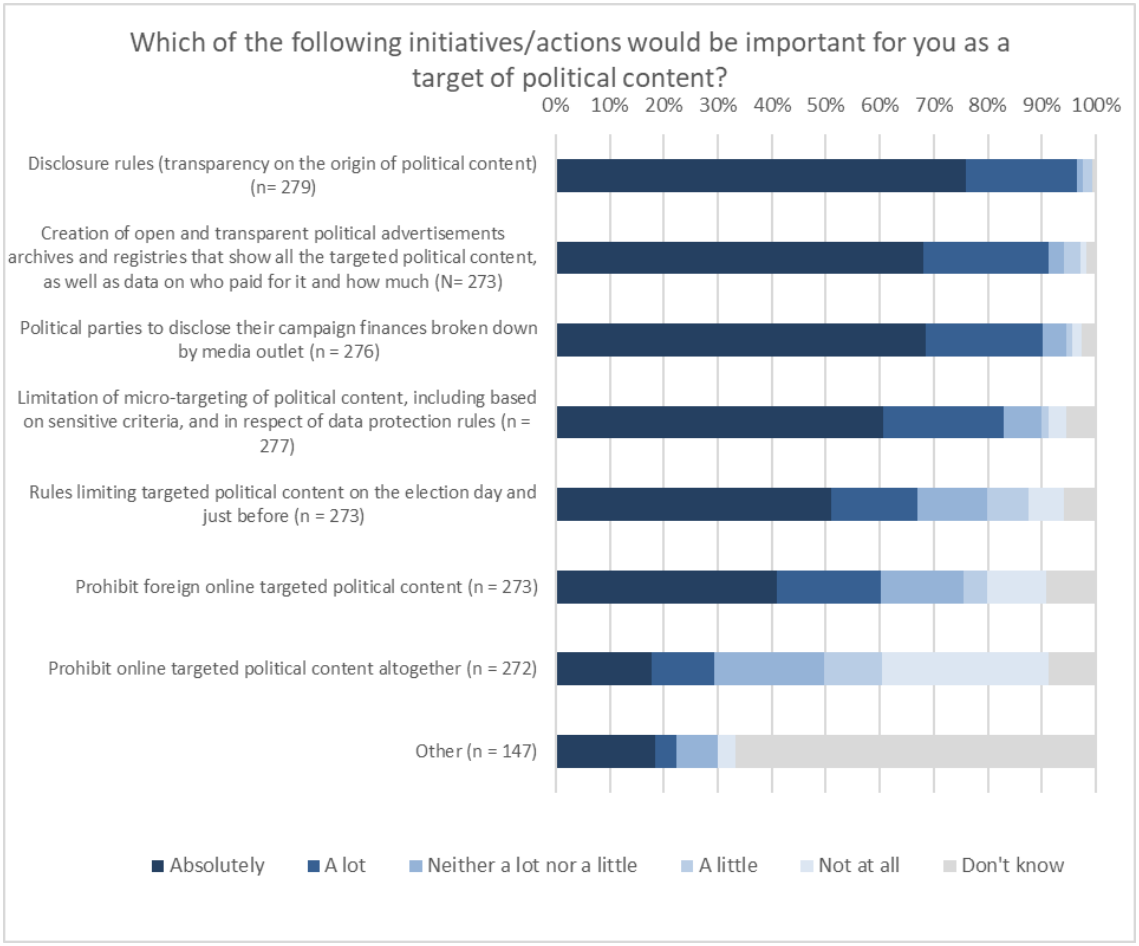
260 Report on the Public Consultation for the European Democracy Action Plan (EDAP) – September 2020, not published yet.

(ii) creation of open and transparent political advertisements archives and registries supported by 91% (from n= 273) (supporting 'absolutely' or 'a lot')

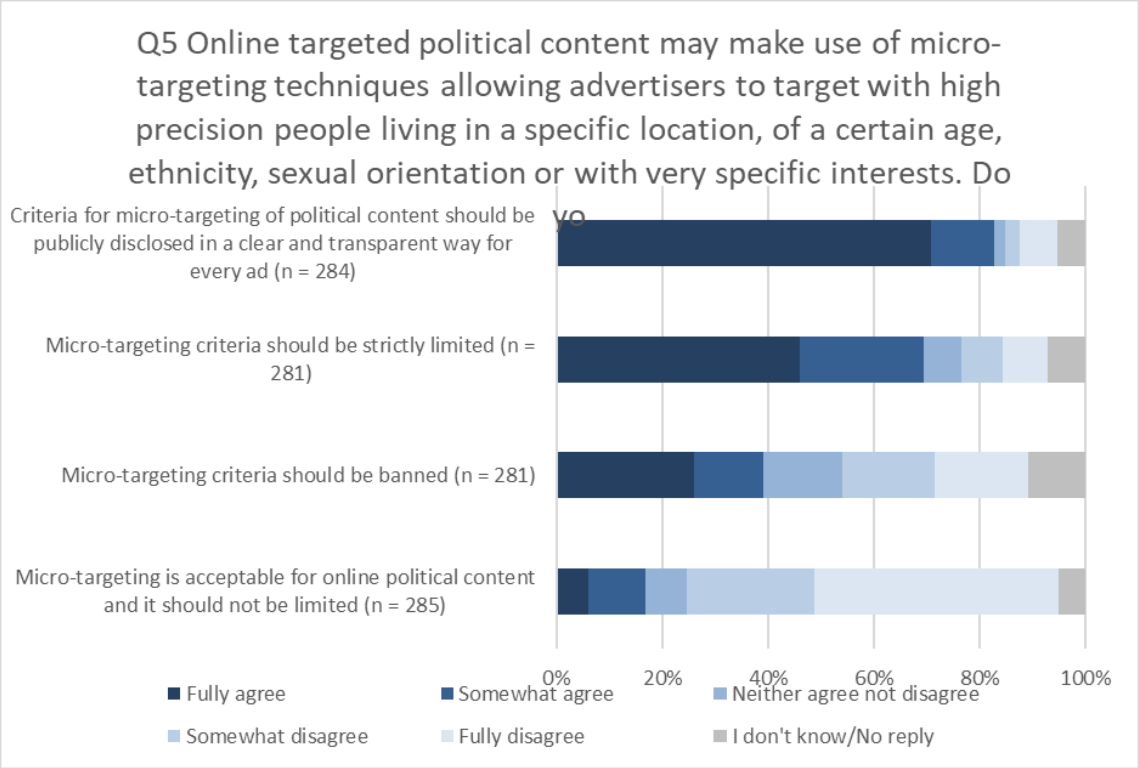
(iii) political parties to disclose their campaign finances broken down by media outlet supported by 90% (from n=276).

(iv) limitation of micro-targeting of political content supported by 83% (from n= 277) ('absolutely' or 'a lot')

Significant support was also received for limiting targeted political content on the election day/just before (supported by 67% 'absolutely' or 'a lot' from n=273) and prohibiting foreign online targeted political content (supported by 60% 'absolutely' or 'a lot' from n=273). The views of respondents were rather mixed with respect to prohibiting targeted political content altogether, which is the option receiving the lowest supporting rate, with 29% in favour (from n= 272).

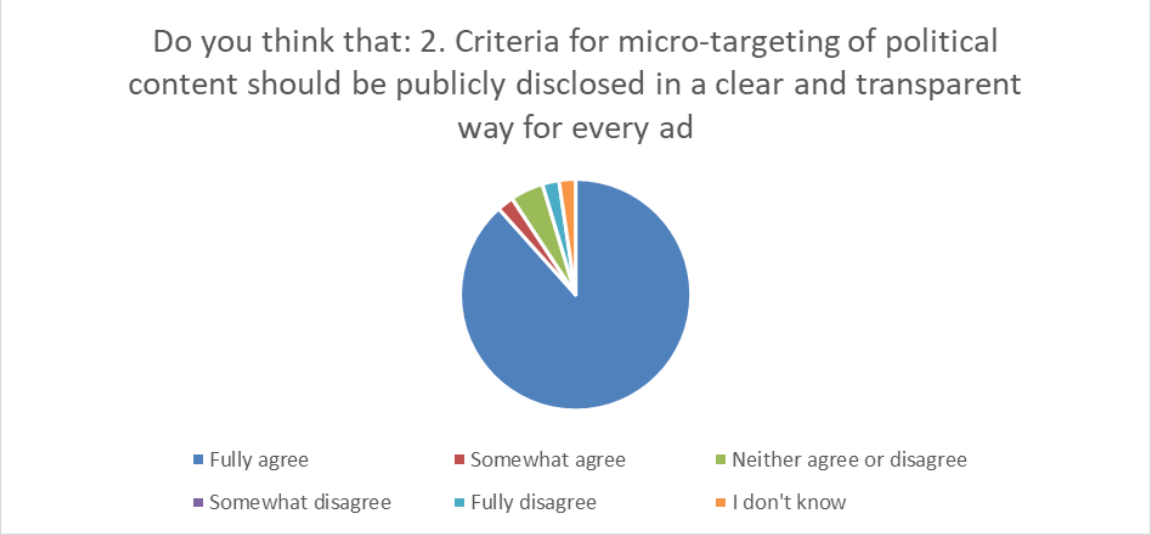


In addition, still in the public consultation on EDAP; 69% agree that microtargeting should be strictly limited:



Finally, in the 2020 public consultation of the European Democracy Action Plan, 38 out of 43 NGOs responding to the question fully agreed that micro-targeting criteria of political advertisement should be disclosed in advertisements.

Figure 2: EDAP public consultation civil society responses



Annex 3: Who is affected and how?

1. Practical implications of the initiative

Actor categories

The following table presents a summary description of the categories of actors considered in the political ads initiative, including examples where relevant, a description of their activities, and a sketch analysis of how they might be practically distinguished for the purposes of defining tailored obligations under the options considered.

Category	Example and comments
Very large online platform (in short: *VLOPs*)	Facebook, Twitter, Amazon, Google, etc. (includes some alternative platforms such as Quora and Reddit). Defined in DSA (Article 25 - >= 45 million monthly users). From the perspective of the measures envisaged, these large (social) media platforms act as publishers of political ads published through their services (e.g. content sharing, search engine, online retail services). They also provide distribution services for advertising published by ad networks (e.g. display advertising and banner ads incorporated into the online interfaces). They have come to play a gatekeeper role over political campaigning online. Political advertising on these platforms is targeted either through services offered by these platforms directly or via an intermediary (and on the basis of data they provide or via an intermediary), and it is also subject to recommender algorithms. They are signatories of the Code of Practice on disinformation, and will be addressed in their advertising activity by the Digital Services Act. VLOPS have various policies with respect to political ads (based on various definitions) and some maintain ad repositories.
Other online platforms	News websites, alternative media platforms, forums etc. Defined in the DSA (Article 2 – hosting service which stores and disseminates public information). Perform the same roles as VLOPs from the perspective of the measures envisaged, but to a smaller scale. Publish and host ads directly to users, offer targeting and hosting ad network content.
Ad exchanges, ad networks, ad platforms	Ad networks/exchanges/platforms (e.g. Adcash, Adform, AdTaily, Criteo, Exoclick) fall under "intermediary services" within the DSA (Article 2(f)). Act as intermediaries between a public facing service which also hosts ads (such as a mobile app, webmail service, search engine, website etc.) and advertisers. Often use central web servers and offer targeting, tracking and varying degrees of control to advertisers over where their ads will appear. The transaction can be quite complex – supply side platforms intermediate between a website offering advertising space for sale in combination with a specific user (identified on the basis of an aggregation of personal data obtained directly from the user's transactions with the site itself, and her behaviour as monitored

	online via cookies, beacons, browser fingerprinting, etc. and by other websites), and an ad exchange, which will offer the supply-user package for sale to the highest bidder via a demand side platform which intermediates on behalf of advertisers looking for specific user-types with a specific budget. Ad platforms are often used to generate revenue from leftover ad space on websites which platforms have not sold to specific campaigns. Ad platforms can then sell an advertiser specific access to such space – usually for a higher price – or sell access to the network as a whole. While they fall within the overall scope of the DSA, as bare "intermediaries" they have few obligations of relevance to political ads (obligation to cooperate with national authorities and offer some very limited reporting of interactions with national authorities).
Other online ad services	Includes intermediary services which do not involve the hosting and serving of ads – e.g. supply-side and demand-side platforms. Handle personal data but do not host content. Also required to comply with the GDPR.
Other ad services	Includes services which are not specific to the online environment: ad agencies, design agencies, campaign management, and promotional, advertising and marketing consultancies. Are involved in the value chain, and create, plan and finance political ads.
Offline ad publishers	Broadcasters, newspapers and periodicals, billboards and other physical media. Partly covered by the AVMSD. In the context of political advertising, strictly regulated nationally.

Concretely, this means that:

Publishers of online political ads (platforms and in the case of banner ads, the relevant agency)
Required to provide additional information to individuals in the ad itself (e.g. on political links) and obtain additional information to support audit and oversight. Ex ante transparency for publishers could be envisaged, partly to address the issue of banner ad providers, requiring websites to include information about the advertising brokers they contract with, enabling users to assure themselves that only standards-compliant brokers are used[261]. Programmatic advertising would be subject to limits on targeting and the conditions for its use.
Very large platforms
Specific reporting obligations regarding their actions in relation to political advertising and would have to include specific additional information in the online repositories of political ads (specific financial information). They would also need to include political ads and the activities within the scope of this initiative in their systemic risk assessment to be conducted under the DSA, and publish the parts thereof that relate to targeting and amplification. VLOPS would be subject to the targeting and amplification measures.
Offline actors disseminating or broadcasting ads to individuals (not covered by the DSA)

[261] What this means in practice is that when visiting a site, app, platform or service which uses banner ads, you would be able to easily see (for instance in the browser address bar, as is the case now with certificates compliance) which banner ad providers (ad brokers) are contracted to provider advertising on the site. Such providers could themselves be required to provider transparency and certification of their compliance with relevant rules, such as the GDPR.

Transparency requirements in their communications to individuals (to make certain information public in the ad itself) and to keep certain records to support audit and oversight.
Entities providing financing in the context of the political ads
Keep records and provide this information in the context of the due diligence requirements, audits and to competent authorities.
Design and ad agencies (online and offline), ad-tech companies (ad brokers, data brokers etc.), and campaign organisers
Keep records in the context of the due diligence requirements and to support reporting, audit and oversight by competent authorities. Programmatic advertising would be subject to limits on targeting and the conditions for its use.
SMEs
Particular attention will be paid not to overburden SMEs[262] which are usually technological service providers, engaged in the provision of 'amplification and targeting services' or 'financial support services' connected to the publication of political ads. Such activities need to be taken into account, proportionately, and this category of addressee cannot be immediately excluded.
EUPPs
They should be covered by specific binding obligations for political ads and regarding keeping records. The information will be attached to the ads or accessible from their website and include the following: name of the party, logo, disclosure of the amount of money being used and information, where relevant, on the targeting techniques being used.

[262] SMEs' were at stake in the Cambridge Analytica case.

2. Summary of costs and benefits

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
Direct benefits		
Reduced legal fragmentation costs	Removal of barriers and obstacles	
Increased legal certainty	Cost reductions of around 1 FTE per economic actor per cross-border campaign.	Applies to agencies and ad publishers when providing political ads across borders or in more than one Member State.
More transparency in political ads	Increased accountability and improved oversight. Reduced opportunities to mislead citizens Improved trust in political ads	
More uniform and effective monitoring and enforcement of regulation of political ads	Simplification of regulatory oversight Reduced circumvention of rules and reduced non-regulated political ads in circulation	
Reduced impact on fundamental rights and democratic processes of the use of targeting in political ads	Reduced opportunities to mislead citizens Improved trust in political ads Dissuades misuse of targeting and of personal data in targeting	
Increased transparency in the use of political ads by national political parties	Political parties have greater certainty and clarity about their use of political ads Improved opportunities for multinational campaigning on European issues Reduction of incentives for restrictive private sector policies	
Better regulation of campaigning organised by European political parties		
Indirect benefits		
Increased opportunities for cross-border political ads services		
Reduced opportunities for interference in elections		
Improved protection of democratic principles and more resilient democratic processes		

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Common framing of political ads	Direct costs	Adaptation of ad purchasing policies for political actors		Training and process adjustment to adapt to common framing		Training and capacity building	
	Indirect costs						
Passive obligation to	Direct costs			Training and process			

retain information about political ads				adjustment to adapt to common framing			
	Indirect costs						
Obligation to provide adequate information	Direct costs			Data handling and process adaptation. Costs may be comparable to costs currently incurred by companies that voluntarily disclose information, estimated at around EUR 10,000 to 15,000 per annum.	Variable costs of data acquisition and publication. Repository adaptation costs		
	Indirect costs						
Obligation to cooperate with competent authorities	Direct costs				Provision against information requests, and upstream where not automated Costs would vary according to the number of requests – potentially 0.5-1 FTE per political ad campaign.		
	Indirect costs						
Conditional limits to targeting	Direct costs			Training and process adaptation. GDPR certification costs			
	Indirect costs						
Powers for national authorities to request information	Direct costs						
	Indirect costs						
Framework to enable exchange of information	Direct costs			Developing necessary APIs and other technical solutions			

	Indirect costs						
Further support for capacity building	Direct costs						
	Indirect costs						
Elaborated rules for EUPPS	Direct costs	Data handling and process adaptation	Additional audit requirements estimated at around EUR 75,000 to 150,000 annually			Training for EP staff to oversee additional audit	
	Indirect costs						
Support for repository of information about political ads for EUPPs	Direct costs		0.5 FTE per party for ~6 months campaign period to make disclosures			Staff training Disclosure platform design/procurement	Monitoring compliance transparency and targeting obligations
	Indirect costs						
Recommendations to Member States for their national political parties	Direct costs						
	Indirect costs						

Annex 4: Analytical methods

1. Analytical framework

The impact assessment is prepared on the basis of a supporting study, an open public consultation and intensive direct stakeholder consultation and the relevant literature and recent EU publications (reports, studies and policy documents). It includes a full analysis of the status quo as a dynamic context, including:

- The relevant legal framework and anticipated legislative changes, at EU and national level, including a qualitative description of gaps, overlaps and conflicts, as well as common elements.
- A summary of the scope and context for the impact assessment is provided in the annexes, including a market analysis drawn from the supporting study, use cases to illustrate the various processes involved and to highlight where difficulties lie.

The objectives, options and assessment of their various impacts were prepared on this basis. Quantitative data on the specific political ads markets investigated were challenging to obtain, as were quantitative data on the businesses and business processes affected.

2. Definition of political advertising and main addresses

For the purposes of the overall impact assessment, a broad, inclusive approach was taken to political advertising (political ads throughout the text), which was taken to include the various national definitions based on partisan content, campaign periods, affiliation with political parties and actors, links to political funding, and to political themes. As such, it was intended to include issues based advertising, while acknowledging that beyond objective and nationally established criteria, the limits of concepts such as “issues based” or “politically themed” advertising would necessarily be contingent, involve a degree of subjectivity and judgement, and could overlap with advertising that also pursued commercial or public informational aims. Specific questions in the open public consultation and in the supporting study sought to obtain stakeholder input for the scope of political advertising. Further input was obtained from the assessment of the national legal and policy framework, which established common characteristics of political advertising and related definitions (including parties and campaign periods), as well as diverging and potentially conflicting terms.

A corresponding approach was also applied to establishing the scope of economic actors potentially affected by relevant rules applied to political ads and the issues subsequently identified specific to this sector. Online and offline actors were considered, and the potential contribution to issues, as well as the extent that actors are currently addressed by relevant rules, was extensively assessed in the various value chains identified. These are described in greater detail in Annexes 2 and 5.

3. Assessment of fragmentation

On the basis of extensive consultation with the Member States, including the preparation of a mapping of relevant rules and policies, as well as the research conducted for the supporting study, the national frameworks applicable to political ads were described and

an analysis of the fragmentation in the internal market of rules applicable to the various categories of economic actor identified which are potentially addressed by such rule when offering services was prepared. National rules and policies are analysed to present gaps, conflicts and measures in common from the perspective of rules which condition the availability of political advertising, which determine its content (except regulation on illegal content, which is out of scope of this initiative)

4. Estimates for costs for economic actors

The economic costs for the economic actors have been based on the consultation. Specific figures for costs are included where possible, and are qualitatively estimated where not.

Assumptions for estimations based on the DSA impact assessment SWD(2020) 348 final:

- Estimates are based on averages established based on data reported by companies for the notice and action and transparency obligations in the German law over a period of 6 months.
- As there are significant differences in the scale of notices received and resources invested by different companies, estimates were corrected based on simulated data from a model built by the JRC for a full content moderation process a company could put in place.
- To estimate the duplication of costs across Member States, the indicators for the legal distance were also used to correct coefficients for the duplication of costs in scenarios of the evolving legal fragmentation. For the additional costs on very large platforms, estimates are based on an average FTE costs of EUR 110.000, benchmarks of risk assessments in the financial sector and estimated costs of technical audits, reported data from stakeholders for maintenance of databases.

5. Comparison of options and proportionality

The tables in section 6 and 7 of the Impact Assessment should be read in vertical: '~' indicates no change in performance compared to the baseline. '+' pointing to a better performance of the option than the baseline, and '++' to the best performance among the options; the '>' symbol is used to indicate higher costs than the baseline, and '>>' the highest cost among the options.

Table 1 summarizes the impacts of the options with regard to the measures addressing internal market issues and based on Article 114 TFEU. Table 2 summarizes the impacts of the options with regard to the measures addressing European political parties and based on Article 224 TFEU. The tables provide an overview of how the options compare. The corresponding narrative sections provide explanations as to why which option is considered better for each category.

Annex 5: Context, scope of the market, and other aspects relevant to the problem definition

This Annex provides additional information on the context of the initiative, on the market for political ads (size, scope, etc.), and develops further aspects related to the problems identified with political advertising which could not be addressed at length in the Impact Assessment (for instance because not directly related to the 114 legal basis).

1. Context

1.1 Political context

In the run up to the March 2019 European elections, the Parliament recommended that transparency of political advertising be based on effective due diligence checks of the identity of sponsors[263]. In a resolution of October 2019[264] the Parliament recognised the risks of foreign interference in elections, including through advertising. The subsequently formed Special Committee on Foreign Interference in all Democratic Processes in the European Union, including Disinformation noted that political advertisements on the internet are not subject to the same disclosure rules and restrictions as regards foreign funding for those on television, radio and in print, and that this exposes democratic processes to increased risk.[265] In its draft report on its proposal to reform the 1976 Electoral Act[266] the European Parliament's Committee on Constitutional Affairs (AFCO) underlines the importance of ensuring a high standard of transparency in political advertising. Responding to private sector policies that tended to divide the internal market for political ads, the Presidents of the European political groups also wrote to Vice President Jourová asking for the Commission to ensure pan-European political communications.

Before the last European elections, the Council and the Member States[267] underlined the need to foster and facilitate the transparency of paid political advertisements and communication (including on their advertising purpose, the methods by which they are targeted to citizens, and their funding). In October 2019[268] the Council recognised the many challenges confronting democracies, and agreed to develop a common and practical response including emphasis on promoting greater transparency of democratic processes, particularly of the financing of political and issue-based campaigning, as well

[263] See in particular points (p) and (aj) of European Parliament recommendation of 13 March 2019 to the Council and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy concerning taking stock of the follow-up taken by the EEAS two years after the EP report on EU strategic communication to counteract propaganda against it by third parties (2018/2115(INI)) https://www.europarl.europa.eu/doceo/document/TA-8-2019-0187_EN.html

[264] https://www.europarl.europa.eu/doceo/document/TA-9-2019-0031_EN.html

[265] Working Document on covert funding of political activities by foreign donors of 22 April 2021 https://www.europarl.europa.eu/doceo/document/INGE-DT-689654_EN.pdf.

[266] https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2220(INL)&l=en

[267] Conclusions of the Council and of the Member States on securing free and fair European elections. https://www.consilium.europa.eu/en/press/press-releases/2019/02/19/securing-free-and-fair-european-elections-council-adopts-conclusions/

[268] Council conclusions on Democracy of 14/10/2019 https://data.consilium.europa.eu/doc/document/ST-12836-2019-INIT/en/pdf

as to ensure that the rules governing elections and democracy offline can be applied effectively online. Finally, in February 2021, Ministers in the Council expressed appreciation and overall support for the Commission's work for the EDAP.

1.2 Commission policies

The Commission has engaged more and more with Member States in policymaking linked to political ads, in particular to address the new challenges of the digital transformation. This includes the proposed Digital Service Act, EU data protection legislation[269], initiatives to support the efficient conduct of the European Parliamentary elections[270], and the initiatives combating disinformation and other forms of information manipulation and interference[271].

In light of the 2019 elections, the Commission adopted a package of measures to support free and fair elections, with recommendations addressed to Member States and national and European political parties, which included measures to address disinformation[272]. As part of the implementation of these recommendations, the Commission organised back then three meetings of a specially created European Cooperation Network on Elections (ECNE) to exchange good practice and information among Member States' competent authorities.

The Electoral Package recommendation

The Recommendation recognised that election periods have proven to be particularly strategic and sensitive for online circumvention of conventional ("off-line") safeguards such as the rules applicable to political communication during election periods, transparency of and limits to electoral spending, silence periods and equal treatment of candidates, as well as for the prevention of cyber-enabled attacks. It noted that in light of the targeting of Union citizens by political advertisements which were not transparent about their source and purpose or were represented as something else, such as new editorial or social media posts, the transparency of political advertisements should be enhanced. To that end, Member States were asked to promote transparency of political advertising in line with their applicable rules. This was to include the active disclosure to citizens of the Union of information on:

- the political party, political campaign or political support group behind paid online political advertisements and communications;
- on campaign expenditure for online activities, including paid online political advertisements and communications, and

[269] Including the GDPR and the e-Privacy Directive.

[270] 2013/142/EU: Commission Recommendation of 12 March 2013 on enhancing the democratic and efficient conduct of the elections to the European Parliament; Commission Recommendation (EU) 2018/234 of 14 February 2018 on enhancing the European nature and efficient conduct of the 2019 elections to the European Parliament

[271] Guided by the Action Plan against disinformation (https://eeas.europa.eu/headquarters/headquarters-homepage_en/54866/Action%20Plan%20against%20Disinformation) reported on in the Commission and High Representative's joint Communication, "tackling COVID disinformation."

[272] https://ec.europa.eu/info/sites/info/files/soteu2018-cybersecurity-elections-recommendation-5949_en.pdf; Reported in https://ec.europa.eu/info/files/com_2020_252_en.pdf_en

- any targeting criteria used in the dissemination of such advertisements and communications[273].

Such rules were to be backed by sanctions. National and European political parties were asked to conduct their campaign activities transparently and to support the implementation of the recommendations on Member States' authorities through the provision of pro-active transparency on the parties websites and in their advertising activity.

The implementation of these recommendations was described in the Commission report on the 2019 elections[274]. While the recommendations on establishing national and European coordination networks could be implemented promptly and showed good results, there were significant challenges for Member States to take action on the transparency of political advertising.

It emerged from the mapping of relevant national regulations and processes which was facilitated by the ECNE (elements of which are presented and summarized in Annex 8) and from the subsequent discussions in the network itself[275], that there are very few examples of jurisdictions where transparency of political advertising is required, fewer still where such a requirement would apply online, and even where this is to be provided, there is no possibility to provide for enforceable transparency with a cross-border dimension[276].

The impact assessment accompanying the DSA proposal characterises online advertising services as an area of particular evolution, and which, as digital services often delivered through online platforms, are inherently cross-border and associated with a number of new risks and challenges. Its assessment of the baseline scenario noted that in "*the absence of further EU legislation and subject to enforcement of the current legal framework, legal fragmentation in areas not yet subject to sector specific legislation is likely to increase. Already today, a number of Member States, such as Germany, Austria, Denmark or France, have adopted or are in the process of adopting new laws to regulate digital services. A patchwork of national measures would not effectively protect citizens, given the cross-border and international dimension of the issues*".[277]

To the extent that the present initiative addresses online political advertising, it largely comprises a specific subset of the elements addressed by the DSA proposal, for which additional and specific problems and solutions are identified here, alongside data and elements addressing certain further elements regarding offline political advertising, certain additional related services, and the part played by EUPPs and European political foundations. All these elements are described in the study and data prepared in support of

[273] At the time that the recommendations were prepared, these criteria represented a necessary first step to ensure that citizens could be sufficiently informed about the political adverts they encountered. The current initiative builds and elaborates on this initial position.

[274] In particular through the implementation of the Commission's September 2018 electoral package (https://ec.europa.eu/commission/presscorner/detail/en/IP_18_5681) which is described in the Commission's report on the 2019 elections https://ec.europa.eu/info/sites/info/files/com_2020_252_en_0.pdf and https://ec.europa.eu/info/sites/info/files/swd_2020_113_en.pdf

[275] https://ec.europa.eu/info/policies/justice-and-fundamental-rights/eu-citizenship/electoral-rights/european-cooperation-network-elections_en

[276] Outsides the specific requirements for transparency to be provided to data subjects by data controllers foreseen by the GDPR.

[277] https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=72160

this impact assessment, which also presents how the political advertising market, the relevant current regulation at national and EU level function and are likely to evolve. The backward-looking aspects of the public consultation and the findings of the report on the 2019 European elections complement the conclusions of the underlying study. That report concludes that the political advertising market in the EU is growing and becoming ever more complex, online and cross-border, and its impact on electoral outcomes and the democratic debate is strengthening the trends towards polarisation, as well as increased susceptibility to interference. At the same time, the regulatory context remains fragmented and will become increasingly so, despite the impact of the DSA on the online advertising market as a whole, as Member States continue in the efforts to control these cross-border activities nationally.

1.2. The specificities of the political advertising market

Transparency is particularly needed for political ads. It is a principle of a democratic process, as noted by relevant international standards setting body. The EDAP explains that "*Citizens, civil society and responsible authorities must be able to see clearly the source and purpose of such advertising. In the online environment, it is often difficult to recognise paid-for political material and distinguish it from other political content*,[278] *not least because it can often appear as 'organic' content shared or created by other users. This creates legal uncertainties for service providers and other operators, in particular online intermediaries, political consultancies and related firms, but also for political parties, campaign organisations, candidates and for the public more widely, and affects accountability and oversight*."

1.3. Different definitions and national rules

Partisan or political advertising is defined in different ways in the Member States[279]. In some Member States, political advertising may only be placed by certain actors (e.g. political parties and candidates) and is strictly regulated, for instance as regards the period during which they may be disseminated. Other advertising with more general political messages, aims or effects (i.e. regarding more general political issues such as the environment or migration – issues ads) is also placed, including by other actors (such as interest groups, companies, civil society, citizens but also political parties) and during other periods than in the context of an election. Some Member States ban such advertising, or seek to impose limits to it through media regulation, other Member States do not, or rely on controls on political parties and in particular their fundraising and spending to control such activities.

The lack of a single harmonised definition at EU-level for 'political advertising' is frequently highlighted in the literature and in the public consultation[280]. The differing

[278] In contrast, a 2021 Eurobarometer found that nearly four in ten Europeans using the Internet (37%) have been exposed to content which they could not easily determine whether it was a political advertisement or not. https://fronteirasxxi.pt/wp-content/uploads/2021/06/ebs_507_en.pdf

[279] See Annex 8 on legal mapping

[280] See for instance, ERGA. 2019. Report of the activities carried out to assist the European Commission in the intermediate monitoring of the Code of practice on disinformation (See: Annex I, Ref. No. 04); European Commission. 2020. Assessment of the Code of Practice on Disinformation – Achievements and areas for further improvement (See: Annex I, Ref. No. 109); European Economic and Social Committee. 2020. The effects of campaigns on participation in

approaches to the concept in Member States emerges from different national political traditions. Concretely, what is a political advert in one Member State might not be in another, and may be regulated very differently. Complying with different rules across Member States when providing services relevant to political advertising (e.g. support fundraising for a campaign, provide design, strategy and copy for adverts, and organise their dissemination) can be legally complex. It can discourage smaller enterprises. It has resulted in larger economic actors seeking to limit their exposure to compliance risk by limiting access to services to a national territory, regardless of applicable rules[281].

Regulatory gaps and conflicts, and in particular decreased transparency of political advertising, is regarded as creating risks for fair and free elections. In particular, in the online environment it may be difficult to distinguish between paid-for political ads from other type of political ads or organic content created by users of platforms, which affects a number of actors in the electoral process.[282]

1.4. Political Ads market and fast evolving landscape

The market for political advertising, understood broadly, has developed greatly in recent years, globally, and in the EU. The amounts being spent have steadily risen[283]. The digital transformation has had a particularly significant effect on the number of actors and services in this market, while previously political advertising campaigns in the EU would have been comparatively modest and would have centred on a few traditional forms and during relatively limited periods before elections. These included print campaign adverts carried in newspapers and periodicals, party political broadcasts on television and radio (often strictly time-limited), and leaflets, billboards and direct mailings, all of which would have been clearly identifiable as political adverts. The publishers and the parties behind them were also identifiable, and there were a limited number of usually domestic advertising and campaign agencies providing the copy, design, distribution and sometimes some 'marketing' advice.

More recent elections have provided examples of how this market has changed, and how new actors have entered to enable new kinds of advertising and related services to support political campaigns and the communication of political messages. Besides publishers and advertising agencies, political advertising involves a large number of services, in addition to those already mentioned for conventional political advertising, including:

- **in financing:** microfunding, crowdfunding and other online donation platforms, banking finance (loans etc.), ad revenue generated from party and campaign websites;
- **in preparation:** copywriters, design agencies, message design and marketing agencies, focus group and other research companies, political consultancies and political analysts (including those using personal data harvested from online activity);

political decision-making (See: Annex I, Ref. No. 116); Hegelich, Serrano. 2019. Microtargeting in Germany for the 2019 European Elections (See: Annex I, Ref. No. 107) and Who Targets Me. 2020. How to take a "gold standard" approach to political transparency and policy. (See Annex I, Ref. No. 184).

[281] Study on the impact of new technologies on free and fair elections (March 2021 – not yet published).

[282] See European Democracy Action Plan, page 4 (See: Annex I, Ref. No. 181).

[283] See the data on spending in the underlying study.

- **in placement:** online platforms, websites (including news sites and political party sites), forums and blogs, video sharing sites, influencers;
- **in dissemination:** ad platforms/networks/brokers (banner ad publishers), targeting and media consultancies, data brokers;

2. Scope

2.1. Estimate on the size of the Political Ads market[284]

Estimates of the size of the EU online political advertising market **ranged from EUR 43 million to almost EUR 100 million** in 2019. Google's transparency report, which records data from 20 March 2019 to 20 April 2021, reported that EUR 16,029,000 were spent in political advertising in the EU. Even though **the EU online political advertising market has been steadily growing in the past years**, it continues to be relatively small when compared with the market in the United States or Canada. The total amount spent on Google political advertising in these two years in the EU is on par with the amount spent in the state of Ohio for only a slightly longer period (30 May 2018 – 20 April 2021). The total spent on political advertising in the USA in the period 30 May 2018-20 April 2021 reached EUR 622 million (USD 751 million). Note that this spending coincides with the 2020 US Presidential election.

The European Parliament spent EUR 3.3 million in Facebook ads, whereas the European Commission spent EUR 105,000 in the same period (beginning of March to the end of May 2019). The Parliament spending was fairly uneven across the EU Member States. Out of the 28 Member States back then, 13 represented more than 20% of the total invested in political ads on Facebook. It is worth noting that the European Parliament did not post any advert in Latvia, according to Google Transparency.

Pan-European parties spent EUR 449,000 in total on Facebook advertising; a figure close to the budget of some national parties. The European Greens invested EUR 272,440 (plus EUR 20,951 by the European Free Alliance and EUR 2,065 spent on the Facebook page of the Europeans), totalling EUR 295,456. Volt and DiEM25 also spent a significant amount. ALDE expenditure was almost inexistent.

Drawing on examples from recent national elections in the US, UK, and the Netherlands, the local elections in France as well as the European parliamentary elections in 2019, we can see that the overall spending on political advertising has increased, and moved online[285].

In the 2019 European Parliament elections, the expenditure in online political advertising reached EUR 23 million[286] (figures vary according to sources). Most of the budget was spent in Facebook ads, with a significant cross border component. The figures are only expected to increase over time.

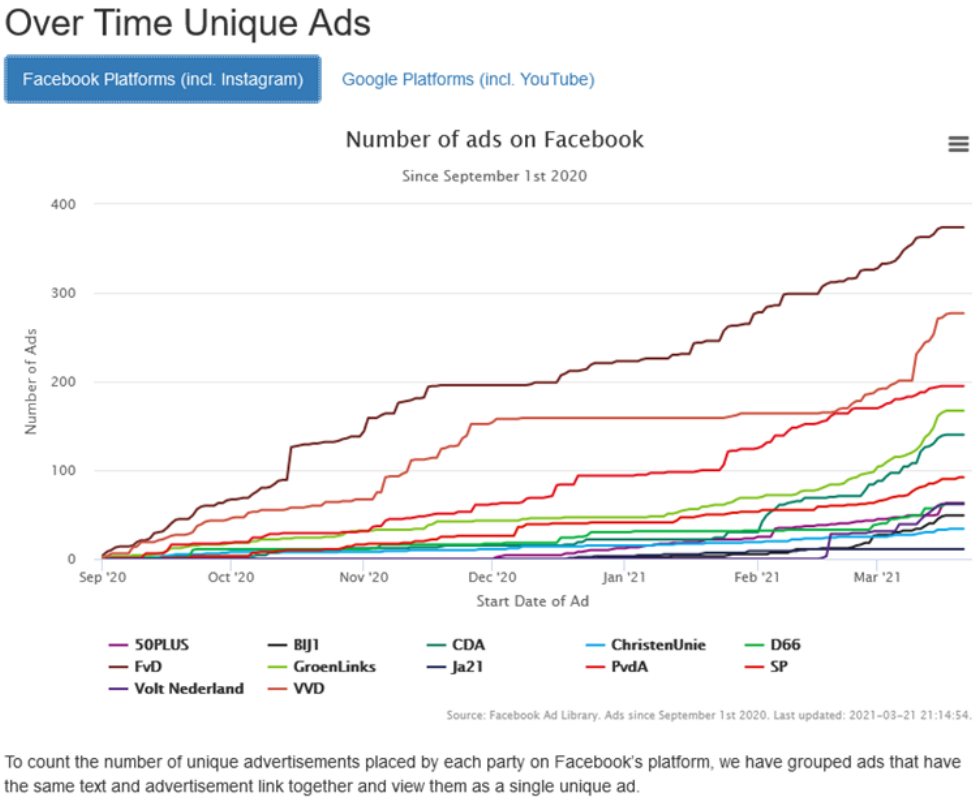
Even as estimates put the size of the online political advertising market in Europe up to over EUR 100 million[287], an ever-greater share of political advertising is shifting away

[284] See annex 6 of the underlying study supporting this impact assessment for more complete data and figures.
[285] See data from underlying study.
[286] https://adtransparency.mozilla.org/eu/2019-05-17/eu/
[287] According to analysis by the political tech firm, Worldacquire, political parties and organisations across Europe spent at least €100 million to advertise on Facebook and Google for their election campaigns in 2019

from traditional media and into the online environment. This is due to factors including the relatively low cost of advertising online, the ease with which online advertisements can be produced and disseminated, and the anonymity of the online environment, in comparison to advertising through traditional media. Stakeholders interviewed for this study suggest that the shift towards online advertising has accelerated as a result of the COVID-19 pandemic.

In terms of the problem's temporal scope, **the shift to online means that political advertising occurs throughout the entire legislative cycle and is not restricted to election campaigns**[288]. This presents new challenges for policymakers and regulators compared to the traditional journalistic media space. The period during which political adverts are circulated is long, and has likely increased, as can be observed from the periods during which unique ads appeared on Facebook platforms promoting messages from political parties contesting the recent (March 2021) national elections in the Netherlands in the chart below.

Figure 1: Number of ads on Facebook run by Dutch political parties before the General elections (15-17 March 2021)[289]



To count the number of unique advertisements placed by each party on Facebook's platform, we have grouped ads that have the same text and advertisement link together and view them as a single unique ad.

https://worldacquire.com/2019/12/30/which-political-parties-in-europe-spent-the-most-on-online-political-advertising-in-2019/

[288] How Difficulties in Delineating Paid Political Communication Can Be Addressed? Available at: https://www.stiftung-nv.de/sites/default/files/snv_definingpoliticalads.pdf

[289] Source: https://dashboard.politieke-advertenties.nl/dashboard/en/index.html (accessed 30 March 2021).

As the variety of services available to political advertising have increased, especially in the data-driven targeting and message-shaping domain, so have the amounts spent on them. The recent US elections provide an indication of trends in this respect, and while the particular financing arrangements available in US presidential elections enable vastly larger sums to be spent in political advertising and related services there, this trend, and the technologies applied, are observed in the EU too.

2.2. Spending on the previous elections for the European Parliament (2019)

Germany (EUR 5.5 million) and Spain (EUR 4.4. million) were the countries that spent the most in online political advertising during 2019[290]. Ten EU countries (AT, BE, DK, FR, DE, EL, IT, NL, ES and SE) saw spending on political ads in the excess of EUR 1 million. Finland almost reaches this mark too. Conversely, six countries appear to have a smaller market during this period of under EUR 150,000 (BG, CY, EE, LV, LT, and SI).

Considering only Facebook (1 March to 26 May 2019), Germany spent EUR 3.46 million and Spain EUR 2.72 million. Covering a longer period of time, Google Transparency shows that the country with the most spending was Romania (EUR 2.7 million), followed by Germany (EUR1.5 million) and the Netherlands (EUR 1.3 million). This is likely to reflect the electoral cycle, since Romania, the Netherlands and Germany all oversaw elections during this period, in addition to the 2019 European elections (presidential and legislative elections, general election in 2021, and elections in eight out of the 16 federated states (Länder) respectively).

Except for the European Parliament, Unidas Podemos (ES), Vlaams Belang (BE) and Ciudadanos (ES) ranked first in terms of total spending in Facebook. All three parties are rather new, which may support the literature arguing for the potential of targeted online advertising for disruptive political parties to reach audiences.

A number of well-known NGOs such as Greenpeace or Save the Children also appear among the top advertisers. This is relevant to the issue-based advertising trends discussed as part of political advertising.

2.3. Cross-border aspect of the Political Ads market

Based on the analysis of the information available in Google Transparency **the total amount of cross border online political advertising reached EUR 6,193,950.00** approximately. **Most of the cross-border flows of money happened between neighbouring countries**. One of two exceptions is Slovakia and the United Kingdom. In total volume of bilateral expenditure, the Netherlands tops the list with EUR 462,000 spent in Belgium, Germany, and Ireland. Slovakia follows with EUR 259,850 spread in Czechia, Greece, Hungary and Poland. Sweden ranks third with EUR 239,400, all spent in Denmark.

The case of Romania is relevant. National advertisers spent € 164,100 across nine Member States, namely: Bulgaria, Germany, Spain, United Kingdom, Greece, Croatia, Hungary, Italy, and the Netherlands. The receipt countries are a mix of neighbours and Member States where there is a big community of nationals from Romania. Reaching potential voters living abroad seems to be one of the main drivers explaining these

[290] Also the UK spent EUR 11.5 million (of which EUR 3.31 million on Facebook), which participated in the European Parliamentary elections

expenses. In this respect, Romania and Slovakia were the two Member States with the most companies among political advertisers. However, since the Slovakian diaspora is not as prominent as the Romanian one, the price of Facebook ads or even the service providers can explain this.

Although the total expenditure is not as high, most likely due to the lower costs of advertising, it is worth mentioning the flows registered in the Baltic countries. Latvia posted advertising in Estonia (EUR 1,250) and Lithuania (EUR 13,750), but none of these seem to have spent anything in political advertising in Latvia nor between themselves. The Visegrad Group (Poland, Czechia, Hungary and Slovakia) also registered a significant amount of cross border money flows.

Luxembourg seems to be the only Member State where actors did not engage in cross border activity in any direction. Of similar interest is the fact that no adverts were posted in Latvia, Romania, Sweden, Slovenia and Slovakia from other Member States.

As regards as political candidates, it is relevant to mention the European wide coverage of the Polish political campaign. **The current president of Poland** is Andrzeja Duda (Komitet Wyborczy Kandydata na Prezydenta Rzeczypospolitej Polskiej Andrzeja Dudy), who **spent EUR 212,100 in 10,918 ads across 23 Member States**, namely: AT, BE, BG, CZ, DE, DK, ES, FI, FR, GB, GR, HR, HU, IE, IT, LT, LU, NL, PL, PT, RO, SE, SK. No ads were published in CY, EE, LV, and SI. The coalition in the opposition (Koalicyjny Komitet Wyborczy Koalicja Obywatelska PO. N iPL Zieloni) spent approximately half of the money EUR 109,750 in double of the ads, 22,787 in 19 Member States: AT, BE, CY, CZ, DE, DK, ES, FR, GB, GR, HR, IE, IT, NL, PL, PT, RO, SE, SK.

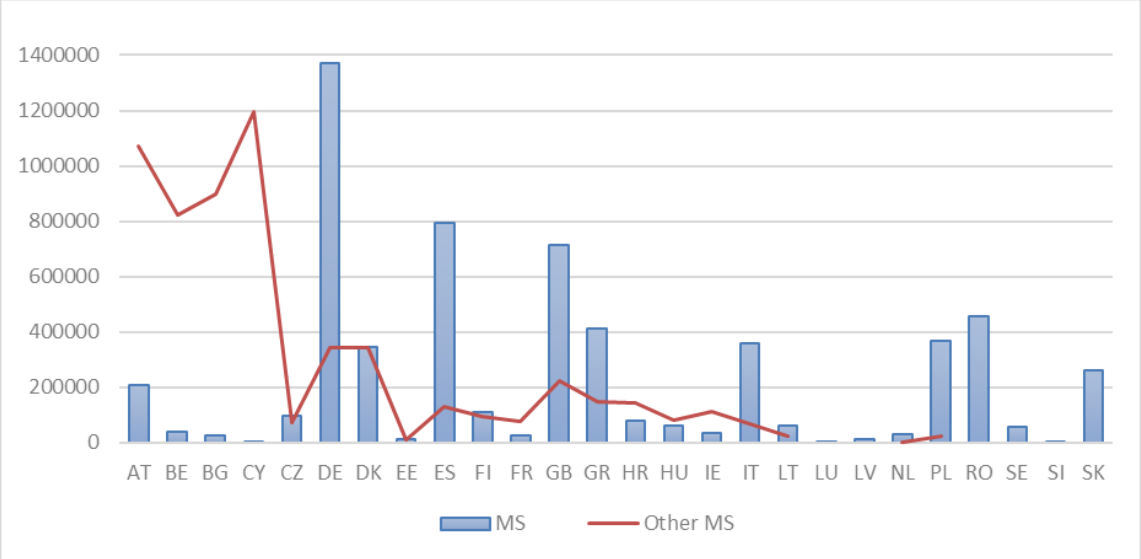
2.4. Cross-border spending on political ads

The figure below illustrates the expenditure on political advertising within the Member States and political advertising with a cross-border component from 19 March 2019 to 19 April 2021[291]. As reported earlier, the total amount of cross-border online political advertising reached EUR 6,193,950[292].

[291] The analysis is based on the data extracted from Google. The data can be divided into political ads posted in a Member State (e.g., AT), and political ads that seem to be posted from a different Member State (e.g., AT, DE). In many cases the political ad seems to be simultaneously available in various Member States (e.g., AT, HU, SK) and its origin is difficult to track.

[292] This figure excludes pan-European political parties, the European Parliament, and other sources in Member States which could not be clearly identified.

Figure 2: Cross-border political advertising[293]



Source: underlying study's author's elaboration based on Google Transparency

The cross-border activity is conducted by political parties, political candidates, civil society organisations and companies. Among the latter, there are communication agencies, advertising and marketing agencies, consultancies and other businesses. Cross-border advertising is defined as a service in which the actor on behalf of which the service is provided is extraterritorial to the jurisdiction where the advert is posted.

Table 3 below lists the most prominent bilateral cross-border activity in terms of expenditure.

Table 3: Bilateral cross-border expenditure in the 2019 EP elections

Direction of the expenditure	Total	Direction of the expenditure	Total
Germany to Austria	€ 192,800	Ireland to United Kingdom	€ 145,600
The Netherlands to Belgium	€ 348,400	Slovenia to Croatia	€ 130,300
Poland to Germany	€ 135,800	The Netherlands to Ireland	€ 112,350
Sweden to Denmark	€ 239,400	Romania to Bulgaria	€ 50,850

Source: underlying study's author's elaboration based on Transparency Report Google

As it can be observed, most of the cross-border flows of money occur between neighbouring countries (with the exception of the Netherlands and Ireland). In total volume of bilateral expenditure, the Netherlands tops the list with EUR 462,000 spent in Belgium and Ireland. Slovakia follows with EUR 259,850 spent in Czechia, Greece, Hungary and Poland. Sweden ranks third with EUR 239,400, all spent in Denmark.

[293] NB: "MS" represents the expenditure within the Member State, while "other MS" indicates the expenditure coming from other Member States.

The case study on the 2020 Presidential Election in Poland shows that cross-border posting of online political advertisements is not a phenomenon limited to elections to European Parliament, but that it also occurs during national electoral processes. Political parties and candidates can seek the vote of nationals residing in different Member States targeting online political advertisements at them, particularly so in the countries where large diaspora communities reside. The case studies on the Constitutional Referendum in Ireland and the Spanish Legislative elections (see underlying study) also show how the funding of online electoral campaigns and the use of dissemination techniques had a cross-border dimension.

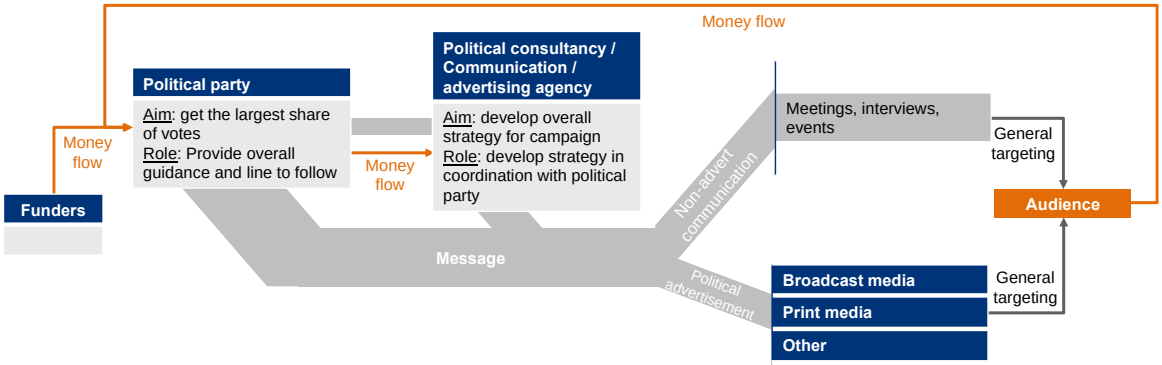
The fact that cross-border adverting has been identified (and to an extent quantified) in 26 Member States, that it is present in national as well as European elections, and that online political advertising in general is continuing to replace its offline equivalent, indicates that the phenomenon will continue to develop. Further, longitudinal data will need to be analysed to understand the extent to which cross-border online political advertising will continue to grow, however as presented in the next section focusing on the actors and processes involved in online political advertising, the complexity of this phenomenon is also growing, indicating a quickly developing and innovative market.

2.5. Profile of service providers

Having a closer look into service providers, as disclosed by Google's Transparency Report, **there were companies with a widespread activity across the EU Member States**. Magnet Media, a media company with offices in Estonia and Latvia, spent EUR 20,750 in 946 political ads in AT, BE, CZ, DE, ES, EU, FI, FR, HU, IE, IT, PL, RO, and SK. None of the ads seems to have been posted in Estonia. The company has 8 employees and works in traditional and online advertising. mmb media Agentur hr, a marketing & advertising Croatian company that belongs to a Swiss conglomerate, spent EUR 22,250 in 2,781 ads in AT, BE, CZ, DE, ES, EU, FR, GB, HR, HU, IT, NL, PL, RO, SE, SI, SK. It has seven employees. Amerisoft SRL, a Romanian digital marketing and publishing company, spent EUR 147,000 in 6,719 ads in AT, BE, BG, DE, ES, EU, FR, GB, HU, IT, LT, NL, PL, PT, and RO. Information about the number of employees is unavailable. The Romanian political party Partidul Mişcarea Populară was among its clients. Another Romanian company, Atelierul de Internet SRL, spent EUR 603,750 on 2,497 ads posted in AT, BE, DE, ES, EU, FR, GB, HU, IE, IT, NL, RO. It employed seven people in 2019. The correlation among its turnover and the 2019 elections is depicted in the Figure below.

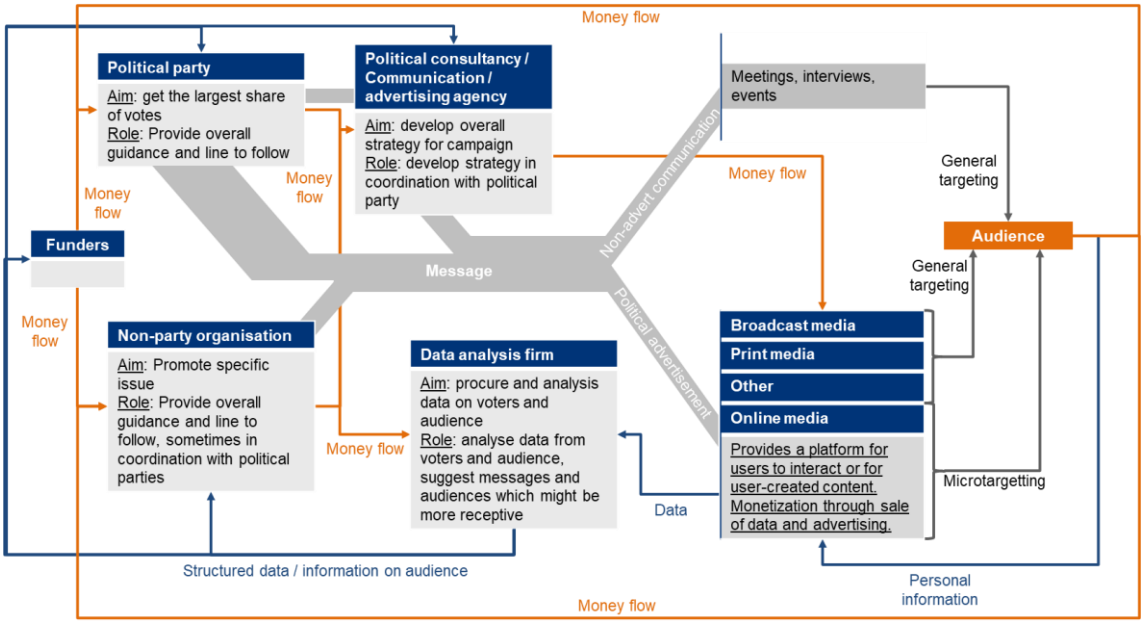
Although difficult to accurately estimate, **the size of the cross-border online political advertising market is rather significant**. In addition to European elections, the free movement of European citizens, especially in those Member States with an important diaspora, also constitute an important part of the business. National elections have transcended borders. As shown above**, some of the companies involved in the provision of online advertising services are micro-enterprises (with less than 10 employees)**.

Figure 4: Processes and actors in traditional political advertising



Traditional political advertising is a relatively simply transaction between a political actor (party, foundation, candidate or campaign organisation), and an ad publisher, either print, broadcast (radio and television) or other physical media (billboards, posters, leaflets). It can involve an intermediary service (advertising agency, consultancy, marketing and branding advice) that can also provide services not related to advertisements. It is typically strictly regulated in the Member States (see below). There is a relatively simple money flow: the audience funds political parties (through contributions and donations), political parties hire different kinds of media to spread their messages to the audience. Political parties may hire intermediary services to assist them with their political campaign. Data is not gathered in a structured way and the kind of media used only allows for general targeting. It should be noted that there is not a significant difference between traditional political ads and traditional commercial advertisement as the money flow is the same.

Figure 5: Processes and actors in modern political advertising

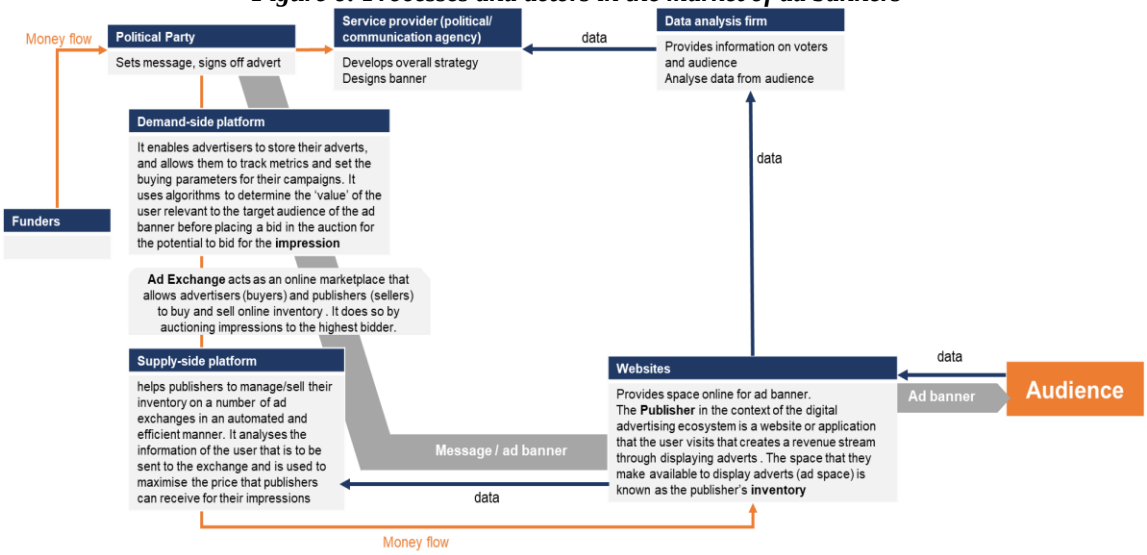


Modern political advertising can involve a range of other actors and include a number of services. Other than the traditional intermediary services (advertising agency, consultancy, marketing and branding advice) some new services, such as data analysis firms, have been used. With online media, it has become possible to gather structured data/information on the audience which enables political parties, non-party organisations

and (Political consultancy / Communication and Advertising) agencies to tailor their messages to specific audiences. This process adds a layer of complexity as besides the money flow there is now also data flowing from the audience to data analysis firms (through online media) which is then made available to political actors.

Depending on the online media used, the process is slightly different. The tables below provide a simplified overview of the actors involved and the flows of data and money in the case of the provision of ad banners, ad videos, and sponsored posts on social media respectively. It also should be noted that both the data and money flows are similar in political and commercial advertising.

Figure 6: Processes and actors in the market of ad banners



When a Political Party (or other Political actor) wants to advertise its message on a website (ad banners), there is usually no direct contact between advertiser and website. Advertisers use demand-side platforms to store their adverts and websites use supply-side platforms that help them to manage and sell their inventory. Ad Exchanges acts as an online marketplace that allows advertisers and publisher to buy and sell online inventory, auctioning impressions to the highest bidder. On top of this (mediated) monetary transaction, there is also a data flow from the websites that gather and sell data towards data analysis firms, which, after processing the data, can sell it to other actors such as political communication agencies.

Figure 7: Processes and actors in the market of ad videos

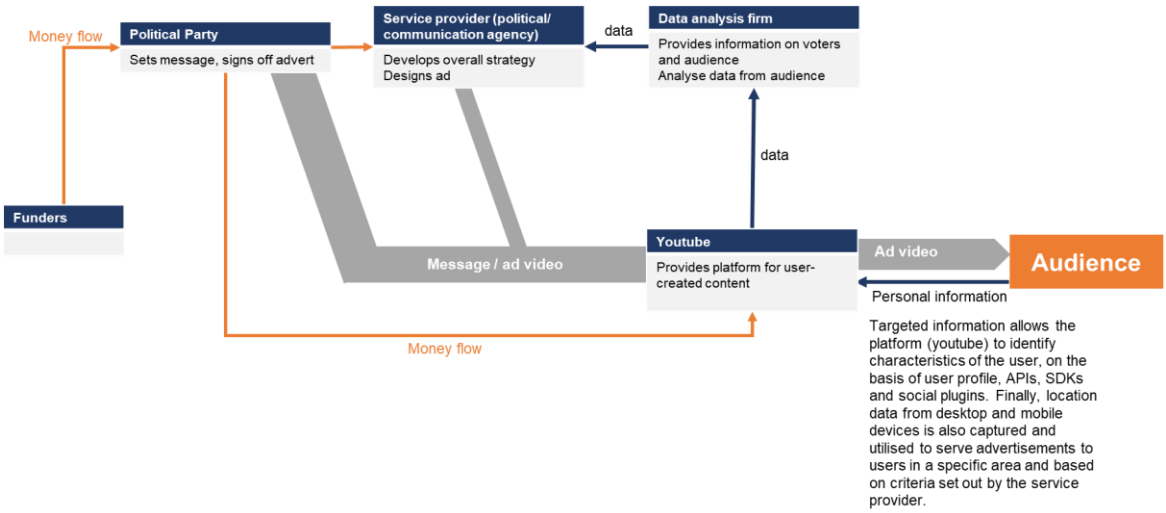
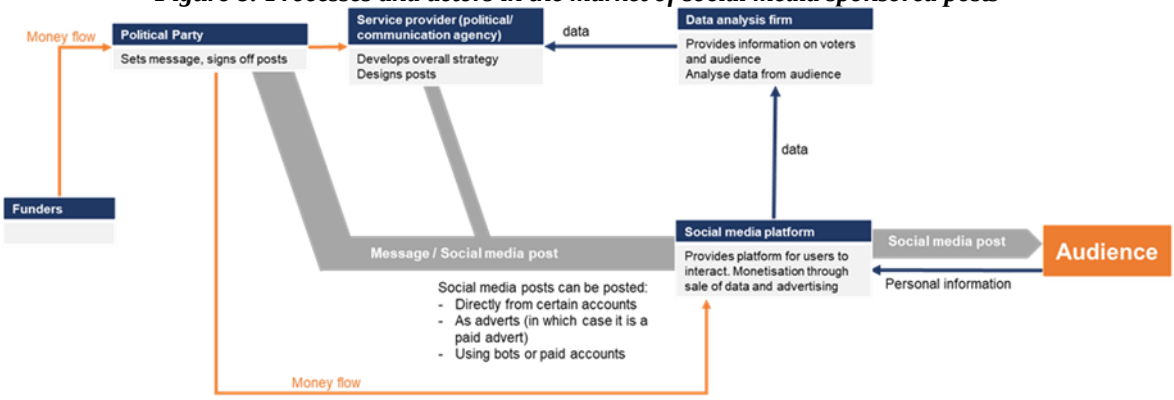


Figure 8: Processes and actors in the market of social media sponsored posts



As can be seen from figures 4 and 5, the processes and actors in the market of ad videos and social media sponsored posts are similar. Political actors (either directly or through an intermediary service provider like a political communication agency) spend money on online platforms in order to get their message advertised. The main difference between this process and the process with traditional advertising is the ability of platforms to collect personal information on the audience, which enables the creation of targeted ads.

2.6. EUPPs' spending on advertising over time

The European Parliament publishes annual financial statements provided by all EUPPs.[294] Each annual financial reports covers one year,[295] from 1 January to 31 December (except for the last two EP election years, where there is a statement per semester). The reports list each political group's expenditure on publications and advertising, in which EUPPs distinguish between 5 categories: Posters, booklets, publications; Advertising inserts and audiovisual advertising; Advertising material, novelty items, telecommunications advertising; internet sites and cyber advertising; visits to institutions, information stands. Based on these reports, the following graphs visualize the political groups' general revenue and their spending on these different categories of

[294] https://www.europarl.europa.eu/groups/accounts_en.htm
[295] With the exception of 2014 and 2019, where biannual reports were submitted.

advertisement. More detailed information is not available, and the proportion of informational and political ads is not known.

Figure 9: EUPP's revenue between 2010 and 2019

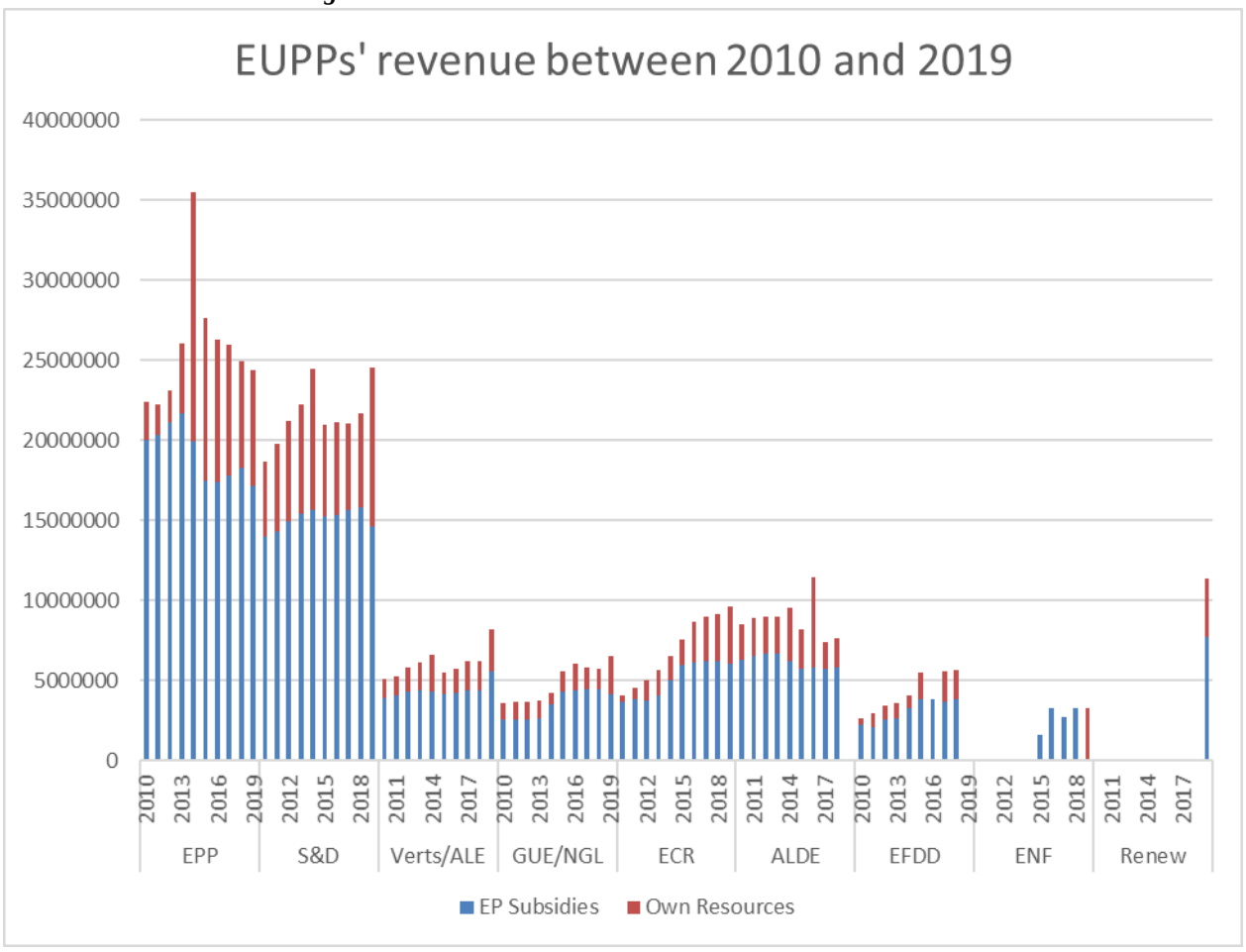


Figure 10: Absolute Spending by EUPP on Advertisement

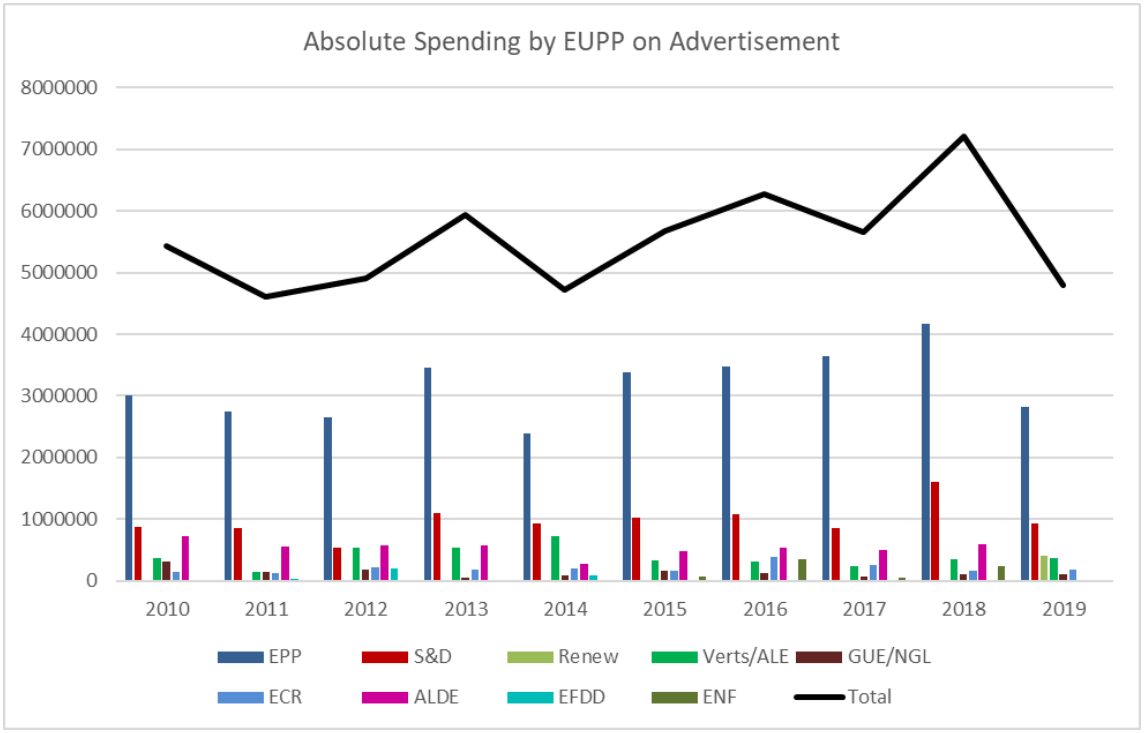
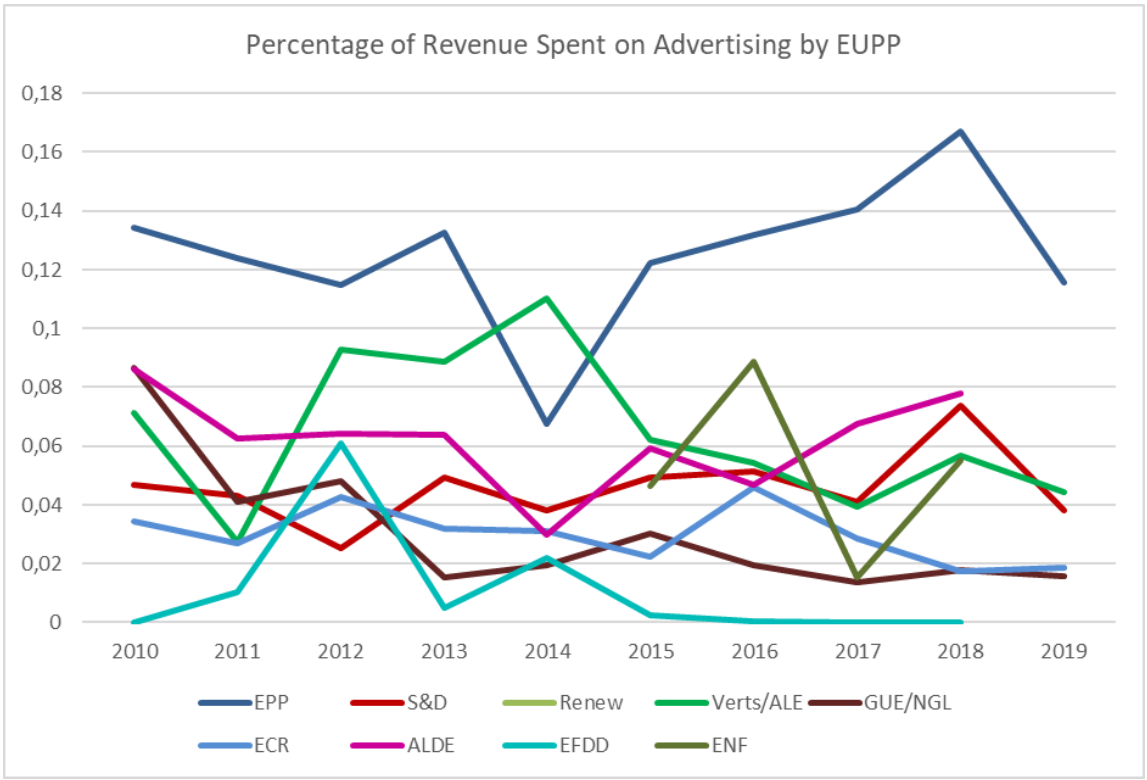


Figure 11: Percentage of Revenue Spent on Advertising by EUPP



The political groups generally spent a larger share of their revenue on advertisement in recent years, with a peak in 2018. Spending plummets significantly in 2019 and, according to stakeholder consultations, the reason for this is Facebook's 2019 rule that limited the placement of cross-border advertisements. Parties had allotted significant

amounts for their online campaigns on Facebook for the 2019 EP elections, which they were not able to spend differently, leading to lower overall spending.

Figure 12: EUPP spending on posters, booklets, publications

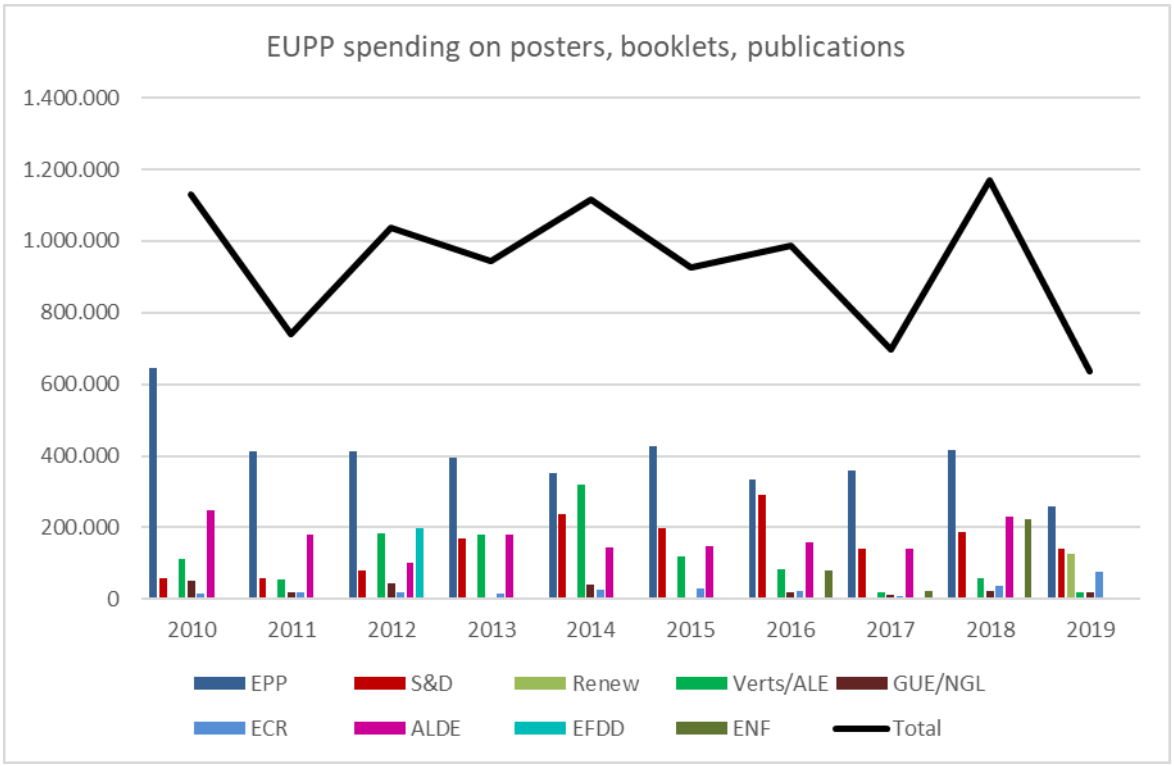


Figure 13: EUPP spending on advertising material, novelty items, telecommunications advertising

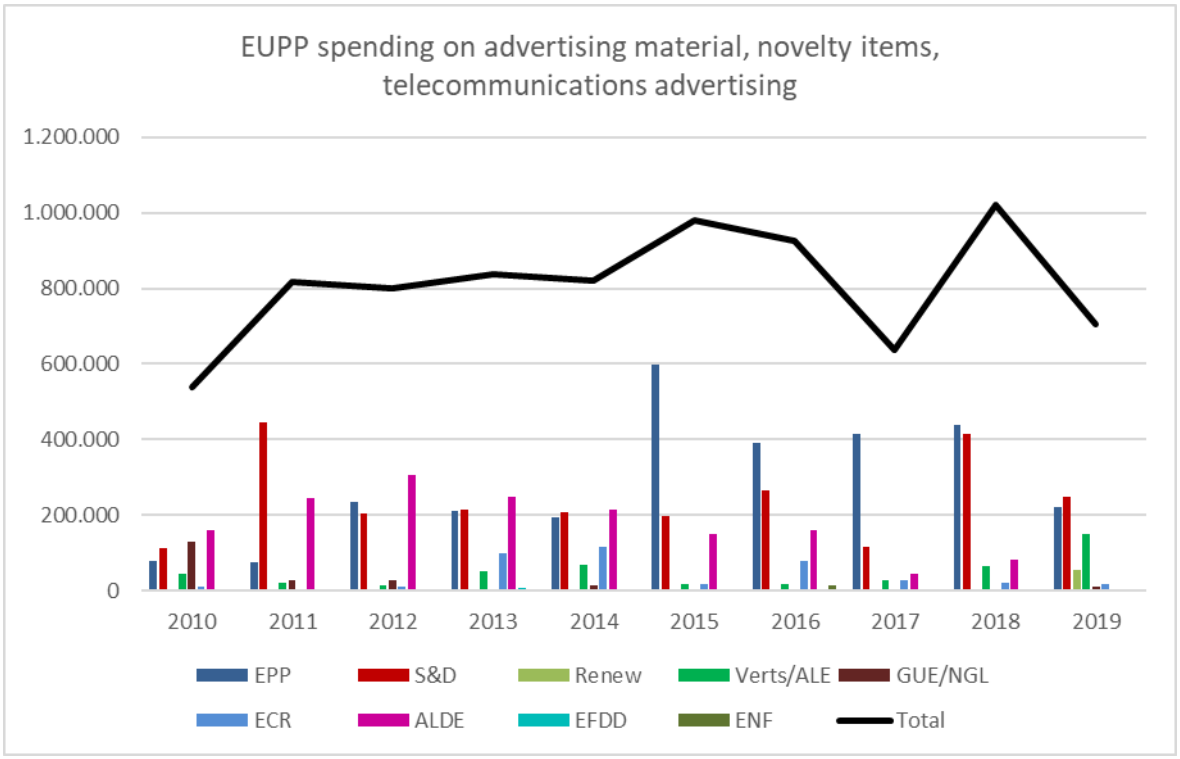


Figure 14: EUPP spending on advertising material, novelty items, telecommunications advertising

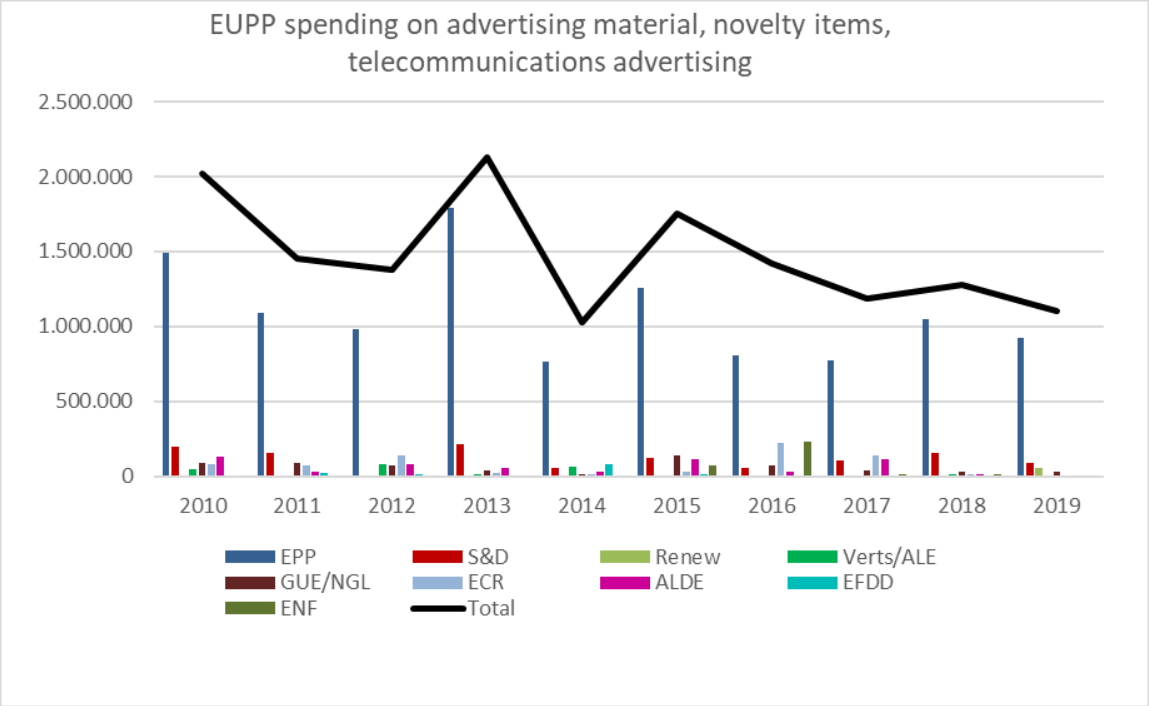


Figure 15: EUPP spending on internet sites and cyber advertising

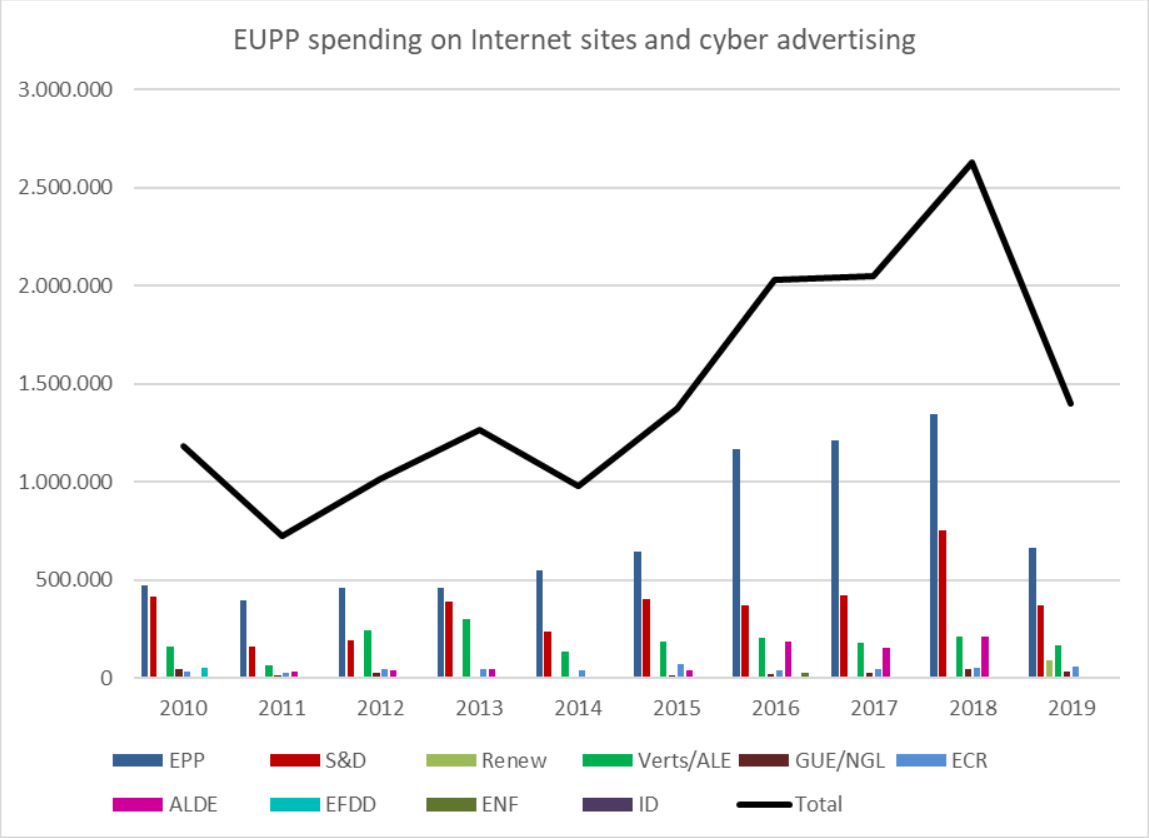
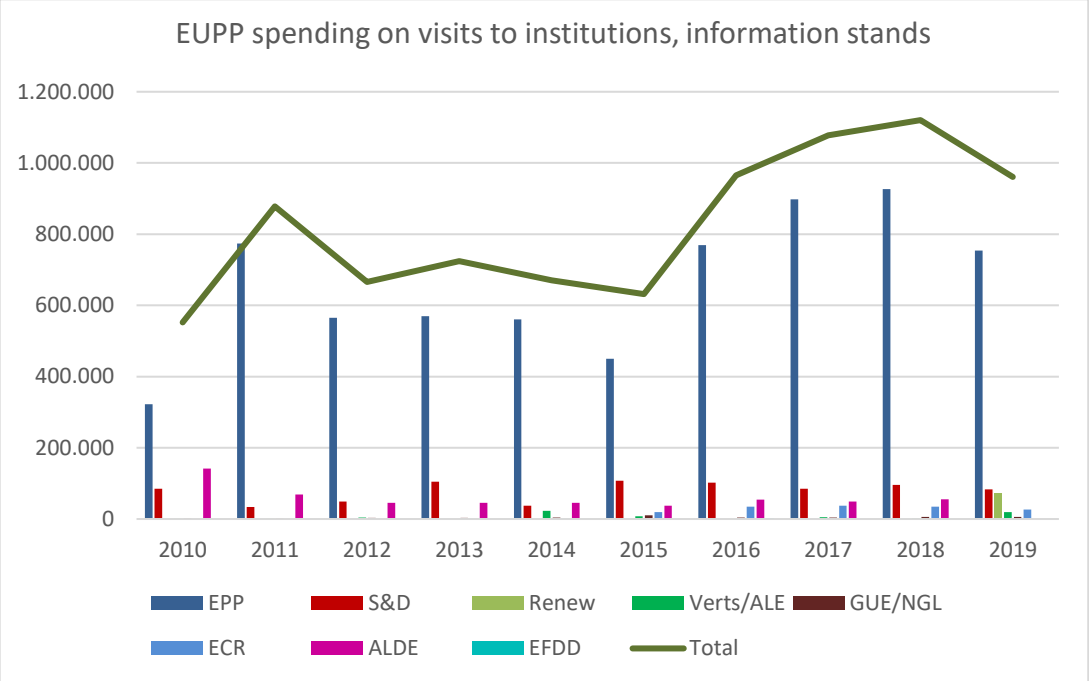


Figure 16: Party spending on visits to institutions, information stands



2. Other aspects relevant to the problem definition

The problem definition section of the impact assessment addresses a number of issues related to political ads from an internal market perspective (as well as issues related to EUPPs). Other issues, less directly related to article 114 TFEU, are briefly mentioned because they are relevant – in particular for the policy options on targeting and for the section assessing the impacts of the policy options. These issues are examined in greater detail below. The numbering is kept for consistency.

3.1 Problems for democratic processes linked to internal market issues (Problem 2)

The fragmentation and gaps in the regulation of political ads also result in poor regulatory outcomes and undermine democratic processes and trust among voters.

As described in Section 2.2.1 of the impact assessment, in the Member States where political ads are permitted, specific provisions condition the *availability* of political ads (regarding medium, period, actors etc.) and their *content* (transparency and other rules)[296]. These rules are specific to each Member State and reflect their respective democratic traditions[297]. They tend to share certain objectives, including that:

- a plurality of political actors have access to the means to communicate their message to voters;
- political actors campaign in the open and can be challenged on the claims they make;

[296] See Annex 8 for a presentation of the availability and content of relevant national legislation in this area.
[297] In particular, the balance established between national institutions, political actors, citizens as voters, and other actors contributing to the democratic debate and oversight, such as journalists and civil society more broadly.

- resources are used transparently (and usually that there is some balance in the access that political actors have to resources);
- citizens are provided with the information they require to evaluate the political messages that they receive and make their minds up freely; and
- foreign actors and powerful commercial interests are not able to control the political debate.

Beyond the EU instruments relevant to the regulation of political ads (see section 2.1 in the impact assessment, and Annex 9), the Commission has supported soft-law measures. As part of the Commission's 2018 electoral package, the Commission recommended that Member States and political parties take measures to strengthen the transparency of paid political advertising, to ensure that parties and economic actors took the necessary steps to ensure that individuals could recognise a political ad and know the identity of its sponsor, the amounts paid for it and the use of targeting, where relevant. The Code of Practice on disinformation included commitments to ensure that the political advertising on their services was clearly labelled as such, and that viewers should be able to understand how it was targeted to them.

The 2020 Commission post-elections report shows that the implementation of the recommendations encountered significant challenges, and while effective measures were taken by Member States to establish elections networks to improve coordination on these topics, substantive changes to relevant rules and procedures were not possible[298]. Moreover, the Commission's assessment of the first year of operation of the Code of Practice on Disinformation[299] showed that, although the Code produced positive results, there were persisting insufficiencies in the signatories' policies and actions on political ads transparency. These include *inter alia* the completeness of political ads repositories, the limited functionalities of application programming interfaces[300] for the repositories, and the absence of uniform registration and authorisation procedures. The Guidance provided by the Commission on the update of the Code of Practice will help its signatories to address these weaknesses and foster industry-led solutions, but the assessment also noted that an inherent weakness of the Code was its self-regulatory nature.

By providing for oversight and enforcement mechanisms, the DSA will provide the Code with a regulatory backstop. It will also introduce a number of relevant obligations **for online platforms** that publish ads on their interfaces, as well as due diligence obligations for very large online platforms[301]. While these initiatives will contribute to further accountability in the online ads environment, and will reinforce the ability of authorities to supervise political ads, a number of gaps will remain with respect to political ads. The scope of the DSA is wide, including but not limited to political ads. For this reason, it does not include in the hard-law requirements disclosure of ad spend, one of the metrics

[298] The implementation of these recommendations was described in the Commission report on the 2019 elections https://ec.europa.eu/info/sites/info/files/com_2020_252_en_0.pdf and https://ec.europa.eu/info/sites/info/files/swd_2020_113_en.pdf

[299] https://ec.europa.eu/digital-single-market/en/news/assessment-code-practice-disinformation-achievements-and-areas-further-improvement

[300] APIs, a software interface which allows external actors (limited) access to a platform's services with automated requests.

[301] See Annex 9 and notably the table "Detail of envisaged obligations introduced under solutions 1 and 2, alongside those anticipated for the DSA (baseline)"

necessary for political accountability. As regards ad transparency measures, the scope of the DSA is focused on platforms that display ads on their interfaces, but does not cover the full range of political ads - that can be encountered online - to be addressed, including when they are placed on third-party websites[302]. Not all actors, and especially not all offline actors involved in political ads are covered by these instruments, but this is out of scope of the problems addressed in the DSA.

Current regulation and soft measures have not achieved their objectives in the context of political ads, especially across borders. This can be observed in a number of areas and has several drivers, discussed below.

3.2. Negative impacts of current framework on regulatory outcomes across borders (Problem 2.1)

Non-recognisability of political advertising by individuals

Offline political ads are usually labelled and some transparency information is provided in most Member States. Online, this is typically only done by certain platforms, usually voluntarily and inconsistently. The DSA will introduce labelling and certain transparency obligations for all ads in its scope, but, as explained here-above, the transparency measures do not cover all online ads and no offline ads, neither do they cover all the data necessary. The open public consultation[303] indicated that respondents across the EU encounter political advertising where they are unable to identify key elements including the entities sponsoring the ad, the amount spent on placing the ad, and the use of targeting. Online, nearly four in ten Europeans have encountered content which they could not clearly identify as political ads[304]. They can confuse political ads with journalistic content shared or created by others online[305]. Although of critical importance, labelling as such is not always sufficient on its own. In a recent German study[306], almost 60% of those interviewed thought that advertorials[307] were genuine news content, despite labels. Other complementary measures on transparency at various levels are necessary.

[302] See in particular Annex 6 for a full description of the various services involved in political advertising. The DSA defines ads as 'displayed by an online platform on its online interface against remuneration specifically for promoting that information' where an online platform is a 'hosting service which, at the request of a recipient of the service, stores and disseminates to the public information', 'online interface' means any software, including a website or a part thereof, and applications, including mobile applications, and a 'hosting' service consists of the storage of information provided by, and at the request of, a recipient of the service. In contrast, in simple terms, adtech advertising is where the adtech service provider acts as an intermediary, arranging for the display of an advertiser's ads on another company's website or app (e.g. a news media service), and involving a number of ancillary services which may be provided by the adtech company or another service provider, such as the actual hosting of the ad, conducting a real-time bidding process to establish which ad will be served to each website user, providing the data analysis used to base the bidding and targeting process etc. These are not ads under the DSA.

[303] European Commission, Political Advertising – Increasing Transparency. https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12826-Political-advertising-improving-transparency

[304] Special Eurobarometer 507 "Democracy in the EU", fieldwork October-November 2020, publication March 2021

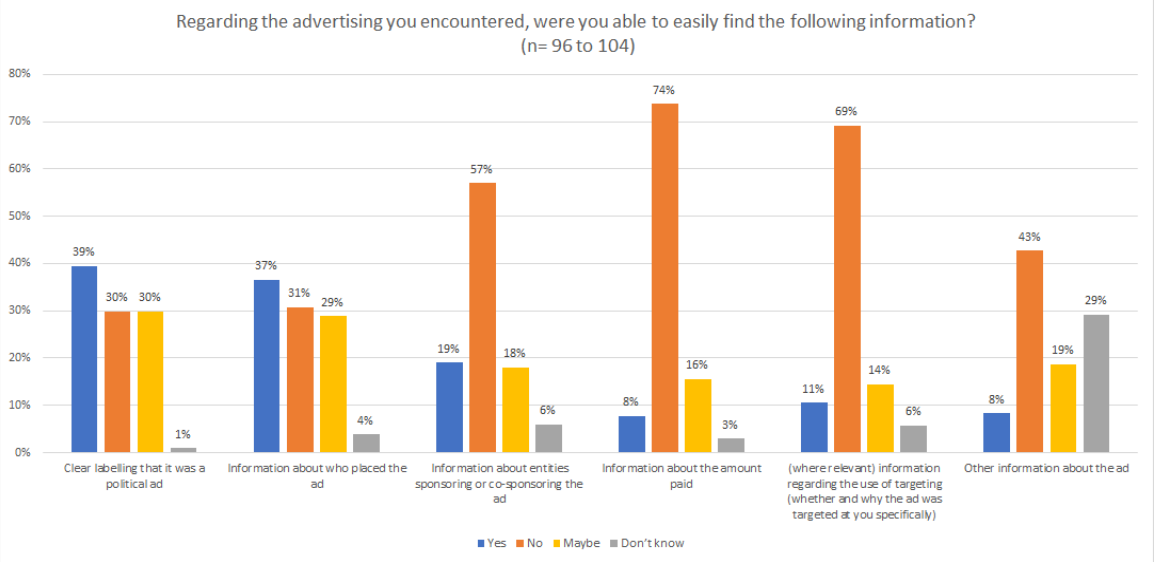
[305] For an account of the impact of labelling, see for instance: "When politicians go native: The consequences of political native advertising for citizens' trust in news" by Magnus Hoem Iversen and Erik Knudsen (University of Bergen, Norway) published in "Journalism", a Sage journal, in 2019, Vol. 20(7) 961–978.

[306] Stiftung Neue Verantwortung, „Quelle: Internet?", March 2021: https://www.stiftung-nv.de/sites/default/files/studie_quelleinternet.pdf

[307] An advertisement written in the form of an objective editorial, presented in a printed publication, and usually designed to look like a legitimate and independent news article.

Lacking transparency presents several interconnected problems for individuals exposed to political advertising[308]. Citizens find it difficult to distinguish between information on political topics and political advertising[309]. This can undermine their assessment and even leaves them susceptible to manipulation. In particular, the political nature of online political ads can easily be concealed from the viewer, and their content concealed from wider scrutiny. The online space also provides opportunities for non-transparent means of amplification, such as networks of (semi-)inauthentic accounts, that might lead to a harder distinction of the nature of the ad; this is especially true if the labelling of a political ad is easy to remove. The lack of transparency in political ads, combined in the online world with proliferation of other information, can also make it difficult to identify essential official information about elections, such as on timing.

Figure 17: OPC question on information about advertising



The potential to exploit the current lack of transparency, particularly online, to manipulate the electorate, impacts citizens' and governments' trust in online ads. Such concern is relevant from an internal market perspective: it is reported as motivating the Irish legislative proposal to include a ban on online political ads from foreign actors, including EU citizens[310].

Stakeholders' views

NGOs and academic experts interviewed for the underlying study attribute the issue of insufficient transparency of political ads largely to online platforms and political parties.

Societal and political actors lack information to hold political actors and parties accountable on their online political advertising activities

[308] How can the Swedish Government prevent Political Micro- Targeting from threatening the Electoral Process? (2018) Knäpper Bohman, C.

[309] See, for example, Fool me once: Regulating "fake news" and other online advertising (2018) Wood, A. K., Ravel, A. M. Available at: https://southerncalifornialawreview.com/wp-content/uploads/2018/10/91_6_1223.pdf

[310] General Scheme of the Electoral Reform Bill 2020, pp246-248 (08/01/2021). https://www.gov.ie/en/publication/34cf6-general-scheme-of-the-electoral-reform-bill-2020/

Certain actors play a specific role in the political process in holding political actors to account and in supporting a plural and open political debate ('interested actors'). This includes journalists, civil society organisations ("CSOs"), election observers,[311] academia, citizens and political actors themselves. Member State regulatory frameworks can include specific provisions reflecting the role such actors play in the political process, but these provisions are not available consistently in all Member States, especially online.

They can be related to the rights of political actors to access the debate (for instance, through rules specifying the amount of time different parties or candidates may run broadcast media slots) to the enforcement of other rights in the political process (such as the right to reply and rectification[312]), or the availability of information to interested actors to monitor the debate[313] and hold politicians to account for their campaign messages.

To play their role as watchdogs in the democratic process, these actors need access to specific information, in particular ads' sponsors, amounts spent and sources of financing[314]. The literature review found a substantial lack of quantitative and comparable data on political advertising for electoral campaigns, particularly online.

Stakeholders' views

CSOs expressed concerns about the lack of transparency on online advertisement as impeding their role in the democratic process.[315] They indicated that transparency should include enough information about the ads to allow campaigns to be followed across platforms and media, and could be pre-processed to help actors make best use of it[316].

Within its (limited) scope, the DSA will already provide researchers with access to relevant data held by online platforms (transparency reports[317], obligation from VLOPs to make publicly available an ad repository, obligation to disclose data to vetted researchers). Political actors and civil society will not, however, be provided such access directly.

The EU Action Plan against Disinformation[318] aims to support the creation of a multi-disciplinary community of independent fact-checkers and researchers focused on emerging digital media vulnerabilities and disinformation campaigns within the EU. The new European Digital Media Observatory (EDMO), operational from June 2020, will

[311] Accredited election electoral observers have privileged access to aspects of the voting process in some Member States, but there are few other rules mandating transparency for this group.
[312] Approached differently in the Member States. The right to reply is also provided for television broadcasting in Article 28 AVMSD.
[313] See for on-line activities, the recently issued guidance for a new Code of Practice on Disinformation.
[314] This was highlighted notably by NGOs and more specifically by the civil society coalition active in the area in a statement. Governing Platforms Project, Putting Meaningful Transparency at the Heart of the Digital Services Act Why Data Access for Research Matters & How we can Make it Happen, https://algorithmwatch.org/en/wp-content/uploads/2020/10/Governing-Platforms_DSA-Recommendations.pdf
[315] Several highlighted key concerns in a joint statement on the topic 8 September 2020, Joint Call for Universal Ads Transparency: https://epd.eu/wp-content/uploads/2020/09/joint-call-for-universal-ads-transparency.pdf
[316] In this regard, actors pointed to the policy of the Netherlands authorities to support independent organisations to perform such pre-processing, including through the *Political Microtargeting: Safeguarding public values* project https://politieke-advertenties.nl/22-2/
[317] And a database with statements of reasons for removal of content which is considered illegal or against terms and conditions of the service provider.
[318] Join (2018) 36 FINAL

help build such a community and coordinate fact-checking and research efforts across the EU.[319] The signatories of the Code of Practice on Disinformation committed to provide researchers access to data from their services, including on political ads[320]. The European Commission's Guidance on the Code of Practice sets out how to increase transparency regarding political and issues ads on signatories' services, including with efficient labelling of such ads, increased transparency in messaging platforms, measures to limit the risks associated with micro-targeting and improved ad repositories.

Together, these EU initiatives offer only a partial solution to the needs of such actors specific to oversight of political ads.

Stakeholders' views

CSOs were sceptical about the capacity of industry initiatives to sufficiently enhance transparency[321]. They did not find the platforms self-regulatory measures sufficient to provide reliable data.[322] They considered that the platform-provided libraries were poorly functioning and would need standards to ensure quality. In addition, they highlighted that mandatory ad libraries should exist for all online platforms.[323]

Moreover, stakeholders highlighted that it was necessary to go beyond the mere publication of the ads and to address the influencing methods used to enhance the impact of ads, including manipulating ranking and placement algorithms. ***Political actors are unable to exercise mutual scrutiny.***

Opaque political ads restrict possibilities for political actors to exercise mutual scrutiny. Based on the feedback from Member States, if a party breaches electoral rules, for instance on party funding, it is currently unlikely that it will be possible to establish this through the available information with sufficient certainty for other parties to flag such activities to the public or the relevant authorities.[324]

Member States are unable to monitor and enforce relevant rules[325]

Competent authorities face difficulties to exercise their oversight function[326], especially in cross-border contexts. There are also important discrepancies between the oversight they are able to exercise online and offline[327].

Limited legislation providing insufficient information

[319] In September 2021, eight independent multidisciplinary hubs become operational (each one covering one or more Member States). They will become part of EDMO network of hubs on digital media to contribute to the fight against disinformation across Europe.

[320] Efforts to implement these commitments have been criticised for being insufficient, inconsistent and untransparent.

[321] In observed through interviews, written EDAP public consultation responses, as well as public statements including (1) Governing Platforms Project, Putting Meaningful Transparency at the Heart of the Digital Services Act - Why Data Access for Research Matters & How we can Make it Happen (previously quoted), and (2) Joint Call for Universal Ads Transparency, https://epd.eu/wp-content/uploads/2020/09/joint-call-for-universal-ads-transparency.pdf

[322] See the underlying study, in particular its table 1 (Examples of existing monitoring platforms).

[323] A comprehensive plan to innovate democracy in Europe. Available at: www.youthforum.org/comprehensive-plan-innovate-democracy-europe

[324] This was a discussion point within the Dutch Code of Conduct, elaborated within the framework of the last Dutch elections and signed by almost all national political parties and global online platforms. Available at: https://www.idea.int/sites/default/files/news/news-pdfs/Dutch-Code-of-Conduct-transparency-online-political-advertisements-EN.pdf

[325] This section does not cover data protection/targeting which are dealt with in a different problem.

[326] The national authorities responsible for the enforcement and oversight of rules on online political advertising tend to vary across Member States (as well as their exact competences) and their coordination is typically insufficient.

[327] See mapping of national legislation in Denmark in Annex 8.

Few Member States impose obligations to provide information on key aspects of online political advertising, such as the amounts spent[328]. When general legislation is in place, it is usually not adapted to the online environment or to cross-border oversight needs. It emerged in the consultation for instance that when the rules on traditional media do apply to social media, they are usually not monitored there, both through a lack of requisite capability and powers in the competent authority[329]. Oversight is not consistent for online and offline media, leading to poor regulatory outcomes.

This can contribute to specific issues with political advertising in multiple Member States or across borders. For instance, the national regulatory body of Lithuania acknowledges difficulties in monitoring political campaign expenditure on political advertising. It referred to the absence of a proper system to monitor editorial coverage of broadcast, online and print media during election campaigns, and having to rely largely on complaints or notifications received from third parties to detect cases of possible hidden advertising.[330] In France, the *Commission nationale des comptes de campagne et des financements politiques* does not undertake real-time campaign monitoring or obtain information from donors and service providers[331].

These issues are linked to the underlying regulatory framework. For instance, in Denmark, internet resources, including online editions of newspapers or broadcasters, are not covered by the rules that apply for offline political ads[332]. Similarly in Bulgaria, Czechia and Slovakia[333] for campaigning on social networks and online media. In Romania, political ad provisions for private offline broadcasters appear restrictive, whereas there are no such restrictions for print and online media[334].

Insufficient information and ineffective collaboration between national authorities and economic actors including online platforms and media

The information published by ad publishers or political parties about their online advertising is often insufficient to permit effective oversight, and other sources of information are necessary. The information is generally published by parties or oversight bodies with a certain delay, incomplete and not precise enough to evaluate if online political advertising expenditure is compliant with transparency requirements.

Member States efforts to address the issue remain fragmented. The French Law of 22 December 2018 to counter information manipulation introduced a duty for online platforms to cooperate with relevant authorities against the dissemination of false

[328] See Annex 8 on legal mapping in Member States.
[329] See underlying study.
[330] OSCE/ODIHR (2019), Republic of Lithuania Presidential Election 12 and 26 May 2019 ODIHR Election - Assessment Mission Final Report. Available at: https://www.osce.org/files/f/documents/a/e/433352.pdf
[331] OSCE/ODIHR (2017), Republic of France Presidential election 23 April and 7 May 2017 OSCE/ODIHR Election Expert Team Final Report. Available at: https://www.osce.org/files/f/documents/c/8/337346.pdf
[332] Internet platforms are unregulated, yet they can voluntarily register to become subject to the Media Liability Act.
[333] OSCE/ODIHR (2021), Republic of Bulgaria Parliamentary Elections 4 April 2021 ODIHR Needs Assessment Mission Report. Broadcasters and audio-visual online content will only be reviewed in case of complaints, while other media are monitored; OSCE/ODIHR (2017), Czech Republic Parliamentary Elections 20-21 October 2017, Presidential Election January 2018 OSCE/ODIHR Needs Assessment Mission Report; OSCE/ODIHR (2019) Slovak Republic Presidential Election 16 and 30 March 2019, ODIHR Election Assessment Mission Final Report.
[334] OSCE/ODIHR (2020), Romania Presidential Election 10 and 24 November 2019 ODIHR Election Assessment Mission Final Report. Available at: https://www.osce.org/files/f/documents/8/a/449200_0.pdf

information, especially during the election period[335], but it has faced challenges in its application.

Stakeholders' views

In the framework of ECNE[336], Member States' expressed the need for more effective oversight possibilities applicable both offline and online to address opaque practices related to political ads. They underlined that, even when rules apply to political advertising on all types of media including social media and platforms, online platforms do not wish to engage in collaboration or to share relevant information allowing competent authorities exercise their monitoring functions. Some national authorities reported that there is no cooperation with online platforms during the usual "reserve period" or "silence period" preceding polling day[337]. The lack of accessibility and transparency about online political content leads to a difficulty to access the content of the advertisements and their archives and the difficulty to access who financed these advertisements.

Opaque practices related to political ads are also indicated as being of concern in the consultation, such as anonymous online fundraising through e.g. GoFundMe[338]. In Spain, there were concerns related to the use of messaging applications (e.g. WhatsApp) for campaigning due to difficulties in assessing the compliance of such campaign activities with legislation[339].

Consequences

Stakeholder groups in the consultation were unanimous in recognising the negative impact of the poor regulatory outcomes on democratic processes and on public confidence and trust in political ads. This has prompted several Member States to legislate and to prepare legislation unilaterally to address these issues. Yet, these Member States and others have also indicated that national regulation is unlikely to be effective in addressing the cross-border aspect of this problem without a sufficient EU framework to support them.

2.2.2.2 Targeting and other dissemination and amplification techniques in online political ads create problems for citizens and for the democratic process (Problem 2.2)

Targeting (also referred to as microtargeting when tailored at individual or small group level) is increasingly used to enhance the impact of political ads online. It is used to direct specific political messages to selected audiences on the basis of personal data based on interactions between citizens and online service providers. It is used to tailor ads to individuals, including social media posts, banner ads, in app-ads, pop ups etc.[340]

[335] See Article 11 of French Law of 22 December 2018 to counter information manipulation. Online platforms are required to provide the Higher Audio-visual Council, responsible for regulating broadcasting in France, with an annual declaration of the methods of implementation of each of the measures taken to counter the spread of false information. Online platforms must provide users with clear and transparent information about the nature, origin and methods of disseminating content as well as the identity of persons paying remuneration in return for the promotion of information content.

[336] *Ad hoc* meeting of the ECNE of 25 March 2021: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/eu-citizenship/electoral-rights/european-cooperation-network-elections_en

[337] Two interviewed Member States public authorities stated that they did not manage to have a satisfactory, effective cooperation with large online platforms so that the latter would provide them with sufficient information on online political advertising conducted in election periods in their countries over the last two years to oversee these activities.

[338] OSCE/ODIHR (2020), Ireland Early Parliamentary Elections 8 February 2020 ODIHR Needs Assessment Mission Report. Available at: https://www.osce.org/files/f/documents/a/b/445528.pdf

[339] OSCE/ODIHR (2019), Kingdom of Spain Early Parliamentary Elections 28 April 2019 ODIHR Election Expert Team Final Report. Available at: https://www.osce.org/files/f/documents/0/5/425336.pdf

[340] It consists of two steps: 1. collection and analysis of data to identify target groups, and 2. formulation of messages to share with each of the target groups identified.

When information about the use of targeting techniques is not transparent, including on how personal data is obtained and processed and on amounts being spent in targeting, it impacts negatively the electoral process as it allows actors to target potential voters in an opaque manner.

The use of targeting for online political advertising is associated with the mobilisation of the electorate[341], particularly in a context of decreased participation in elections and low attachment to political parties. It allows new and small political parties, as well as other actors in democracy that may not have the resources to outsource nor engage in overarching communication strategies, to amplify their voice. Stakeholders (particularly EUPPs and CSOs) consulted indicated that it was a way for them to reach potential voters and niche audiences easily, inexpensively and directly. Recent elections in the EU have shown that the use of targeting is increasing, and targeted ads account for an increasing proportion of overall political campaign spending[342].

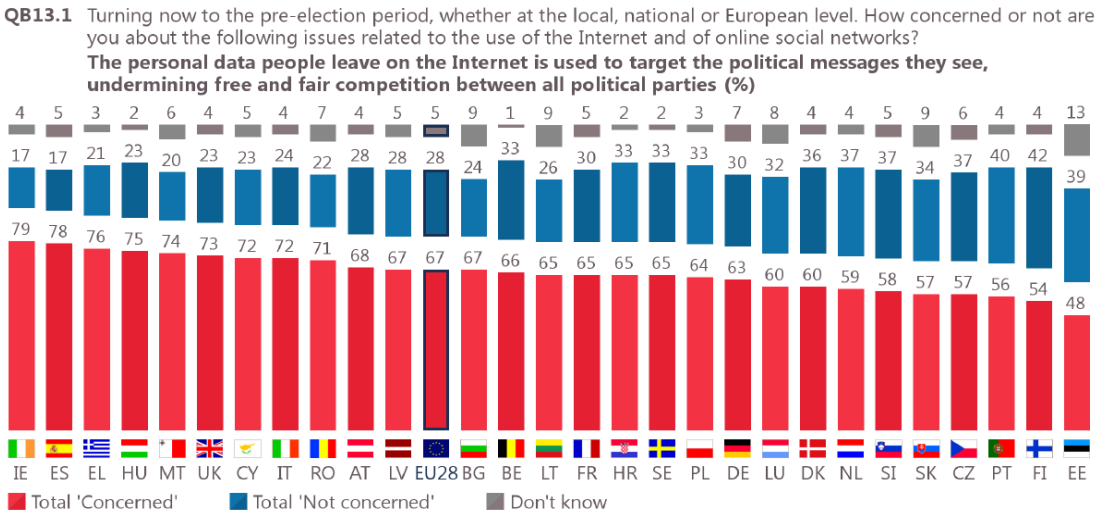
The effectiveness of targeting, including in the political context, seem to be somewhat contested[343], as some targeting techniques would seem not to be always very precise. Accuracy depends on different variables (e.g. relevance of data, accuracy of modelling etc.). Yet the sophistication of profiling and automated analysis and decision making is strengthening the impact of the technique, enabling relevant groups to be targeted with increasing precision[344]. Companies do not publish details on the targeting services they offer. Abusive and sometimes unlawful practices related to these techniques are also documented in the literature[345]. Watchdog organisations and national authorities appear unable to oversee this activity effectively. **These practices in connection with political ads create specific horizontal problems for citizens and the democratic process.**

Drivers of problems related to targeting

Strong public concerns have been expressed about the targeting of political ads and the use of personal data for this purpose.[346]

[341] Jarusch, J. (2020) Defining Online Political Advertising.
[342] See underlying study.
[343] Krotzek, L.J. (2019). "Inside the Voter's Mind: The Effect of Psychometric Microtargeting on Feelings Toward and Propensity to Vote for a Candidate", International Journal of Communication vol. 13.
[344] Opinion 3/2018 EDPS Opinion on online manipulation and personal data. Available at: https://edps.europa.eu/sites/edp/files/publication/18-03-19_online_manipulation_en.pdf
[345] (Micro)Targeting can easily conceal its intent and nature making difficult to estimate the size and scale of the problem. See underlying study.
[346] Kozyreva, A., Lorenz-Spreen, P., Hertwig, R. et al. Public attitudes towards algorithmic personalization and use of personal data online: evidence from Germany, Great Britain, and the United States. Humanit Soc Sci Commun 8, 117 (2021). https://doi.org/10.1057/s41599-021-00787-w

Figure 18



Base: Internet users (n=22,629)

Targeting of political ads is argued to be problematic per se[347].

Psychographic profiling techniques, where an individual's special personal characteristics are inferred from other information (e.g. *Cambridge Analytica*'s involvement in the 2016 US presidential campaign and in the Leave.EU campaign in the UK[348]) are regarded as particularly threatening as it enables targeting on the basis of special characteristics by proxy, with an increased risk of illegally bypassing informed consent (and broader user awareness) requirements.[349] **This defeats the purpose of the current framework,** undermining the rights which it intended to protect.

Political ads can avoid scrutiny by being **narrowly targeted** to (and hence only visible by) certain audiences or profiles. Political actors can use targeting to make irreconcilable promises to different segments of the electorate[350]. It can thus be a powerful tool to manipulate public opinion, and exclude certain societal groups ('redlining', affecting minorities and other vulnerable groups) from aspects of the public debate[351]. The 'micro' aspect of targeting is itself part of the issue when striving for transparency, especially democratic transparency (i.e. not directed to the user per se, but to the wider public). Ads that are micro-targeted below a certain threshold are divulged to too small of an audience for society itself to exercise a form of democratic oversight, and it is hardly possible to keep track of who spreads what.

[347] Dobber, T. & Ó Fathaigh, R. & Zuiderveen Borgesius, F. J. (2019). The regulation of online political micro-targeting in Europe. Internet Policy Review, 8(4). DOI: 10.14763/2019.4.1440

[348] Bakir, V. (2020) Psychological Operations in Digital Political Campaigns: Assessing Cambridge Analytica's Psychographic Profiling and Targeting. Front. Commun. 5:67. doi: 10.3389/fcomm.2020.00067

[349] Note, for many kinds of targeting (also when not based on special categories of data), consent will be main lawful ground available – see EDPB Guidelines on the targeting of social media users. Further, "inferred" special categories of data are still special categories (see pp. 24-26, 32-34). https://edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-82020-targeting-social-media-users_en See also Annex 9.

[350] IDEA (2020). Online Political Advertising and Microtargeting: the latest legal, ethical, political and technological evolutions. Webinar Series Report.

[351] Jarusch, J. (2020) Defining Online Political Advertising.

When **information about the use of targeting**[352] **is not provided in a political ad**, including on how personal data is obtained and processed and on the amounts spent on targeting, this can result in individuals being targeted unconsciously, even though they may have consented to it somewhere. Its targeted nature and sponsored character are also not evident to other individuals exposed to the ad, such as when the targeted individual further disseminates it to his or her peers ('organic distribution').

The **targeting** of political ads **can also be exploited to manipulate** the information environment and to disseminate disinformation,[353] conspiracy narratives and hate speech. This has been observed in successive elections within the EU and in third countries.[354] Transparency on the funding of political advertising is crucial to prevent foreign actors from manipulating and interfering in civic discourse inside the European Union. and narrowing the space for an open debate. This effect is also exploited, contributing to fragmenting public space and polarising public opinion[355]. This can compound the problematic effect of the misleading messaging where these messages circulate within closed groups, preventing fact checking and rebuttal. This can segment and polarise the voter base and distort the political debate.

The use of **special categories of personal data** ('sensitive data') can be problematic and liable to misuse. Targeting on the basis of political views (which includes *inferred* political views, and which still amounts to sensitive personal data under the GDPR) can be consented to in all Member States except for Spain.[356] . This knowledge about individuals' political views can be exploited to increase a malicious ad's polarising and misleading impact, or create echo-chambers for instance.

Other forms of manipulation of the online environment, such as the use of inauthentic accounts or paid-for user engagement for amplification, also pose a risk to distort public opinion. Research[357] suggests that there is a market for the sale of such services. When such tactics are being employed in the context of political advertising, this has the potential to mislead voters about the popularity of a party or a political programme. Funds could be used to buy such services like fake engagement or amplification online – making it crucial to include such manipulative behaviour in the considerations for rules on political advertising.

Stakeholders' views

Almost 70% of the Open Public Consultation (OPC) respondents indicated to be unable to find information regarding targeting - whether and why the ad was targeted at them. There is also a wide agreement among most stakeholders interviewed on the significant risks associated with the use of targeting in political advertising. Civil Society Organisations (CSOs) and Member States electoral authorities underlined the peril of this service to be hired by actors with interests exerting some type of political pressure, focus the debate and influence and manipulate public

[352] in addition to the information obligations towards data subjects under the GDPR.
[353] DisinfoLab and 49 other non-profits' open letter. https://www.disinfo.eu/advocacy/open-letter-to-eu-policy-makers-how-the-digital-services-act-dsa-can-tackle-disinformation/
[354] See for example, Matthew Crain and Anthony Nadler 'Political Manipulation and Internet Advertising Infrastructure https://www.jstor.org/stable/10.5325/jinfopoli.9.2019.0370
[355] Lewandowsky, S., Smilie, L., Garcia, D., Hertwig, R., et al. (2020) Technology and Democracy: Understanding the influence of online technologies on political behaviour and decision-making. European Commission, JRC Science for policy report.
[356] See Annexes 8 and 9.
[357] https://stratcomcoe.org/publications/the-black-market-for-social-media-manipulation/103

opinion. Similarly, the use of undeclared sources of money to cover expenditures, making difficult to track who is behind the ads, was often mentioned by stakeholders interviewed across all categories and supported by scholarship. The transparency of targeting provided voluntarily by very large online platforms was described as unreliable and insufficient to enable users to understand how targeting is used[358]. No information is provided on amounts spent.

Consequences

The way targeting is used with political advertising and the still not sufficient transparency and control applied to it through regulation and self-regulation has undermined trust in the use of such services among citizens and government authorities, and has a knock-on effect on perceptions about the integrity of elections and the democratic process. The association of targeting of political ads with foreign interference and information manipulation, including disinformation has driven Member State and private sector prohibitions of cross-border activity, which has in turn limited the availability of services without addressing the problems connected to the use of targeting for political ads. Proposals in the European Parliament and nationally have included banning targeting altogether, for all advertising.

Current measures addressing this problem

Targeting and other techniques which rely on processing of personal data can affect data protection rights as protected under EU law[359]. These rules impose *inter alia* significant conditions on how personal data can be processed including collected and used for specified, explicit and legitimate purposes, requirements for lawful processing and obligations regarding fair processing and information in relation to the data subject. The GDPR also provides for monitoring and enforcement through independent national data protection authorities, backed by harmonised powers including significant fines. The DSA proposes an obligation for all online platforms to ensure that meaningful information about targeting is presented to the user in connection to each ad, and for VLOPs to publish targeting and delivery criteria in the ad repositories. VLOPs will also have to assess and mitigate risks that their services may pose e.g. on non-discrimination, freedom of expression and information, or the intentional manipulation of their service with a negative effect on electoral processes, public health or civic discourse. National rules on political advertising can also be engaged by targeting activity[360]. Annexes 8 and 9 present the relevant national and EU provisions.

The Code of Practice on Disinformation includes a relevant commitment among its signatories[361] to provide transparency about the use of targeting. The Commission's Guidance on the Code calls upon signatories to further strengthen the Code's commitments in this regard, notably to contribute to limit or avoid risks associated with micro-targeting, to inform individuals when they are being micro-targeted, and to provide greater transparency and disclosure around the micro-targeting of political ads.

[358] See underlying study.

[359] See GDPR and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02002L0058-20091219

[360] Dobber, T. & Ó Fathaigh, R. & Zuiderveen Borgesius, F. J. (2019). The regulation of online political micro-targeting in Europe. Internet Policy Review, 8(4). DOI: 10.14763/2019.4.1440

[361] 'Ensure transparency about political and issue-based advertising, also with a view to enabling users to understand why they have been targeted by a given advertisement'.

The Electoral Package Recommendation asked Member States and political parties to take steps to ensure that information was provided to individuals about targeting. Non-binding initiatives at the civil society level include the "who targets me" project, which aims to enhance the recognisability of targeting, and AlgorithmWatch's Monitoring Instagram project, which aims to scrutinise the platform's ad-related practices to hold it to account.[362] Such valuable independent transparency initiatives are fragile; platforms can threaten them with lawsuits and arbitrarily shut down initiatives, as is the case with AlgorithmWatch's Monitoring Instagram project[363] and with the Online Political Ads Transparency Project from New York University.[364]

While some information about targeting is now provided by certain platforms about certain political ads, there continue to be issues concerning the consistency and comparability of this information, as well as the ads which are either out of scope from such policies (such as where they are provided via ad intermediaries) or where the criteria used for targeting are complex or indirect ('mirror audiences'[365]).

Self-regulation has not provided a solution to the issues raised by transparency in political advertising. National measures are being considered, but they will not address the cross-border nature of this issue and are unlikely to be effective.

2.2.2.3. Member State are unable to monitor and enforce transparency of political ads, and other relevant rules (Problem 2.3)

There is a substantial body of national regulation relevant to political ads, including electoral and political party rules, political funding and transparency rules and regarding relevant audio-visual media and other media services. There are also relevant EU rules, including on data protection and audiovisual media services. National competent authorities encounter challenges with monitoring and enforcing these rules because they lack sufficient:

- information about the political ads in circulation, especially online; and
- powers and capability to perform their oversight functions across borders.

Lack of resources, capacity, competence regarding political advertising

The lack of appropriate powers and resources is raised by both civil society and international organisations. They mentioned the under-capacity of relevant authorities and bodies at Member States level to enforce regulation (including on the origin of funds used for political ads). A review of OSCE reports on elections in Member States in the past years highlights a lack of capacity, resources and sometimes knowhow among entities in charge of monitoring and enforcement.[366]

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[362] https://whotargets.me/en/ad-targeting-in-the-german-election/ Similar projects include Dataskop (https://dataskop.net/overview-in-english/) and the Online Political Ads Transparency Project from New York University (https://www.politico.eu/article/facebook-nyu-laura-edelson-political-ads/).

[363] https://algorithmwatch.org/en/instagram-research-shut-down-by-facebook/

[364] https://www.politico.eu/article/facebook-nyu-laura-edelson-political-ads/

[365] Mirror audiences are target groups based on similar characteristics as known audiences (for example, "all users who interacted with the party's site on the platform"). Platforms often use algorithms to determine such audiences and thus do not know themselves how they were built.

[366] For example, in Italy, Regional Electoral Guarantee Boards reported a lack of capacity to verify candidate's campaign finance reports. Furthermore, it was mentioned that competent bodies lack the power and resources to conduct an efficient supervision, investigation and enforcement of political finance regulation: OSCE/ODIHR (2018), Italian Republic Parliamentary elections 4 March 2018 ODIHR Election Assessment Mission Final Report. Available

The legal mapping indicates that very few national authorities and bodies are empowered to supervise online political advertising. National monitoring and enforcement are strongest with respect to the funding of political parties and candidates and their financing of their campaigns offline.

Extraterritorial nature of the enforcement of online political advertising

National authorities and bodies reported limited resources and insufficient capacities for oversight over political advertising across borders. The market for political advertising would tend toward becoming increasingly cross-border despite the obstacles,[367] as many relevant service providers and platforms are based in a limited number of Member States (mostly Ireland, Belgium and the Netherlands) or even third countries, and multi-Member State or cross-border campaigns are becoming more common. National rules cannot easily be enforced across borders, and with the exception of the exchange of information and practices coordinated in the European cooperation network on elections, Member States reported little cooperation among authorities in this respect.

EU law provides for oversight of a number of aspects of activity relevant to political advertising. Annex 9 presents the relevant EU provisions.

Insufficient coordination among national authorities in political advertising

Outside of EU coordinated governance (which is sketched in the figure above and elaborated on in depth in Annex 9), the legal mapping describes[368] the diversity of existing authorities and bodies in the different Member States playing a role on the basis of different legal acts. The OSCE reports on EU Member States' elections provides various examples of insufficient coordination in this area[369].

This increases the challenges linked to cooperation in this area. The European Cooperation Network on Elections (ECNE) established on the basis of the 2018

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at: https://www.osce.org/files/f/documents/9/5/383589_1.pdf. Similar issues were mentioned for Portugal, Bulgaria, Latvia and Slovenia: OSCE/ODIHR (2020), Portugal Presidential Election 24 January 2021, ODIHR Needs Assessment Mission Report. Available at: https://www.osce.org/files/f/documents/c/a/473994_1.pdf; OSCE/ODIHR (2021), Republic of Bulgaria Parliamentary Elections 4 April 2021 ODIHR Needs Assessment Mission Report. Available at: https://www.osce.org/files/f/documents/6/0/476866_0.pdf; OSCE/ODIHR (2019), Republic of Latvia Parliamentary Elections 6 October 2018 ODIHR Election Assessment Mission Final Report. Available at: https://www.osce.org/files/Latvia%202018%20parliamentary_final%20report_17.01.2019.pdf; OSCE/ODIHR (2018), Republic of Slovenia Early parliamentary elections 3 June 2018 ODIHR Election Assessment Mission Final Report. Available at: https://www.osce.org/files/f/documents/0/d/394106.pdf.

[367] See market analysis provided in VVA study.

[368] Underlying study.

[369] For instance in Bulgaria, the Council for Electronic Media is charged with monitoring content on certain television and radio stations. However, the entity has no authority to sanction media for election-related violations but must forward the issue to the Central Election Commission (CEC) which in turn can decide whether to review the issue or impose sanctions (OSCE/ODIHR (2021), Republic of Bulgaria Parliamentary Elections 4 April 2021 ODIHR Needs Assessment Mission Report. Available at: https://www.osce.org/files/f/documents/6/0/476866_0.pdf). In Italy, the law does not regulate the cooperation among the relevant competent bodies and a practical working arrangement was said to be lacking (OSCE/ODIHR (2018), Italian Republic Parliamentary elections 4 March 2018 ODIHR Election Assessment Mission Final Report. Available at: https://www.osce.org/files/f/documents/9/5/383589_1.pdf). In Slovenia, the responsibilities to supervise the relevant rules on political advertising, in particular rules on election and *referendum* campaigns, on monitoring of the mandatory 'silence period', on financing of the election campaigns, on supervision of electoral stations and finally, on monitoring any violation of political parties' acts, is spread over five different authorities. In turn, these authorities are spread across the national and local level of government: OSCE/ODIHR (2018), Republic of Slovenia Early parliamentary elections 3 June 2018 ODIHR Election Assessment Mission Final Report. Available at: https://www.osce.org/files/f/documents/0/d/394106.pdf.

Recommendation supports exchanges of practices and information in this area, and supported the preparation of the mapping for this impact assessment.

First impact: Fragmented enforcement of rules and fragmentation of sanctions applicable at national level

The lack of capacity, resources and knowhow of national competent authorities to properly enforce legislation, as well as the insufficient coordination between these entities affect enforcement nationally. In light of the country-of-origin principle, enforcement is also affected by the limits to the imposition of sanctions for infringements of national rules in one Member State based on political advertising (and related activities) originating from enterprises established in another Member State[370]. The different sanctions laid down by various Member States legal systems, such as fines, interim measures or for some imprisonment sentences (in more than a third of Member States), cannot be effective and dissuasive.

Second impact: Use of undeclared sources and interference by foreign actors

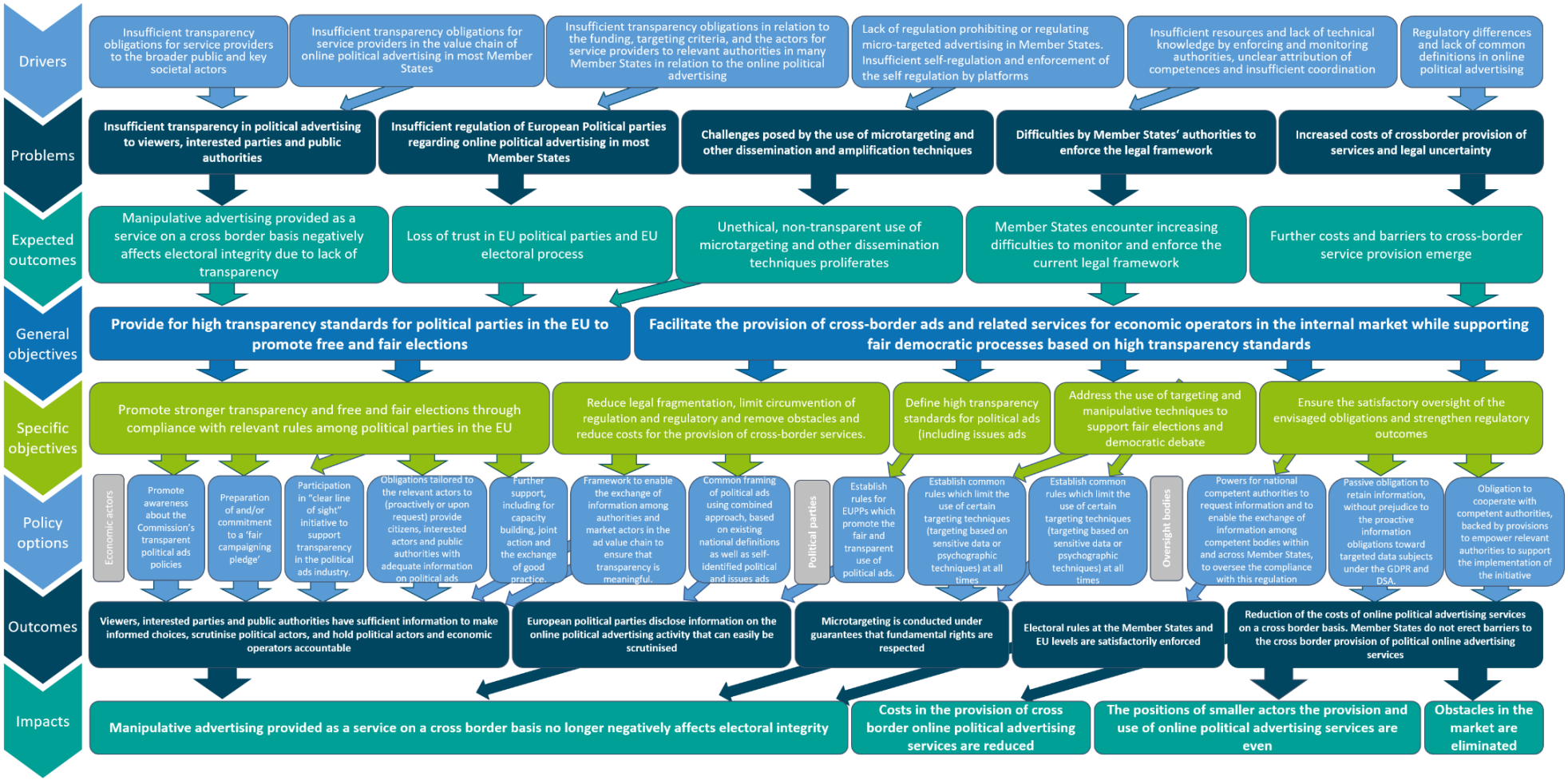
Difficulties exist with the lack of transparency including the use of financing to conduct political advertising across borders. It might not be declared to the competent authorities, or it might be from sources which contravene relevant rules in certain Member States. This can concern anonymous donations or monetised content, or through crowdfunding campaigns, which might contravene relevant rules. This enables foreign state and non-state actors to manipulate and interfere in the EU's democratic debate.

Stakeholders' views

Stakeholders interviewed by the contractor with direct experience on funding of political parties and online political campaigns indicate that the legal framework and its enforcement are not adequate to counter the threats of uses of undeclared sources in online political advertising. In particular, the heterogeneity of the regulation at the Member State level makes it easier for foreign actors – private or State-sponsored – to interfere in electoral processes in the EU either supporting specific candidates or parties manipulate the information environment, including the dissemination of disinformation.

[370] For instance to enforce French provisions regarding political ads circulated into France by services established in Luxembourg, where the services comply with the national rules of Luxembourg.

Annex 6: Intervention logic



Annex 7: Legislation addressing political advertising across Member States

1. General rules on political advertising

Sources

Legal practices regarding the regulation of political advertising differ across Member States. Political advertising is governed by varying, sometimes cumulative, legal sources: 1) Constitutional provisions and fundamental rights; 2) electoral laws; 3) general laws applying to commercial and non-commercial advertising as well as advertising codes; 4) laws on (financing of) political parties. That is why, political advertising is often regulated through overlapping legislation. Several Member States are contemplating – or already in the process of developing[371] hard or soft law specifically for online political ads, as delineated in point 7 below. The current patchwork of legislation at national level applicable directly or indirectly to online and offline political advertising is such that the obligations imposed can be inconsistent and unclear, in particular for actors operating in a cross-border context.

Members States apply different rules regarding the transparency requirements applicable to political ads, as is visible in Table 8.0 below. The rest of Annex 8 delves deeper into the analysis of other elements of the regulation of political advertising.

The data presented in this Annex is based on submissions from Member State authorities, as well as on desk research.

Table 8.0. Transparency requirements for publishing political ads (on at least one medium), grouped by Member State

Clear separation from editorial content (labelling)	AT BG CY DE DK EL ES HU LT LV PL SI IE* NL*
Identification of Advertiser	BG CZ DK FI FR IE LT LV PL SI SK IE* NL*
(Depending on the type of material), the number of copies, identity and contact details of the publisher	FR LT DK HU IE LV RO IE*
Amount of remuneration received for the ad	FR IE*
Keep records on, report on or declare financing political activities and election campaigns	FI HR HU LT LV PL PT IE* +

IE* and NL*: forthcoming

Definitions[372]

Political advertising defined in the broadest sense refers to political propaganda. As a rule, national advertising provisions are not applicable as they require payment or similar considerations.[373] Only some Member States (7 in total) provide a specific definition of political ads: In **CY**, political advertisement is an "announcement or message of any kind

[371] In the case of IE and NL
[372] See table 8.1.
[373] This information was gathered in a 2006 survey by the European Platform of Regulatory Authorities ("EPRA"), mentioned in the 2013 European Court of Human Rights Case of Animal Defenders International v. The United Kingdom http://hudoc.echr.coe.int/eng?i=001-119244

transmitted in return for payment or consideration by a candidate in presidential or parliamentary elections or European Parliament elections or any other election." **FI** defines political advertising as all forms of advertising by parties, candidate or candidate's support groups during any elections campaign. **HU** defines it as a program intended to promote or support a party, political movement or government, or to promote their names, purposes, activities, slogans, emblems; appearing or published in a manner similar to advertising. In **LT**, 'political advertising' means information disseminated by a state politician, political party, its members, a political campaign participant, on behalf and/or in the interest thereof, in any form and through any means, for payment or without charge, during a political campaign period or between political campaigns, where such information is aimed at influencing voters' motivation when voting at an election or a referendum, or where it is disseminated with the purpose of campaigning for a state politician, political party, its member or a political campaign participant as well as their ideas, objectives or programme. **LV** defines pre-election campaigning as political parties, associations of political parties, associations of voters or deputies advertising the candidate in the media or otherwise, if it contains a direct or indirect invitation to vote for or against a political party, association of political parties, association of voters or candidate for deputy. **SE** defines advertisements as commercials or other messages broadcast on behalf of someone else and that aim at promoting a cause or an idea and the specifies that opinion advertisements are messages broadcast on behalf of someone else and that aim at gaining support for political or religious ideas, or opinions related to the labour market. **SK** defines it as support for a political party, political movement, party member or movement member or candidate, possibly in their favour during an election campaign or a referendum campaign, popularization of the name, brand or slogans of a political party, political movement or candidate. Some 8 other Member States (**ES**, **FR, HR, IE, PT, SI**)[374] cover the concept of political advertisement by using the broader term of political/election campaign or political propaganda, which encompasses other kinds of activities (such as meetings, debates, handing of small gifts etc.). In **BE**, the definition is given indirectly as electoral propaganda expenses are defined as those "relating to verbal, written, audio and visual messages, intended to favourably influence the result of a political party and its candidates and issued within four months preceding the elections". In **IT**, there is a definition of radio and television political communication as radio and television media of programs containing political opinions and evaluations. Other times the political advertising concept is defined in the generic audiovisual commercial communication law as those communications that "are designed to support a cause or idea" (**AT**).

Some Member States (**CZ**, **DK**, and **RO**) mention either political advertisement or political propaganda without further definition. 9 Member States (**DE**, **EE**, **EL**, **SE, LU**, **MT**, **NL** and **PL**) do not provide any definition for political advertisement yet.

[374] In Spain, political advertising is covered by the term "electoral campaign" which means "all the lawful activities carried out by candidates, parties, federations, coalitions or groupings in order to get votes". In France, similarly, political campaign is covered by the term electoral propaganda. In Portugal, "any type of activity which aims directly at promoting candidates (be it of candidates, of subscribers of candidates, or of the respective political parties supporting a specific candidacy), as well as the publishing of texts or images which express or reproduce the content of those activities" is considered political advertising. In Slovenia, political propaganda are the messages (spots) and other forms of political propaganda whose purpose is to influence the stance of voters in casting their votes in elections. This kind of election campaign is regulated only for 30 days before the day of voting. Political advertising outside of the election campaign period are considered as commercial advertising in line with the Mass Media Act.

All in all, even when Member States do define the concept of political advertisement, those definitions have different scopes and requirements and use different types of criteria such as objective, subjective and time. Sometimes, a payment is a requirement to qualify as an ad. Timing is also an important factor in the definition of political advertising (as for some Member States, only those during the electoral period will be categorised as such),[375] which is particularly relevant as in some Member States political ads are not allowed during certain periods before elections.

Paid broadcast political advertising has long been statutorily forbidden in the majority of Western European Countries and several countries from Central and Eastern Europe.[376] Even in countries that allow paid political advertising there are some restrictions on when it is allowed to run political ads. The scope of the ban on political advertising usually does not relate exclusively to election periods, political parties and candidates but may also include other issues that reflect societal debates such as environmental issues and abortion. Some countries provide for a more restricted ban, only concerning political actors (parties and candidates). The ban sometimes only covers certain types of media (for example TV ads but not advertisement on radio). Most of the countries which allow political advertising also foresee certain legal restrictions to avoid the discriminatory character of the practice, including limits on the duration and frequency, scheduling, limits on charges, labelling, and equal conditions for all parties. **AT, EE, FI** and **PL** were given as examples of countries without restrictions on paid political advertising.

Content[377]

While most Member States do not have explicit rules on the content of political advertisement there are a few that restrict it. Besides some limitations arising from provisions from criminal law, intellectual property law and other legal branches not specifically related to elections, there are some examples of provisions that election campaigns must be conducted honestly and fairly (CZ), that false information about the candidates must not be published (CZ), prohibition of materials that harm the good manner, honour and reputations of candidates (BG, RO) or that constitute hate speech or political extremism (RO, DE[378]), provisions that political advertising should not offend political beliefs (EL) and bans on campaigns of achievements or accomplishments of public authorities (ES).

In FR, there is a provision on "new elements of electoral controversy" where, in order to maintain the adversarial nature of the electoral debate, it is forbidden for any candidate to bring to the attention of the public a new element of electoral controversy at a time such that his opponents do not have the opportunity to respond meaningfully before the end of the electoral campaign. Subsequently, broadcasting media are also banned from publishing comments by a candidate that include a new electoral argument to which their opponents are unable to offer a reasoned response before the end of the election campaign.

[375] In Belgium, electoral propaganda expenses are those relating to verbal, written, audio and visual messages, intended to favourably influence the result of a political party and its candidates and issued within four months preceding the elections. In Slovenia, the election campaign is only regulated only for 30 days before the day of voting with political advertising outside of the election campaign period being considered as commercial advertising. Other Member States also use the time factor of the election period to define political advertisements.

[376] European Court of Human Rights, Animal Defenders International v. The United Kingdom. See particularly the references to the 2006 EPRA study. http://hudoc.echr.coe.int/eng?i=001-119244

[377] See table 8.2

[378] NetzDG prohibits harmful contents that are exhaustively listed. Such content needs to be checked and deleted by the online provider if illegal. Among such content is hate speech and political extremism.

In HR, at certain elections (including elections for the European Parliament) an Ethics Commission is established as an ad-hoc authority to ensure ethical and democratic principles in the election are adhered to. It adopts and publishes the Electoral Code of Ethics which consists of codes of conduct for individuals and political parties in the election campaign and in the electoral process. Within their competencies, they can issue announcement and warnings related to the content of the campaign. There are examples of provisions for sign language interpretation or subtitles to be included in political advertisements (HU).

There are provisions forbidding the use of national symbols (either domestic or foreign) (BG, RO) or religious signs or images (BG). Some Member States have specific language requirements and forbid political advertisement that is not in their own language (EE, LV in the future).

Targeting

It seems that Finland is one of the only three Member State that has rules explicitly on (micro) targeting. While targeted advertising and profiling based on personal date are not categorically prohibited, the advertising recipients must be provided with sufficient information on why they are being targeted, who is responsible for the advertising and how they can exercise their data protection rights. These requirements were created through specific legislation[379] with the aim to go beyond the GDPR.

Ireland is another Member State which directly regulates micro-targeting: Part 3 Section 30 of the Irish Data Protection Act makes it an offence for companies or corporate bodies to process the personal data *of a child* for the purposes of direct marketing, profiling or micro-targeting.[380] Political advertising is perhaps less often targeted at children, but this situation remains relevant. The forthcoming Irish proposal will also regulate the transparency of targeting practices.

Targeting political ads based on political opinions (which constitutes sensitive personal data) is in practice mostly prohibited in Spain. Political parties were previously able to use the public interest legal basis (Art. 9(2)(g) GDPR) entrenched in the national electoral law (LOREG Art. 58 bis 1)[381] to process such data, but the Spanish Constitutional Court struck down that provision of the law[382]Further, consent is not a possible ground, as the Spanish implementation of the GDPR, the Organic Law on Protection of Personal Data and Guarantee of Digital Rights, says that, in order to avoid discriminatory situations, the sole consent of the data controller shall not be sufficient to lift the prohibition on the processing of data the main purpose of which is to identify their ideology, trade union membership, religion, sexual orientation, beliefs or racial or ethnic origin.[383] Parties are still allowed to process personal data manifestly made public by the data subject (9(2)(e)), which may allow them to target electoral propaganda based on political opinions, but the scope for this is very limited. Further, as regard the use of targeting techniques as such, a (legally binding) Circular by the national DPA labels political campaigning as a "high risk" activity, and bans any form of data processing

[379] The Data Protection Act, https://www.finlex.fi/fi/laki/smur/2018/20181050. For an English translation see: https://www.finlex.fi/en/laki/kaannokset/2018/en20181050.pdf
[380] Data Protection Act 2018, Section 30, http://www.irishstatutebook.ie/eli/2018/act/7/section/30/enacted/en/html.
[381] https://www.boe.es/buscar/act.php?id=BOE-A-1985-11672&tn=0&p=20210707
[382] https://www.tribunalconstitucional.es/NotasDePrensaDocumentos/NP_2019_076/2019-1405STC.pdf
[383] Organic Law on Protection of Personal Data and Guarantee of Digital Rights, article 9. https://www.boe.es/buscar/doc.php?id=BOE-A-2018-16673

(such as microtargeting) that attempts to divert [*desviar*] the will of voters, because not proportionate under GDPR requirements.[384] The Circular further forbids profiling at the individual level or on the basis of very specific personal characteristics.

Silence periods and timing for political advertising[385]

20 Member States have established silence periods (sometimes called reflection days) in order to prevent voters to be influenced in the immediate run-up to the election. These silence periods have different lengths (from one day to 55 hours before the voting) and scopes (sometimes only broadcasters are forbidden to carry content relating to election issues allowing for candidates to continue campaigning through other methods, sometimes all campaigning activity is forbidden). Even when there is not a silence period, election campaign in polling stations is still sometimes forbidden (DE, EE, and FI). It varies across Member States whether political advertising is allowed outside election periods (see table 8.1). Sometimes the only "advertising" allowed is the one done through the (free) airtime in broadcast media, usually during election periods, sometimes paid political advertising is allowed regardless of the timing.

2. Transparency requirements for political ads (whether offline or online)[386]

While the European Court of Human Rights observed already in 2013 that there was a lack of European consensus on how to regulate paid political advertising in broadcasting,[387] the current patchwork of legislation at national level – together with the great variety of approaches and requirements – applicable directly or indirectly to political advertising is such that the obligations imposed can be inconsistent and unclear, in particular for actors operating in a cross-border context. Some Member States forbid anonymous political advertising and others require some specific information on the identity of the sponsor to be displayed on the ad (BG, CZ, DK, FI, FR, IE, LT, LV, PL, SI, SK); in FI, this is a requirement only when the amount payed for the ad is above a certain threshold (€800 in municipal elections or €1,500 in parliamentary, European or presidential elections). Some Member States (AT, BG, CY, DE, DK, EL, ES, HU, LT, LV, PL and SI) have requirements on the labelling of political advertisement, or at least a clear separation between advertising and editorial content, to ensure they are regarded and identifiable as such. Sometimes it is not clear whether these requirements are also applicable to the online environment – if only implicitly – as they are provided by general rules not specific to the online environment.

FR has the most comprehensive regulation with a new law tackling false information with specific transparency obligations for (some) online platforms, including providing users information on the identity of the private person or company which pays the platform for the promotion of information content.

The relevant national rules on transparency of political advertising have been collected and listed in table 8.3. There, the differences in transparency requirements are put into

[384] Circular 1/2019, de 7 de marzo, de la Agencia Española de Protección de Datos, sobre el tratamiento de datos personales relativos a opiniones políticas y envío de propaganda electoral por medios electrónicos o sistemas de mensajería por parte de partidos políticos, federaciones, coaliciones y agrupaciones de electores al amparo del artículo 58 bis de la Ley Orgánica 5/1985, de 19 de junio, del Régimen Electoral General. https://www.boe.es/boe/dias/2019/03/11/pdfs/BOE-A-2019-3423.pdf

[385] See table 8.1

[386] See table 8.3

[387] European Court of Human Rights, Animal Defenders International v. The United Kingdom. http://hudoc.echr.coe.int/eng?i=001-119244

light - putting aside the fact that due to differences in definitions, an advertisement may count as political in one Member State and as not political in another. In particular, providing cross-border advertising may be confusing because while in HU and RO it is required to provide information about the sponsor and publisher of the political advertisement, that is not required when the ad is an online ad, whereas in CZ, LT, FI, SK, FR, and (forthcoming) IE and NL this is the case (and the publisher may be termed a 'processor', 'intermediary' or 'supplier' depending on the national framework). In FR, FI and (forthcoming) IE and NL there are rules specific for online advertising, with the caveat for FR that they only apply to online platforms and intermediaries, whose number of connections on French territory exceeds 5 million unique visitors per month on average per year.

Further, while in CZ, ES, LT, LV, FI, SK, FR, PL, IE and NL there are or will be transparency rules for online ads (or the existing rules simply apply online), they differ in that, of these, only the name of sponsor and publisher are to be provided in CZ, LT, LV FR, PL and FI, whereas in SK their address is also to be disclosed (and the forthcoming IE rules go even further, requiring the name, postal address, email address and, where applicable, the website address of the buyer). Additionally, in IE the amounts paid for a political advertisement will have to be disclosed, whereas in FR the amount paid for the promotion of an online advertisement is to be disclosed only if superior to €100. In LT, the transparency disclosure requires information on the source of the funding of the advertisement. Further, RO, LT and LV require information to be provided in the ad on the intended reach, in case of printed advertisements (the number of copies), and in FR and IE such information on intended reach is or will also be provided for online advertisements.

In FR, the transparency requirements apply even if the sponsor is a company, whereas in CZ, LT, FI, SK they apply only if the sponsor is a person – and, for FI (and unclear for LT), only if the sponsor is a political actor in particular.

The few Member States having provisions on transparency of targeting also differ. Whereas FI requires information as to why an advertisement is targeted at the person, and the identity of the person responsible for advertising, FR requires information about the methods of distribution, the existence of financial compensation, the extent of the distribution (number of views, type of target population, etc.), and whether they were generated automatically or not. The forthcoming IE rules require the disclosure of information about targeting, including a description of the criteria used and of the characteristics of the target audience.

In terms of disclosures also not in the advertisement itself, FI, LT, LV, HR, HU, PL, PT and RO have reporting requirements for political actors and/or for service providers. When requiring political actors to report on donations they received, FI and HR require not only financial elements, but also reporting in terms of services provided free of charge. Reporting requirements vary in terms of the kind of body reported to (e.g. to the Central Electoral Commission in LT, to the Corruption Prevention and Combating Bureau in LV, in the Hungarian Gazette in HU), the timing (e.g. in HR 7 days prior to elections, in RO 15 days then 30 days after the end of the electoral campaign, or in LV no later than 3 days after entering into a contract with a service provider/sponsor), or the elements to be disclosed (e.g. in HR this includes the OIB of the supplier and the date or period of advertising services, in FI the donations, in LV very detailed information about the identity of the sponsor and contracting parties, about the advert's form and its removal date, the procedures and terms of payment) (for more details, see table 8.3).

3. Rules on Political advertising in Broadcasting media (TV and radio)

Free Airtime for political parties or candidates

Nearly all Member States have some rules on free airtime and how that free time should be allotted to the political parties. However, the specifics of these arrangements are different between Member States and sometimes are defined for each election. In some Member States every party is given the same amount of airtime, in others airtime is allotted proportionally to the results of the last elections (sometimes with rules for smaller or new parties to ensure some kind of political visibility to every party).

Paid political advertising

Besides this free air time given to political parties there are different rules on political advertising.

Most Member States forbid paid political advertising, others restrict this prohibition to specific periods. Even when allowed, there is usually some regulation (e.g. the broadcast service must give the same conditions and prices for every party).

There are also examples of self-regulation mechanisms and agreements, either between political parties or between political parties and the media. Some of these agreements are valid just for a specific election.

The objectives of these kinds of rules (both those on paid political advertising and those on free airtime on (public) broadcast services), usually designed for the offline environment, can be easily defeated if they are not applied to online platforms.

4. Rules applicable to online advertising, and/or to online platforms

Some Member States (15) have rules applicable to online advertising and/or to online platforms. Only three Member States have rules specific to online political advertising (see subjection on targeting above). The other Member States have rules to offline political advertising that (sometimes, not all of them) are also applicable to the online environment. Many times there is no explicit reference to the application to the online environment. The application to the online environment comes as a natural interpretation of the law, as it is not restricted to the offline environment. It varies across Member States whether national legal practice regards them as applicable to the online environment (14 Member States) or not (10).

Further, the legal framework is also complex and fragmented within the 27 Member States, because the older directives – the e-Commerce Directive, for instance – are minimal harmonisation instruments (which means that some Member States have introduced more far-reaching rules, thereby threatening the achievement of the Digital Single Market).[388]

In FR, a law was adopted on 22 December 2018, which aims to fight the manipulation of information and the spread of false information online during electoral campaign periods.[389] It lays out transparency requirements specifically intended for online platforms.

[388] Fourberg et al. (2021), "Online advertising, the impact of targeted advertising on advertisers, market access and consumer choice." https://op.europa.eu/en/publication-detail/-/publication/9b3cb8b5-d55b-11eb-895a-01aa75ed71a1/language-en/format-PDF/source-217130651

[389] https://www.legifrance.gouv.fr/eli/loi/2018/12/22/MICX1808389L/jo/texte

The ES legislation requires transparency regarding the political nature of the message, and only allows political actors to send or target such messages when using technological (including web-based/online) means.[390] (See sub-section on targeting above.) economic operators can act as processors for political actors, but cannot be the sponsors themselves of the political ads.

IT saw, already in 1999, a proposal to regulate political advertising, which put online ads on the same footing as ads in print or broadcast;[391] the part relating on online advertising was, however, not included in the final version of the law[392].

5. Sanctions imposed by Member States

A variety of sanctions are provided for in almost all Member States for violations of these rules, the most common sanctions being fines. Such sanctions can be relatively common in an electoral process. For example, in 2019, in Czechia, 68 administrative proceedings were launched during parliamentary elections, which resulted in a total of 36 fines issued. This constitutes a high number of sanctions for violations of electoral rules. Yet, it is unclear whether they were imposed in violation of political advertising rules as such[393]. Apart from fines, in more than a third of Member States, imprisonment sentences are also incurred for violation of these rules. In this context, it is important to mention the proportionality of the fines imposed for this type of violation. The OSCE report from the elections in Romania in 2019, mentioned that sanctions for non-compliance with campaign finance provisions were revised in 2015. However, they were said to remain too low to be effective or dissuasive[394]. Finally, another method for enforcing the relevant rules applicable to political advertising during election period in France is the application of interim measures for the cessation of the dissemination of false information on communication services to the public online, when this information is likely to undermine the integrity of elections.[395]

6. Authorities responsible for Political Advertising

There is a variety of authorities in the Member States with responsibilities related to political advertising,[396] sometimes there are multiple competent authorities each with different duties[397]. Usually, these authorities are the Media Regulators or the Electoral Authorities, but also media self-regulating bodies and auditing authorities. This oversight is sometimes linked to the financing of political parties and transparency of donations and expenses of political campaigns. Sometimes the bodies tasked with regulating Political Advertising are self-regulating bodies, focused on the media actors. Sometimes it is the authority for commercial ads that also oversees political ads (in LU, for instance). In some Member States there are multiple authorities with a limited territorial scope (DE

[390] https://www.boe.es/buscar/act.php?id=BOE-A-1985-11672&tn=0&p=20210707 Art. 58bis
[391] La Republica, « Niente più spot politici su tv, radio e Internet » (4 agosto 1999). https://www.repubblica.it/online/fatti/condi/par/par.html
[392] La Republica, « Par Condicio: Internet esce dal testo di legge » (22 settembre 1999) https://www.repubblica.it/online/fatti/condi/emenda/emenda.html
[393] See the mapping of national legislation in the Czech Republic.
[394] OSCE/ODIHR (2020), Romania Presidential Election 10 and 24 November 2019 ODIHR Election Assessment Mission Final Report. Available at: https://www.osce.org/files/f/documents/8/a/449200_0.pdf
[395] See Article L163-2 of the French Electoral Code.
[396] See table 8.3 below.
[397] This is why the Commission proposed in 2018 to establish Network on elections, see 2018 elections package.

and ES, for example). There is also some discrepancy across these authorities as regard to the scope of their investigative powers and the kinds of sanctions they can issue.[398]

7. Forthcoming national initiatives

While online political advertising is already partly regulated in Member States as described above, there is ongoing national legislation being prepared; Ireland and the Netherlands are particularly relevant, as well as Sweden. The Irish Electoral Reform Bill,[399] proposed in 2020, is a legislative Act that would cover broad matters relating to elections, including a section dedicated to online political advertising. The Netherlands has two initiatives: recent soft law in the form of the 02/2021 Dutch Code of Conduct for Transparency in Online Political Advertisements,[400] as well as upcoming hard law in the form of the Law on Political Parties,[401] which will include provisions on online targeted political advertising (digital campaigning and micro-targeting). Swedish authorities reported that legislating in this area was an option currently being considered, aiming at addressing both the lack of transparency in political parties' online expenses as well as the risks associated with targeting.[402]

In terms of soft law, beside the Dutch party-wide Code (which most but not all parties adhere to), there is also the emergence of a patchwork of voluntary commitments by individual political parties, with at least in Germany the Greens,[403] SPD,[404] Die Linke, FPD and CDU,[405] as well as LaREM[406] in France and Possibile[407] in Italy.

Table 8.5 below compares the envisaged state of play in Ireland and the Netherlands, highlighting the provisions most likely to be relevant for this Impact Assessment – with the caveat that, the texts being proposals, their provisions are likely to evolve. What emerges is that even where they overlap, there remain tensions and discrepancies: some of the obligations would be binding in one Member State but non-binding in the other (e.g. on transparency of the ad's intended or actual reach), and some of the requirements

[398] See underlying study, page 8.

[399] General Scheme of the Electoral Reform Bill 2020, pp233-261 (08/01/2021). https://www.gov.ie/en/publication/34cf6-general-scheme-of-the-electoral-reform-bill-2020/

[400] Dutch Code of Conduct Transparency for Online Political Advertisements (09/02/2021). https://www.idea.int/0073ites/default/files/news/news-pdfs/Dutch-Code-of-Conduct-transparency-online-political-advertisements-EN.pdf

[401] Wet op de Politieke Partijen (WPP) ("the law on political parties") (07/12/2020). https://www.parlement.com/id/vlboezk3ftm8/wet_op_de_politieke_partijen

[402] With reference to this article : Knäpper Bohman, "How can the Swedish Government prevent Political Micro-Targeting from threatening the Electoral Process? A Policy Memo Security, Policy and Strategy in Cyber Space." https://www.academia.edu/37352763/CYBER_SECURITY_How_can_the_Swedish_Government_prevent_Political_Micro_Targeting_from_threatening_the_Electoral_Process_A_Policy_Memo_Security_Policy_and_Strategy_in_Cyber_Space

[403] Die Grünen, "Parteirat Selbstverpflichtung für einen fairen Bundestagswahlkampf" (Voluntary commitment to a fair Bundestag election campaign) (15/05/2021). https://www.gruene.de/artikel/selbstverpflichtung-fuer-einen-fairen-bundestagswahlkampf

[404] SPD, "Acht punkte für Fairness im digitalen Wahlkamp" (Eight points for fairness in the digital election campaign) (07/05/2021). https://www.spd.de/fileadmin/Dokumente/Beschluesse/Parteispitze/PV_2021/SPD-PV-Kodex-Fairness.pdf

[405] Individual statements by Die Link, by the FPD and by the CDU. https://www.rnd.de/politik/wahlkampf-im-netz-selbstverpflichtung-der-parteien-zu-fairness-gefordert-UTINBQEYOJB5RGLL3NJ7OBOZNY.html

[406] La République en Marche (LaREM), "Prise de position sur la lutte contre les nouvelles formes d'ingérence et de propagande numériques" (Position statement on the fight against new forms of foreign interference and of digital propaganda) (June 2021). https://storage.googleapis.com/en-marche-fr/COMMUNICATION/LaREM-Publication_Ingerences-Propagande.pdf

[407] Possibile, "Una campagna web libera e uguale. E trasparente" (2017). https://www.possibile.com/campagna-web-libera-uguale-trasparente/

have a different scope or require a different level of detail. This risks increasing the existing market fragmentation. Further, it appears that the two Member States do not necessarily identify the same problems with online political advertising, or are looking to solve different parts of the same problem (with their Code of Conduct the Netherlands – unlike Ireland – also looks beyond transparency requirements and into the content of the ads, especially misleading ads). While the Irish proposal imposes obligations both on economic actors and political parties, the provisions of the Dutch proposal only concerns political parties. Finally, each proposal leaves gaps which need to be filled according to this Impact Assessment (e.g. the Irish proposal does not include any restrictions whatsoever on the criteria used for targeting).

Table 8.1 Political Ads – Definition, Free Airtime, Silence Period

MS	Political Ads allowed	Definition	Free airtime	Silence Period
AT	**Allowed**	No legal definition – Political advertising seems to be encompassed by the term "Commercial communication"	**No**	-
BE	**Forbidden**	Content-based approach (with a timing element) – "electoral propaganda - verbal, written, audio and visual messages, intended to favorably influence the result of a political party and its candidates and issued within four months preceding the elections."	**Yes**	-
BG	**Allowed**[408]	No legal definition.	**Yes**	**X**
CY	**Allowed**	Actor-based approach - "announcement or message of any kind transmitted in return for payment or consideration by a candidate in presidential or parliamentary elections or European Parliament elections or any other election."	**No**	**X**
CZ	**Forbidden**	No legal definition – the term "political commercial communication" is used	**Yes**	**X**
DE	**Allowed**[409]	No legal definition – the term "Werbung politischer Art/political advertising" is used	**Yes**	-
DK	**Allowed**[410]	Content-based approach – "all messages regardless of its form, which has the purpose to promote or affect the opinion of different political questions, both at a local, national, and international level." This definition is explicitly mentioned only for ads on TV	**No**	-
EE	**Allowed**	No legal definition	**No**	**X**
EL	**Allowed**	No legal definition – the term "display of messages of political parties" is used	**Yes**	**X**
ES	**Forbidden**[411]	Actor-based approach (with a content element) – electoral campaign "all the lawful activities carried out by candidates, parties, federations, coalitions or groupings in order to get votes"	**Yes**	**X**
FI	**Allowed**	Actor-based approach (with a timing element) - all forms of advertising by parties, candidate or candidate's support groups during any elections campaign.	**No**	-
FR	**Forbidden**	No legal definition – the term "electoral propaganda" is used	**Yes**	**X**
HR	**Allowed**	No legal definition (both an actor-based and content-based approach are used)– the term " media advertising of political campaign" is used "election campaign" - set of actions taken by election campaign participants relating to their own public representation and the public presentation and explanation of their own election programs in order to persuade voters to vote for them.	**Yes**	**X**

[408] Political advertising may not be carried out outside the scope of a political campaign, running for certain set of elections. This is so due to the fact that no commercial advertisement is allowed to spread messages that would make political influence or contain certain politically affiliated elements

[409] Just during the campaign period. Political advertising online does not seem to be prohibited, but needs to be clearly marked as such and the advertiser or sponsor needs to be indicated.

[410] There is a general ban for political advertisements on TV from employer organizations, unions, political parties, elected members or candidates running for election. Furthermore, three months before an election, it is forbidden to advertise any political messages on TV.

[411] Exception for periodical print media and private radio stations during the campaign period.

HU	**Allowed**[412]	Content-based approach - political advertising is a program intended to promote or support a party, political movement or government, or to promote their names, purposes, activities, slogans, emblems; appearing or published in a manner similar to advertising. Political advertising means media content published in return of payment, intended to promote or support a nominating organization or an independent candidate, or promoting their name, purpose, activity, slogan, logo, press product or cinema audio-visual content.	**Yes**	**X**
IE	**Allowed**[413]	No legal definition	**Yes**	**X**
IT	**Allowed**	Content-based approach - Political communications, radio and television political communication means the broadcasting on the radio and television media of programs containing political opinions and evaluations. This does not apply to the broadcasting of news in information programs.	**Yes**	**X**
LT	**Allowed**	Actor and content-based approach - political advertising means 'information disseminated by a state politician, a political party, a member of a political party, a political campaign participant, on their behalf and / or interests in any form and by any means, paid or unpaid, during or between political campaigns, aimed at influencing voter motivation to vote in elections, or in a referendum or the dissemination of which promotes a state politician, a political party, a political a party member or participant in a political campaign, as well as their ideas, goals, or program'.	**Yes**	**X**
LU	**Allowed**	No legal definition	**Yes**	**X**
LV	**Allowed**	Actor and content-based approach - pre-election campaigning - political parties, associations of political parties, associations of voters or deputies advertising the candidate in the media or otherwise, if it contains a direct or indirect invitation to vote for or against a political party, association of political parties, association of voters or candidate for deputy.	**Yes**	**X**[414]
MT	**Allowed**[415]	No legal definition	**Yes**	**X**
NL	**Allowed**[416]	No legal definition	**Yes**	**-**

[412] Political advertising is only allowed during election campaigns or when there is an already ordered referendum.
[413] There is a general ban for TV and Radio, but it is allowed for print and online.
[414] On election day, it is forbidden to include the results of public opinion polls on popularity of political parties, association of political parties, voters association or individual deputy candidates in broadcasts of electronic mass media on the election day during the course of election laid down in the law and to distribute broadcasts [in electronic mass media] led by commentaries, interviews and reports prepared by persons who have been nominated as deputy candidates or who before the elections have made a public announcement on their participation in activities of any political party, association of political parties or voters association. On the Election Day and the day before, it is forbidden to place pre-election campaign materials in electronic mass media radio programmes and broadcasts, public use outdoor areas and indoor premises, publications, and authorities and capital companies as well as conduct the campaign as a paid service on public electronic communication networks, including the Internet. However, on the Election Day it is possible to use free of charge broadcasting time, or place campaign materials in radio programmes and broadcasts of an electronic mass medium with the exception of cases described in the paragraph above. It is also possible to use pre-election campaign materials in the discussion programmes on the Election Day, if these programmes are not sponsored by a political candidate.
[415] Advertising in broadcast media cannot have a political nature.
[416] When implementing the e-Privacy Directive in the Telecommunications Act, the Dutch legislator opted for a broad interpretation of the ban on spam, which also includes (automated) political communication on the internet (section 11.7, "unsolicited communications for commercial, ideological or charitable purposes") – if the recipient has not given permission to do so. This prohibition also applies to political advertisements as it includes "transmitting. Where Article 13 of the e-Privacy Directive leaves open the question of whether political advertising also falls within the definition of direct marketing, the Telecommunications Act clearly indicates that this is the case.

PL	**Allowed**[417]	Content-based approach definition (however, only certain types of actors are allowed to run political ads) - Election agitation (electioneering) - public inducing or encouraging to vote in a specific manner, including, in particular, to vote for a candidate of a specific election committee. It can be carried out by election committees or voters after they receive a written permission from an electoral representative of a committee (Art. 105, Election Code). Election material - each published and recorded message from the election committee related to elections. Election materials should clearly identify the election committee that they come from (Art. 109 par. 1 and 2 Election Code). Election broadcast – a part of a radio or television broadcast that does not come from the broadcaster and constitutes a separate whole due to its content or form (Art. 116a Election Code). The definition applies to election committee.	**Yes**	**X**
PT	**Forbidden** [418]	Content-based approach - Electoral propaganda - any type of activity which aims directly at promoting candidacies (be it of candidates, of subscribers of candidates, or of the respective political parties supporting a specific candidacy), as well as the publishing of texts or images which express or reproduce the content of those activities".	**Yes**	**X**
RO	**Allowed**	No legal definition	**Yes**	**X**
SE	**Allowed**	Content-based approach - opinion advertisements (åsiktsannonsering) - messages broadcast on behalf of someone else and that aim at gaining support for political or religious ideas, or opinions related to the labour market.	**No**	-
SI	**Allowed**	Content-based approach - "political advertising" - any advertising during elections, referendums or related political activities in accordance with the applicable regulations governing this area.	**Yes**	**X**
SK	**Allowed**	Content-based approach - political advertising for the purposes of that law as a form of "public administration aimed to provide: a) support for a political party, political movement, party member or movement member or candidate, possibly in their favour during an election campaign or a referendum campaign, b) popularization of the name, brand or slogans of a political party, political movement or candidate."	**Yes**	**X**

Table 8.2. Constraints on political advertisements (Financial, Content, Advertiser)

MS [419]	**Financial Limits/ Caps**	**Content Rules**	**Advertiser limitations (e.g. does it have to be a political party)**
AT	Yes	There are **no content rules** for election campaigns in the Austrian electoral law. Advertisements could still be subject to subsequent bans or limitations but according to other provisions such as criminal law, intellectual property law, etc.	No
BE	Yes	No information	No information

[417] Only Election Committees may carry out political advertising.
[418] With limited exceptions. Publicity, dully identified, in periodical publications, radio broadcasting stations, social media and Internet, limited to the name, symbol, acronym of the party / coalition / group of citizens, and to information regarding a specific event. Article 10 of the Law on Political Advertising by Commercial Means.
[419] The colours in this column show if political ads are allowed (green), allowed but with strong restrictions (orange) or forbidden (red), as shown in the previous table.

BG	Yes	Materials that harm the good manners, honor and reputation of candidates is prohibited. The use of the coat of arms or the flag of the Republic of Bulgaria or of a foreign country, as well as religious signs or images is also prohibited in the agitation materials;	No information
CY	Yes	Yes, the political advertisement must not constitute a negative advertisement	No information
CZ	Yes	The election campaign must be conducted honestly and fairly, **false information must not be published about the candidates, parties, movements and coalitions.**	Entity intending to conduct an electoral campaign without the awareness of a political party, political movement, coalition, their candidate or independent candidate is required to register as a "third party" before entering the election campaign. Registration is provided by the Office for the Supervision of the Finances of Political Parties and Movements.
DE	No	Yes, NetzDG prohibits harmful contents that are exhaustively listed in § 1 III NetzDG. Such contents need to be checked by the online provider and deleted, if illegal. Among such contents are hate speech, political extremism etc – which may be part of the political expression (also in the form of advertising).	No information
DK	No	Yes, any advertisement in radio, television and on demand audio visual media services must be legal, seemly, honourable, true and conducted with clear social responsibility.	In television and in radio considered as public service it is illegal to send content sponsored by employer organisations or unions or political parties. In television it is also prohibited to advertise for employer organisations, unions, political parties or elected members or candidates running for election.
EE	No	Yes, 'Signs, signposts, business type names and outdoor advertisements, including outdoor advertising, installed to a public place with the purpose of political campaigning, and the notices of a legal person shall be in Estonian'. This rule is also enforceable online. There is also a prohibition of the use of national symbols and colour combination of the Estonian flag in a misleading manner, or providing inaccurate information, contain denigration or discrimination on the grounds of nationality, race, age, colour, sex, language, origin, religion, political or other beliefs, financial or social status or other circumstances, or ignoring the principle of gender equality. It is also forbidden to use the voice or image of a person who appears as an anchor or commentator in programmes on political events or issues or as an announcer in a news programme in ads on television. Advertisements cannot provide inaccurate information.	No information
EL	Yes	Advertising should not offend political beliefs.	Only political party, coalition and candidate. Candidates are banned to display promotional messages via public and private radio and TV or pay-TV service providers. The appearance of candidates in public or private TV is permitted under the following conditions: at any national radio or TV station only one candidate is allowed to appear during the election period. In local and regional radio or TV stations, the candidate may appear two times during the election period.
ES	Yes	During the electoral period (from the calling of the elections to their celebration), it is forbidden any act organised or financed, either directly or indirectly, by the public authorities which contain mentions to any achievements, or that use images or expressions similar	Only political formations contesting elections can campaign for elections

		to those used in the campaigns of any of the candidate political entities.	
FI	No	Advertising that offends human dignity, religious or political convictions may not be presented on tv or radio. Its content cannot discriminate based on race, gender or citizenship. The picture or voice of individuals who regularly present or take part in news or current events programming may not be used in advertising	No information
FR	Yes	"**New element of electoral controversy**": In order to maintain the adversarial nature of the electoral debate, **it is forbidden for any candidate to bring to the attention of the public a new element** of electoral controversy **at a time such that his opponents do not have the opportunity to respond** usefully before the end of the electoral campaign. Subsequently, broadcasting media are also banned from publishing comments by a candidate that include a new electoral argument to which their opponents are unable to offer a considered response before the end of the election campaign	No information
HR	Yes	**No** - At certain elections (including EU elections) an Ethics Commission is being established as an ad-hoc authority to promote and realize ethical and democratic principles in the election by making announcements and warnings. It adopts and publishes the Electoral Code of Ethics which consists of rules of conduct for individuals and political parties in the election campaign and in the electoral process. To some extent, within their competencies, they can issue announcement and warnings also relating to the content of the campaign	No information
HU	Yes	Those who order political advertisements to be broadcast in audiovisual media shall arrange for the advertisements to be **subtitled or supplemented with sign language interpreting**	No, posters may be placed or ordered by anyone.
IE	Yes	No regulation on the content of electoral material, including election posters, either during, or outside of, electoral campaigns.	**No**
IT	Yes	No information	No information
LT	Yes	No information	There is no special regulation for third parties
LU	Yes	No information	No information
LV	Yes	During the pre-election campaign it is forbidden to retransmit foreign electronic media if these include campaign materials on political parties and their associations. In 2020, the Parliament has adopted in the first reading the ban on paid pre-elections campaigning in languages other than Latvian (but the provision is not enforced yet)	No information
MT	Yes	No information	Yes – The Foreign Interference Act prohibits an alien to perform, do, hold, take part in, aid or abet, or allow any restricted activity in Malta, including any activity, or participation in any activity, of a political nature or having a political purpose at any time during the period commencing nine months prior to the date on which Parliament is dissolved and the date of the publication of the results of an election.
NL	No	No information	No information
PL	Yes	Several restrictions with regards to election posters	Yes - The electoral committees whose candidates have been registered shall have the right, during the period from the 15th day before the election

			day until the end of the election campaign, to broadcast election programmes free of charge in the programmes of public radio and television broadcasters at the expense of these broadcasters.
PT	Yes	No information	No information
RO	Yes	During the electoral campaign, discriminatory messages or slogans or messages inciting to hatred and intolerance are forbidden. Electoral posters which mix the colours in a sequence which reproduces Romania's or other state's flag are forbidden. During the electoral shows, it is forbidden to combine colours, graphical signs or sounds evoking the national symbols of Romania or some other State. During electoral shows, the candidates shall have the following obligations: a) not to jeopardise the constitutional order, public order, safety of persons and goods; b) not to make statements that could harm human dignity or public morals; c) to prove potential accusations that could have a criminal or moral impact on another candidate; d) not to urge to hatred or discrimination for racial, religious, nationality, sex, sexual orientation, or ethnic considerations.	No information
SE	No	No content rules	No information
SI	Yes	No content rules	There is no limitation.
SK	Yes	No information	No information

Table 8.3 Transparency requirements on Political Ads

Member State	Transparency rules on political advertising?	Rules for transparency of individual political advertisements	What information is to be published (separately, afterward)	Competent authority
AT	Yes, and applicable online	A clear separation of advertising from editorial content.		Communications Authority (KommAustria)
BE				Conseil Supérieur de l'Audiovisuel de la Féderation Wallonie-Bruxelles (Audiovisual High Council of Wallonie-Bruxelles region). Vlaamse Regulator voor de Media (Flemish Media Regulator). Medienrat der Deutschsprachigen Gemeinschaft (German Community regulator).
BG	Yes	Paid political advertising during pre-election campaigns is allowed, so long as: • It does not include publishing or broadcasting of anonymous materials; • A visual, audio or audiovisual sign that contains a **label** or audible message that the material contains paid political advertising;		Council for Electronic Media (CEM)
CY	Yes, but not applicable online	A clear separation of advertising from editorial content on radio and TV.		Cyprus Radio Television Authority
CZ	Yes, and implicitly applicable online	Promotion or election agitation disseminated through communication media must contain **information about their sponsor and processor**. (The dissemination of anonymous announcements concerning elections between their announcement and the end of voting is banned).		Council for Radio and Television Broadcasting (Rada pro rozhlasové a televizní vysílaní): a supervisory body, discusses offenses and imposes sanctions
DE	Yes, for radio, television, and audiovisual media on demand of national scope, but not for social media.	A clear separation of advertising from editorial content.		Regarding advertising in audiovisual on-demand services the competent authority is determined by law of each of the Länder; generally the competent authority is the respective (local) regulator (Landesmedienanstalt). German Press Council for the press
DK	Yes, but not applicable online	For print: the poster must bear the **name, email and phone number of the person who is responsible for placing it**. For audiovisual (radio, TV, on-demand video): A clear		The Danish Press Council, Radio and Television Board, Danish Agency for Culture, Media Division

Member State	Transparency rules on political advertising?	Rules for transparency of individual political advertisements	What information is to be published (separately, afterward)	Competent authority
		separation of advertising from editorial content. It must be clearly stated in the advertisement who is the **advertiser**.		
EE				Estonian Consumer Protection and Technical Regulatory Authority (ECTRA) (Tarbijakaite ja tehnilise järelevalve amet, TTJA)
EL	Yes,[420] but not applicable online	A clear separation of advertising from editorial content (ads distinguishable from the rest of the programme by labelling)	**The expenses of the political parties** and the candidates and elected members of the Hellenic Parliament and of the European Parliament, **are published on an official website**, which is maintained by a Parliamentary Service supporting the work of the Audit Committee	National Council for Radio and Television Others[421]
ES	Yes, and specific rules for online	Art. 58 bis LOREG: The dissemination of electoral propaganda by electronic means or messaging systems and the engagement of electoral propaganda on social media or equivalent media shall prominently identify their electoral nature.	The electoral program	Electoral Administration
FI	Yes, and applicable online, with specific rules for targeting	The candidate, the candidate support group and any other entity working exclusively to support the candidate must ensure that the paid advertisement included in or intended to support the election campaign indicates **the payer of the advertisement**. However, the name of an individual may not be disclosed without his/her express consent if the value of the advertisement paid by him/her is less than EUR 800 in	An election funding disclosure (to be submitted by the political parties to the NAOF within two months of the confirmation of the election results), breaking down the election campaign costs, separated between the various kinds of expenditure or	The National Audit Office (NAOF) oversees election campaign and political party funding and receives and publishes documents specified in the Act on Political Parties and the Act on a Candidate's Election Funding. Office of the Data Protection Ombudsman (in relation to Data Protection Act). The NAOF oversees that elections funding disclosures have all been submitted

[420] A) Presidential Decree 26/2012 "Codification in a single text of the provisions of the legislation for the election of deputies" (A' 57), as in force.
B) Law 3023/2003 "Financing of political parties by the state. Revenues and expenses, promotion, publicity and control of the finances of the political parties and the candidates for MPs" (A' 146), as other supplementary laws apply.
C) Law 2328/1995 "Legal status of private television and local radio, regulation of radio and television market issues and other provisions" (A' 159), as in force.
D) Presidential Decree 77/2003 "Code of Conduct for news and other journalistic and political programme" (A' 75).
[421] A) The Audit Committee,
B) The National Council for Radio and Television (NCRT), which is an Independent Authority. The NCRT gives an opinion on the ministerial decision on the broadcasting of pre-election messages of the political parties by the radio and television, on the appearances of the candidates for parliament and the appointed representatives of the political parties by the radio and television media in order to prevent any indirect promotion. It also controls the broadcasting market in the time before the pre-elections period.
C) The Inter-Party Election Committee, which is a cross-party body and submits proposals for the proper implementation of the regulatory framework

Member State	Transparency rules on political advertising?	Rules for transparency of individual political advertisements	What information is to be published (separately, afterward)	Competent authority
		municipal elections or less than EUR 1 500 in parliamentary, European or presidential elections. (Act on a Candidate's Election Funding (273/2009)) **Persons subject to advertising must be informed of why information is targeted at them, who is responsible for advertising and how they can exercise their data protection rights**	advertising media.	and they contain the right information and no errors.
FR	Yes, and specific rules for online Further, there is soft law[422] specifying the kind of information to be provided to combat the dissemination of false information.	The Electoral Code and the Law to counter information manipulation impose transparency requirements. 3 months before the first day of the month of elections of national character (e.g. EU, or presidential) and until the results are known, online platform operators have **transparency obligations relating to the promotion of information** content linked to a debate of general interest. As such, online platforms and intermediaries whose number of connections on French territory exceeds 5 million unique visitors per month on average per year must provide the users with fair, clear and transparent **information on the identity of the private person or the company, which pays to the platform for the promotion of information content** related to a debate of general interest. Online platforms and intermediaries must also make public **the amount of the remuneration received** for the promotion of such content when the amount exceeds a specific threshold (>100 € per content). They should also provide information as to	The information required of online platforms **must be made available to a public in a register,** regularly updated during the campaigning period.	Supreme Audiovisual Council (Conseil Supérieur de l'Audiovisuel, CSA)

[422] The Electoral Code provides for the application for interim measures for the cessation of the dissemination of false information on communication services to the public online, when they are likely to undermine the integrity of elections. Indeed, Article 11 of Law of 22 December 2018 to counter information manipulation specifies the duty of cooperation of online platforms in the first against the dissemination of false information. Consequently, the CSA can indeed issue recommendations towards online platforms to improve the effort to combat the propagation of false information that is likely to disturb public order or to affect the sincerity of the ballot. As such, the CSA issued its first recommendation on 15 May 2019 of the CSA to online platform operators as part of the duty to cooperate in the fight against the dissemination of false information, the CSA monitors the obligations on online platforms operators, which can involve "informing users about the nature, origin and methods of disseminating content and the identity of persons paying remuneration in return for the promotion of information content". This recommendation also suggests how each of the possible measures should be implemented: 'transparency of algorithms'; 'promotion of content from press companies and news agencies and from audiovisual communication services'; 'combatting accounts disseminating false information on a massive scale'; 'information of users on the nature, origin and modalities for dissemination of content, and the identity of individuals providing remuneration in return for the promotion of information content'; 'promote media and information literacy'. As regards the monitoring of the implementation of these actions by online platforms, according to Article 11 of the Law of 22 December 2018 Platforms must provide an annual declaration to the CSA of the methods of implementation of each of the measures taken pursuant to Article 11. Said article is reported below:

Member State	Transparency rules on political advertising?	Rules for transparency of individual political advertisements	What information is to be published (separately, afterward)	Competent authority
		the use of the individual's personal data in the context of the specific promotional material. Online Platforms should distinguish sponsored content from the rest, and should specify the **methods of distribution** of the content, indicating as far as possible the conditions of their publication such as the existence of **financial compensation**, the **extent of the distribution (number of views, type of target population**, etc.), and whether they were **generated automatically or not**.		
HR	Yes[423], and applicable online		A report of **donations** (incl. donated services) and of **election campaign costs** to be published 7 days prior to the elections[424], and in particular containing information for each expenditure on the: purpose of cost, the number of media services contracted and performed, name of supplier / recipient, name of the social network, OIB of the supplier, address of the supplier / recipient, date / period of use, invoice payment date, amount (amount paid and the market value of the product or service). Additionally, operators providing media advertising services for election campaigns submit to the State Electoral Commission their schedules of rates charged for	State Audit Office State Electoral Commission Ministry of Finance State Electoral Commission of the Republic of Croatia (with respect to financing supervision of election campaigns of election participants) No investigatory powers. The Act – Article 94: the authorised prosecutor shall be the State Attorney

[423] 1. Act on Financing Political Activities, Election Campaigns and Referendums (Official Gazette 29/19 and 98/19). 2. Ordinance on the manner of keeping records, issuing certificates and entering reports on financing political activities, election campaigns and referendums in the information system for financing supervision (Official Gazette 71/19)
[424] Report of donations and election campaign costs: Article 11.

Member State	Transparency rules on political advertising?	Rules for transparency of individual political advertisements	What information is to be published (separately, afterward)	Competent authority
			election campaign advertising and the contracts they have concluded with electoral participants in relation to their election campaigns, and they publish them on their websites from the election campaign start date	
HU	Yes, but not applicable online	For political ads in press products: Political advertisements published in press products shall be immediately recognizable and distinct from other media contents. The **name, address or seat of the customer ordering the advertisement** shall be indicated on the advertisement. For posters: **Name and address of the publisher and name of the person responsible for publishing** shall be indicated on the poster.	Each candidate and nominating organisation shall publish in the Hungarian Gazette, within 60 days of the parliamentary election, the amount, source and method of use of public and other funds and financial support spent on the election.	National Media and Infocommunications Authority
IE	Yes, but not applicable online Advertisements that are directed towards a political end are otherwise prohibited. Exemptions are provided for advertisements broadcast at the request of a Referendum Commission (an independent body established under statute to explain the subject matter of a referendum, to promote public awareness of a referendum and to encourage the electorate to vote) and the broadcasting of a party political broadcast provided that a broadcaster does not, in the allocation of time for such broadcasts, give an unfair preference to any political party.	Electoral law (1992) provides that every notice, bill, poster or similar document used for electoral purposes is required to bear upon its face the **name and address of the printer and publisher** thereof. Printers' and publishers' failure to comply with these requirements is an offence under the law (this is also applicable to anyone who *causes* the printing, publishing or posting).		**Broadcast:** Broadcasting Authority of Ireland. **Print:** An Garda Síochána. Advertising in print media is subject to the self-regulatory code of the Advertising Standards Authority of Ireland (ASAI). However, political advertising is not within the scope of this code, and therefore the ASAI does not consider any complaints in relation to this category of advertising.

Member State	Transparency rules on political advertising?	Rules for transparency of individual political advertisements	What information is to be published (separately, afterward)	Competent authority
IT	Yes (for print), and soft measures for their application online (but not legally enforceable[425])			Communications Authority (Autrità per le Garanzie nelle Comunicazioni – AGCOM)
LT	Yes, and applicable online	All political ads (irrespective of the means of distribution, including online) must be marked indicating that it is political advertising, indicating the **source of funding** (the name of the individual political campaigner and their campaign account, or state budget where applicable), the **order number, the identity of the printer, producer or disseminator**. (Also requirements on the means/formalities of such labelling such as font size, or localisation within an audio political ad). Political parties, participants of a political campaign, public information producers and disseminators are obliged to declare all political advertising.	Upon reaching the end of the election campaign, the political candidates have to submit the records of their expenditures to the Central Electoral Commission for control.	Radio and Television Commission of Lithuania – LRTK Radio and Television Commission of Lithuania – LRTK The Central Electoral Commission investigates complaints on non-labeled political ads online.
LU	Yes, for audiovisual	Audiovisual commercial rules require a clear separation of advertising from editorial content. (This is partly applicable online: in the absence of a specific regime for political ads, some online audiovisual political ads are subject to the provisions for commercial ads.[426])	/	Independent Audiovisual Authority of Luxembourg (Autorité luxembourgeoise indépendante de l'audiovisuel) (ALIA)
LV	Yes, and applicable online	A full disclosure of **the agreement** between the campaigner and the service provider. All political ads shall include the **name of the sponsor** and a clear and unambiguous indication that it is a political ad. When distributing printed political ads, the relevant edition shall in addition indicate the **number of copies** of the edition.	Service providers shall keep records of the political ad campaign (expenses), identifying each campaigner or recipient of post services, amount of funds acquired for the placement of the relevant advertising material or service, as well as persons who have entered	National Electronic Mass Media Council

[425] The regulator and competition authority for the communication industries in Italy (AGCOM) indicated the desirability of the transparency rules for political advertising in print to be applied online. AGCOM, Guidelines for equal access to online platforms during the 2018 parliamentary election campaign (2018). https://www.agcom.it/documents/10179/9478149/Documento+generico+01-02-2018/45429524-3f31-4195-bf46-4f2863af0ff6?version=1.0 These non-binding guidelines are reported not to have been followed by the parties in the 2018 elections, see Chiusi & Agosti, The Influence Industry Personal Data and Political Influence in Italy (2018), p5. https://cdn.ttc.io/s/ourdataourselves.tacticaltech.org/ttc-influence-industry-italy.pdf

[426] ALIA, Décision DEC0013/2020-P003/2019 du 6 juillet 2020 du Conseil d'administration de l'Autorité luxembourgeoise indépendante de l'audiovisuel concernant une plainte à l'encontre du service RTL 4.

Member State	Transparency rules on political advertising?	Rules for transparency of individual political advertisements	What information is to be published (separately, afterward)	Competent authority
			into the relevant contract on behalf of the campaigner (the commissioner of the ad). Service providers and campaigners shall send a notification to the Corruption Prevention and Combating Bureau on the placement of pre-election campaign materials or provision of postal services not later than within three working days after entering into the contract. The information shall include: 1) the date and number of the contract; 2) information on contracting parties: a) the name, registration number and registered address of the entity placing the pre-election campaign material (service provider) in case of a legal person, otherwise the given name, surname, personal identity number (if there is none - the date of birth, personal identification document number and date of issue, country and authority that has issued the document) and the address of the declared place of residence of the person placing the pre-election campaign material; 3) information regarding the placement of pre-election campaign material: a) the date, (where applicable) the size, the broadcasting time and duration of the placement of each	

Member State	Transparency rules on political advertising?	Rules for transparency of individual political advertisements	What information is to be published (separately, afterward)	Competent authority
			pre-election campaign material, including its removal date; 5) the contract sum (with VAT); 6) the discounts applied and justification thereof, as well as the contract sum (with VAT), which would have been effected in case if discounts were not applied; 7) the procedures and terms for the payment of contract sum; 8) other information which is considered essential by the entity placing the pre-election campaign material (service provider).	
MT	No	/	/	Broadcasting Authority Malta
NL	No, but: Soft law for print[427] Soft law for online[428]			Commissariaat voor de Media
PL	Yes, and applicable online	All advertisements have to be easily recognizable as advertisements and should clearly identify the **election committee from which they originate**. For print: the editor is responsible for indicating the source of the election materials and who financed it	Election committees are obliged to submit financial reports including information on the amounts they spend on advertising, broken down into services provided by newspapers and periodicals, radio, television, poster carriers, and Internet advertising.	National Broadcasting Council (Krajowa Rada Radiofonii i Telewizji) National Electoral Commission
PT	No	/	Every campaign expense needs to be duly identified and is subject to judicial oversight post-election	The Portuguese Regulatory Authority for the Media (ERC – Entidade Reguladora para a Comunicação Social)
RO	Yes, but not applicable online	Electoral competitors shall communicate, for all the printed,	Within 15 days from the election	For the printed electoral propaganda materials:

[427] Advertising Code, amended 2020, (Stichting Reclame Code) https://www.reclamecode.nl/wp-content/uploads/2018/08/SRC_Code_Opmaak-CodeJaarverslag_2020_Compleet.pdf

[428] Advertising Code for Social Media & Influencer Marketing, 2014, amended 2019 (Reclamecode Social Media & Influencer Marketing) https://www.reclamecode.nl/nrc/reclamecode-social-media-rsm/ as well as the Dutch Code of Conduct Transparency Online Political Advertisements, 2021 https://www.rijksoverheid.nl/documenten/richtlijnen/2021/02/09/nederlandse-gedragscode-transparantie-online-politieke-advertenties

Member State	Transparency rules on political advertising?	Rules for transparency of individual political advertisements	What information is to be published (separately, afterward)	Competent authority
	(except one, on post-elections reporting, which encompasses online expenditures)	audio or video electoral propaganda materials the following details: a) the independent **candidate's name**, the name of the political party, of the electoral alliance/political alliance of which it forms part, or of the organisation of citizens belonging to national minorities, as applicable; b) the name of the **economic operator who made them**; c) the **unique identification number** ascribed by the Permanent Electoral Authority; d) for print: the **print run**, for the electoral posters and the booklets, leaflets and other printed materials in the same category.	date, electoral competitors shall submit to the Permanent Electoral Authority, in written and electronic format, the statement on the number of electoral propaganda materials produced and used, broken down by category. Within 30 days of the end of the electoral campaign, electoral competitors shall transmit to the Permanent Electoral Authority information on the description of the online electoral propaganda materials, their production, period and broadcasting space.	Permanent Electoral Authority Electoral bureaus For the audio or video electoral propaganda materials: National Audiovisual Council (Consiliul National al Audiovizualului) Investigatory powers
SE	No	/	/	The Swedish Press and Broadcasting Authorities (Myndigheten för press, radio och tv)
SI	Yes, and implicitly applicable online	Media publishers shall publish the **name of the customer** commissioning the publication of election advertising content. Bulletins, catalogues and other information publishing media, posters, pamphlets, banners and video pages without live images, and telecommunications messages containing advertising content for an election campaign shall contain the name of the customer commissioning the publication of such content. Posters shall also bear a **serial number** (Election and Referendum Campaign Act). Commercial advertising must be clearly recognisable and visually separated from the mass medium's other programmes. Advertisements **published free of charge** must be specially designated as such (Mass Media Act)	/	Culture and Media Inspectorate (Ministry of Culture)
SK	Yes, and implicitly applicable online	Everyone who conducts an election campaign is obliged to ensure that broadcast political advertising, published paid advertising, published election posters and all other methods of conducting an election campaign contain **information about the client and supplier** (incl. **name, surname and municipality of residence** in case of a natural person, and the **name, registered office and identification number of the organisation** in case of a legal person). The same applies to the presentation of pre-	/	Council for Broadcasting and Retransmission of the Slovak Republic

Member State	Transparency rules on political advertising?	Rules for transparency of individual political advertisements	What information is to be published (separately, afterward)	Competent authority
		election and public opinion polls. If the broadcasting of political advertising on radio last less than 30 seconds, providing the name of the client (e.g. political party) is sufficient.		

Table 8.4 Private sector political ads policies - VLOPS

Obligation/VLOP COP signatory **("?" Indicates where policies information is inconclusive)**	FB/ Instagram	Google/ Youtube	Snap
Ad repository (maintenance)	x	x	x
Ad repository (publication)			
DSA-like requirements, including:			
• Content of the advertisement	x	x	?
• Natural or legal person on whose behalf the advertisement is displayed	x	x	x
• Period during which the advertisement was displayed	x	x	x
• Whether the advertisement was intended to be displayed specifically to one or more particular groups of recipients of the service and if so, the main parameters used for that purpose		x	x
• Total number of recipients of the service reached and, where applicable, aggregate numbers for the group or groups of recipients to whom the advertisement was targeted specifically		x	
Amount spent and financial data		x	x
Banner ads included	?	?	?

Labelling of ads (visible to individuals through the ads themselves)			
DSA-like requirements, including:			
• That the information displayed is an advertisement	x		x
• Natural or legal person on whose behalf the advertisement is displayed	x		x
• Meaningful information about the main parameters used to determine the recipient.			?
Name of any associated political campaign (plus registration information where relevant)			?
Self-certification as political ad not associated with political campaign			x
Due diligence/"know your client" data (retained from client)			
DSA requirements, including:			x
• Name, address, telephone number and email address of economic operator			
• A copy of the identification document of the economic operator [advertiser]			
Where the advertiser is registered as a political campaign or as a political candidate, the register in which the advertiser is registered and its registration number or equivalent means of identification in that register;			
Self-certification by the advertiser that the advertising being placed complies with the applicable national rules.			
Self-certification by the advertiser that the advertising being placed, and the means by which it was prepared and disseminated, complies with the GDPR.			
Restrictions related to country of establishment of ad sponsor	x (MS)	x (EU)	x (MS)

Twitter bans political ads on the basis of the following definition:

"Twitter globally prohibits the promotion of political content. We have made this decision based on our belief that political message reach should be earned, not bought. **Ads that contain references to political content, including appeals for votes, solicitations of financial support, and advocacy for or against any of the above-listed types of political content, are prohibited** under this policy. **We also do not allow ads of any type by candidates, political parties, or elected or appointed government officials**. News publishers who meet our exemption criteria may run ads that reference political content and/or prohibited advertisers under our political content policy, but may not include advocacy for or against those topics or advertisers"[429]

TikTok bans political ads on the basis of the following definition:

"We have chosen not to allow political ads on TikTok. Any paid ads that come into the community need to fit the standards for our platform, and the nature of paid political ads is not something we believe fits the TikTok platform experience. To that end, **we will not allow paid ads that promote or oppose a candidate, current leader, political party or group, or issue at the federal, state, or local level – including election-related ads, advocacy ads, or issue ads."**[430]

[429] https://business.twitter.com/en/help/ads-policies/ads-content-policies/political-content.html
[430] https://newsroom.tiktok.com/en-us/understanding-our-policies-around-paid-ads

Table 8.5: Forthcoming national initiatives

This table lists the obligations foreseen under the IE and NL forthcoming proposals regulating political ads, highlighting the overlap when there is any. It distinguishes between obligations for providers (economic actors) and obligations for buyers of political ads (political parties). It also puts side-by-side the NL proposal and NL code of conduct, because of their complementary character. The IE proposal is complete and in the later stages, whereas the NL proposal is currently only an announced forthcoming initiative, with little publicly-available information as to its provisions; a blank cell in the IE column (and NL Code of Conduct) means there is no applicable provision, whereas a blank cell in NL legislative column indicates lack of data.

	Irish legislative proposal[431]	Dutch legislative proposal[432]	Dutch Code of Conduct Transparency for Online Political Advertisements[433] (soft law)
Definition of political advertisement	"online political advertisement" means any form of communication in a digital format commissioned for political purposes for placement, display or promotion on an online platform during an electoral period and for which a payment is made to the online platform" "political purpose" (Electoral Act, 2001) includes the direct and indirect promotion of, opposition to, and presentation of the interests, objectives, policies and comments of a political actor or of a third party with regard to a political campaign, referendum or election, and otherwise includes the act of influencing the outcome of the election, referendum or campaign.		No definition
Definition of platform	"online platform" means any public-facing website, web application, or digital application, including a social media network, advertising network, search engine or the seller of an online political advertisement, that (i) has 10,000 or more unique monthly visitors or users in the State for a majority of months during the 12 calendar months immediately preceding the date of the making of a polling day order for an election or a referendum, and (ii) receives payment for		

[431] General Scheme of the Electoral Reform Bill 2020, pp233-261 (08/01/2021). https://www.gov.ie/en/publication/34cf6-general-scheme-of-the-electoral-reform-bill-2020/

[432] Wet op de Politieke Partijen (WPP) ("the law on political parties") (07/12/2020). https://www.parlement.com/id/vlboezk3ftm8/wet_op_de_politieke_partijen. The document mainly relied on is: Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, Notitie: Regulering van politieke campagnes (27 maart 2019). Accessed from https://www.rijksoverheid.nl/documenten/wob-verzoeken/2021/03/22/besluit-op-wob-verzoek-over-transparantie-van-politieke-advertenties. Further information was found in: Voortgang voorbereiding Wet op de politieke partijen, Brief van de Minister van binnenlandse zaken en koninkrijksrelaties Aan de Voorzitter van de Tweede Kamer der Staten-Generaal (11/06/2020). https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2020Z10803&did=2020D23378

[433] Dutch Code of Conduct Transparency for Online Political Advertisements (09/02/2021). https://www.idea.int/sites/default/files/news/news-pdfs/Dutch-Code-of-Conduct-transparency-online-political-advertisements-EN.pdf

		the placement, display or promotion of an online political advertisement on that website, application, social media network, advertising network or search engine		
Definition of look-alike targeting		"look alike targeting" means a targeting method that takes an existing target audience and uses machine learning methods to identify new persons who have similar characteristics or are engaged in similar activities on an online platform or platforms as the case may be		
Definition of broadly-conceived 'digital political instruments'				The concept of "digital political instruments" should be formulated in such a way as to avoid the need to adapt the HRF every time new technologies enter the market. [Therefore includes the instruments/tools of data analysis, micro-targeting and other digital technologies used to profile, reach and provide information to individuals.]
Scope of application		The law would be applicable • **during an electoral period** (30 days before polling) • when the ad is commissioned (bought) by **a political actor or** by a **person/entity seeking to influence** the outcome of an **election or a referendum held in Ireland**	Concerns **Dutch political parties only**. **A different law may be made for online political ads by other actors.**	**Not particularly linked to any specific period** such as elections. For online platforms and **political parties/candidate**s **only**, and **only signatories of the Code**. Covers: • primarily paid online political ads • partly unpaid political reporting
<u>Obligations for platforms</u>				
Policy on political ads	On the procedures around ads			Commitment to have clear and transparent **rules** for **placing** and **removing** messages and advertisements. Commitment to develop and enforce platform **policies** on the **safety and privacy of users and electoral integrity** in relation to online political advertising.
	On the content of the ads			Commitment to **remove political advertisements** or any content **that incite violence or hate speech** within the shortest possible period of time once identified Commitment to consider **countering any inaccurate information** on the electoral process, such as voter, voting process and polling station information, in case such information is identified [including in an ad].
Identifiability of the ad *as* an ad		To have a **button, icon, tab, or hyperlink** on the ad, with the **text "Political Advert"**, in a position where the viewer will readily see it, **linking** to a page clearly displaying a transparency notice (which is to be maintained with real-time info).		

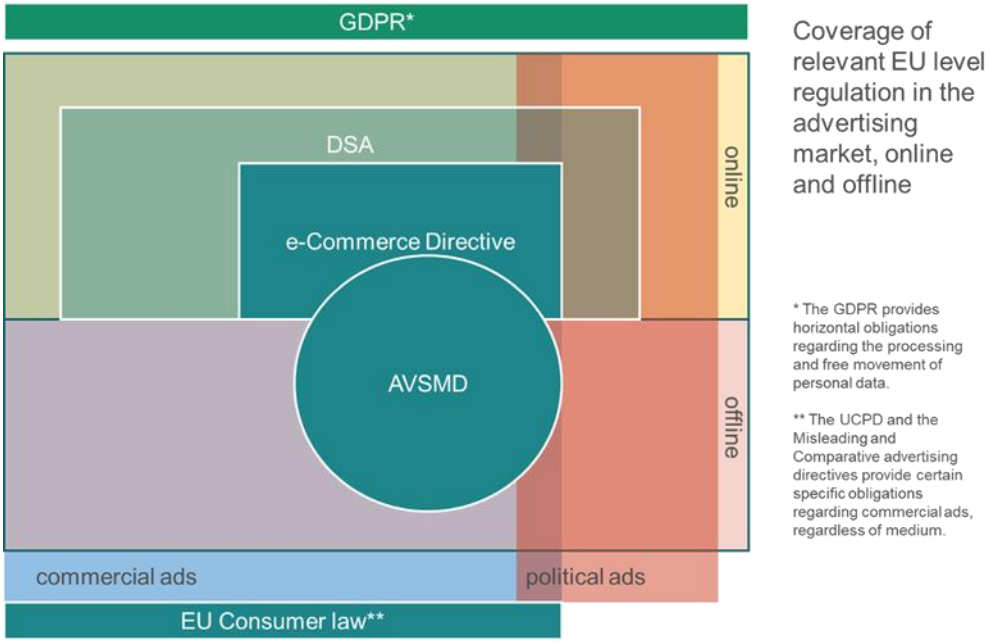
Ad transparency requirements regarding:	The ad buyer's details	**name**, **postal** address, **email address** and, where applicable, the **website** address of the buyer	The law will mandate **transparency on who paid for an ad**	Commitment to develop and enforce relevant transparency mechanisms Commitment to **report** adequately and clearly on "paid for **by**"
	Targeting	• confirmation of **whether micro**-targeting was applied in the placement, display and promotion of the online political advertisement and, where applicable, a **description of the criteria used** • confirmation of whether the target audience contains a **look alike targeting list** and, where applicable, a **description of the characteristics of the target audience**	Transparency on profiling	
	Payment	the **amount** paid for the online political advertisement, including the amounts paid for content creation and for online placement, display and promotion		Commitment to **report** adequately and clearly on **spend and spending range**
	Time	the **number of days during which the online political advertisement will be placed**, displayed and promoted on the online platform and the **start and end date of the online advertising campaign**		
	Reach	**the number of user impressions** that the online political advertisement is **intended** to reach, and **the number of active engagements** by user		Commitment to establish transparency on reach
Online ad archive /library		Yes • **Not a live archive**: the ads and their transparency notice are to be **transferred in the archive at the expiration of the period of the online advertising campaign**, retained for **min. 7 years**. • (**No standards** are specified on format to allow easy comparison between platforms.) • Access is **public**, for the public interest and for the purpose of research • The archive is to be transferred to the Electoral Commission if the platform is dissolved.		Commitment to provide relevant **advertiser** and **advertisement details** in **publicly available libraries** with easily **downloadable** and **comparable** data. Signatories to the code are invited to collaborate with researchers on political advertising libraries and make available any additional data to support such research, as far as it does not concern confidential information.
Identity verification measures		Obligation to appoint a **responsible person** for the purposes of **identifying** and **verifying** the information and documentation provided by the buyer		Commitment to require and enforce **registration by and verification of political advertisers**.
Lack of, or inadequate cooperation from the ad buyer		**Not to provide the service** sought by the buyer when unable to obtain the required information (for transparency notice) and documentation (for identification of buyer)		
Customer due diligence		monitor all dealings with a buyer by **scrutinising transactions and the source of funds** for those transactions, to determine whether or not there might be a breach of this law		
Undue foreign influence		**No person residing outside of the State, other than [an Irish**	The **payment or influence of**	Commitment to **ban cross-border political**

	resident, a corporate body based in Ireland, or a EUPP], may, either directly or indirectly, commission an online political advertisement. **Ensure that there is no undue foreign influence**: The responsible person at the platform shall take reasonable steps to determine whether or not the buyer of an online political advertisement, or a person connected with the buyer, is residing in a place outside of the State – in which case the responsible person shall (a) obtain approval from their senior management, and (b) determine the source of the funds.	**(digital) political campaigns from outside the EU** (excluding contributions from voters residing there) **is prohibited**	**advertisements from outside the EU**. Commitment to **refuse direct purchases of political advertisements by foreign actors** in support of the political party; **refrain from receiving foreign funding** to pay for online political advertisements, other than from party members living abroad.
Post-election review			Consider conducting a **post-election review** on the Dutch electoral campaign and compliance with the code of conduct; consider the possibility of publishing a **report** in case there have been any relevant incidents in relation to the Dutch elections and the correlated platform actions
Obligations on buyers of online political ads			
Transparency	to provide the information for the transparency notice (non-compliance is an offence)	The system of disclosure is the same as for the disclosure of the financial reports. Parties must be **transparent on the amounts** that they have **paid above a certain threshold.** Parties must report on the tools (e.g. targeting) used/purchased; they should **report before the elections on the databases and search criteria they have used and how much they have paid for**.	Commitment to refrain from contracting or engaging intermediaries to place political ads without attribution to the party. Commitment to strictly **adhere to online platforms'** advertisement **policies** and mechanisms Transparency obligations on political information for **other [non-political] organisations should and will be regulated by other laws** (e.g. the Criminal Code)
Online ad archive /library		Political parties are to upload the ads they run and the relevant information into an **archive** hosted by the supervisory authority.	
Cooperation with the platforms	To comply with requests for information/documentation re- the identity of the buyer and the lack of foreign interference (non-compliance is an offence)		Commitment to **provide faithful information for registration and verification processes**, and to respond to inquiries regarding ad authorization and verification processes.
Restrictions on targeting	No	**Transparency on profiling**	• Maintain **ethical limits** to **linking** different data sets and **uploading** them to online platforms for the purpose of microtargeting • **Refrain from psychological profiling** for

			targeting purposes
Undue foreign influence	No active obligations for political parties (only for platforms)	The **payment or influence of (digital) political campaigns from outside the EU** (excluding contributions from voters residing there) **is prohibited**	
Security requirements		**Minimum requirements for information security** for political parties. This is subject to the condition that the costs do not constitute a threshold to participate in the elections.	
Authorities			
Supervision and enforcement	Set-up of the (independent) **Electoral Commission** which may take any investigative actions as may be required to ensure that the Act's provisions are being complied with. Its powers include: access to premises (with consent or a warrant), inspection, seizing of material, serving compliance notices	The law will **set up an independent supervisory authority.** This authority will **host the ad library** where political parties will have to upload the ads they run and relevant information.	Commitment to **respond quickly and accurately to enquiries** about placement and removal of messages and advertisements **by competent authorities and political parties.** Participation is voluntary and cannot replace existing or future legislation and regulations. Compliance is therefore not enforceable
Penalties	Fines and/or imprisonment		

Annex 8: Presentation and analysis of EU acquis

Although there is no overarching legislative framework covering online targeted advertising at the EU level, different legislative measures apply to advertising (including targeted advertising) and provide certain rights to individuals. The current European legislative framework is complex and only addresses certain aspects of online targeted advertising, though, and sometimes in an indirect manner.



These measures are often either only partly applicable to online political advertising, or exclude the latter from their scope altogether; this may be because their scope is restricted to a specific medium, such as audiovisual material, or because the scope is restricted to advertising of a commercial nature. This body of relevant EU rules is presented below,[434] and includes the (forthcoming) DSA, the (forthcoming) DMA, the ePrivacy Directive[435], the GDPR[436], the E-Commerce Directive[437], the Audiovisual Media Services Directive[438], the

[434] A great deal has been taken and adapted from the following study commissioned by IMCO: Fourberg *et al.* (2021), "Online advertising, the impact of targeted advertising on advertisers, market access and consumer choice." https://op.europa.eu/en/publication-detail/-/publication/9b3cb8b5-d55b-11eb-895a-01aa75ed71a1/language-en/format-PDF/source-217130651

[435] Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications): https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02002L0058-20091219

[436] 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-"GDPR"): https://eur-lex.europa.eu/eli/reg/2016/679/oj

[437] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market http://data.europa.eu/eli/dir/2000/31/oj

[438] 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) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02010L0013-20181218

Unfair Commercial Practices Directive[439], the Consumer Rights Directive[440], the Misleading and Comparative Advertising Directive[441], the Directive on services in the internal market[442] and the Platform-to-Business Regulation[443]. There is also relevant soft law in the form of the Code of Practice on Disinformation. Also, this initiative is parallel to the one on the funding of EUPPs and European political foundations (see point 8.13 below)[444].

The *transparency in political ads* initiative in particular overlaps with the DSA and with some of the commitments under the Code of Practice on Disinformation, insofar as it stems from, or strengthens elements of these two; the overlap is mapped in tables 2 and 3 below.

Each piece of legislation is narratively described below, with a focus on the provisions most relevant to political advertising. The governance model under each is described. Where relevant, the space for action under the present initiative is also discussed, i.e. the relation between the two, as well as the gaps the latter could fill.

It is good to note already that even those laws that only regulate ads of a commercial nature remain relevant for the *transparency in political ads* initiative. This is particularly the case because some commercial ads are also political ads (such as when an economic actor promotes its services while connecting them to a political issue). Rules for commercial advertising are also relevant for the *status quo* regarding political ads, insofar as some authorities may decide – like the Luxembourgish audiovisual authority (ALIA) does[445] – that, in the absence of a specific regime for online political ads, the rules for commercial ads apply[446]. However, even where these rules apply, the analysis below shows that there is space for action under the *transparency in political ads* initiative, because even under consumer protection rules, it emerges that there is no specific obligation to inform consumers in a clear and comprehensible manner that they are facing targeted advertising, or regarding the parameters used to determine the recipient or the content of the advertising (rules are currently limited to ranking and personalised pricing). Only insofar as certain advertising practices may be seen as a form of ranking can the information duties now contained in the UCPD, the CRD and in the P2B Regulation be seen as relevant.

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[439] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02005L0029-20220528&from=EN

[440] Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32011L0083

[441] Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0114.

[442] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market. http://data.europa.eu/eli/dir/2006/123/oj

[443] Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R1150

[444] Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations

[445] ALIA, Décision DEC0013/2020-P003/2019 du 6 juillet 2020 du Conseil d'administration de l'Autorité luxembourgeoise indépendante de l'audiovisuel concernant une plainte à l'encontre du service RTL 4.

[446] The AVMSD generally does not cover political ads.

Other legislation (such as the GDPR) applies to political ads and their targeting, but not in a comprehensive way: the GDPR, for instance, only addresses elements relating to the processing of personal data. Although recent proposals by the European Commission (the DSA, DMA) will fill some of the gaps in this existing framework, the need for horizontal legislation on political ads remains.

Furthermore, regarding the governance of the different applicable rules, it emerges from the analysis below that a variety of authorities may be competent to oversee, supervise and enforce the application of existing rules for political advertising (see Table 4 below). However, there is no authority that can deal with a problematic political ad in its entirety, because each can scrutinise only a different aspect of political ads – one being the data protection angle and another being the electoral rules angle, for instance. Each authority can only tackle one aspect of any given problematic political ad – whereas that ad may be problematic on many levels – and there is little structured cooperation foreseen between relevant authorities beyond certain multilateral and EU level cooperation groups. Finally, another governance-related issue is that, if we compare what the applicable EU-level rules cover, we see that they provide a certain level of governance for some areas, but not for all areas that are in scope of the present initiative. The main available structures are ERGA, which provides coordination for the implementation of the AVMSD (which however does not foresee a task for national authorities to oversee political ads), and the European Cooperation Network on Elections which was established as part of the Electoral package. Neither are able to mandate coordination. The coordination mechanism under the GDPR, in turn, includes the One-Stop-Shop and lead authorities, cooperation among DPAs and under the EDPB, as well as a dispute-resolution mechanism; it is more effective, though it, too, faces structural issues.

It should be observed that the internal market options put forward in the *transparency in political ads* initiative are intended to complement and build upon existing legislation applicable to providers of political advertising services, and to be without prejudice to the relevant sectoral and market legislation applicable to offline and online political advertising and services. In contrast, the options concerning political parties are prepared in close alignment with the parallel initiative to reform the regulation on the statute and funding of EUPP and foundations. The latter rules are mapped separately, at the end of Annex 9.

9.1. The Digital Services Act (DSA proposal)[447]

The DSA is a horizontal instrument aimed at establishing the essential responsibility of information society services generally in the internal market, and clarifies their responsibilities as intermediaries in light of national prohibitions of hate speech, terrorist content etc. The actors covered by the DSA are technical intermediaries (such as internet access providers), hosting service providers (which include advertising servers), online platforms (that disseminate content to the public) as well as very large online platforms (VLOPs) that have more than 45 million monthly active users in the EU. The DSA's rules differ according to the size of the economic actors, with VLOPs being subject to extra obligations.

[447] Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608117147218&uri=COM%3A2020%3A825%3AFIN

A subset of the DSA's provisions address online targeting by this sector. The rules are aimed to make sure that users receive more information to help them make informed decisions online, and better protect their rights. This added transparency is also intended to enable the scrutiny by authorities and vetted researchers on how advertisements are displayed and how they are targeted. Article 2(d) of the DSA defines advertisement in the online domain as "information designed to promote the message of a legal or natural person, irrespective of whether to achieve commercial or non-commercial purposes, and displayed by an online platform on its online interface against remuneration specifically for promoting that information".

In addition to the requirements resulting from Article 6 of the e-Commerce Directive, all online platforms would be required[448] by the DSA to ensure that the recipients of the service receive individualised information so that they can identify, for each specific advertisement displayed to each individual recipient, in a clear and unambiguous manner and in real time:

- that the information displayed is an advertisement;
- the (natural or legal) person on whose behalf the advertisement is displayed; and
- meaningful information about the main parameters used to determine the recipient to whom the advertisement is displayed (for targeted advertising).

VLOPs would have to comply with additional rules as set out in Section 4 of the DSA and in particular would have to compile and make publicly available through application programming interfaces (APIs) a repository containing certain information. The repository would have to contain at least: the content of the advertisement; the person on whose behalf the advertisement is displayed; the period during which the advertisement was displayed; whether the advertisement was intended to be displayed specifically to one or more particular groups of recipients of the service and if so, the main parameters used; the total number of recipients reached and, where applicable, aggregate numbers for the group or groups of recipients to whom the advertisement was targeted specifically.

The Commission would have to support and promote the development of voluntary industry standards to ensure the interoperability of these repositories. The Commission would also have to encourage and facilitate the development of codes of conduct at EU level to support and complement the transparency obligations relating to advertisements with transparency obligations that would go beyond the imposed rules.

The DSA proposal sets a high standard of transparency and accountability on how the providers of platforms moderate content, on advertising and on algorithmic processes. It provides obligations to assess the risks their systems pose to develop appropriate risk management tools to protect against systemic risks, including risks to the integrity of their services being compromised by manipulative techniques. Additionally, the DSA will set out a co-regulatory backstop, including building on existing voluntary initiatives such as the Code of Practice on disinformation.

The DSA proposal is without prejudice to, and builds on the liability rules for providers of intermediary services set out in the e-Commerce Directive – by now established as a foundation of the digital economy and instrumental to the protection of fundamental rights online. The DSA being a Regulation, it harmonises those rules; it also clarifies some aspects

[448] Article 24 of the DSA proposal.

of those rules to eliminate existing disincentives towards voluntary own-investigations undertaken by providers of intermediary services to ensure their users' safety and to clarify their role from the perspective of consumers in certain circumstances. Those clarifications are intended to help smaller, innovative providers scale up and grow by benefitting from greater legal certainty. The DSA also addresses new information asymmetries and risks that have arisen since the entry into force of the Directive and were thus not adequately addressed therein, including in the area of online advertising systems (though only with regard to large platforms). The new common framework of requirements applicable to certain information society services (intermediaries) devised by the DSA goes well beyond the basic framework provided by the E-commerce Directive, but the core framework for the functioning of the single market and the supervision of digital services is already set in the e-Commerce Directive; the Directive's basic structure for a general cooperation mechanism among Member States is superseded in the context of DSA obligations by the cooperation mechanism foreseen under the DSA.

Governance

The Member States where the provider is mainly established would be in charge of enforcement of the rules under the DSA. Member States would have to designate one or more competent authorities who would be responsible for the application and enforcement of the rules. One of these competent authorities would have to be designated as the Digital Service Coordinator (DSC) at the national level. DSCs would be given a set of far-reaching investigation and enforcement powers (including power to request information, on-site inspections, power to accept commitments from providers and to make them binding, to order the cessation of infringements and to impose fines). Were systemic risks emerge across the Union (in the case of VLOPs), the proposed Regulation provides for supervision and enforcement at Union level. For VLOPs, the proposal sets-out an enhanced supervision system, whereby the DSC of the country of establishment could be asked either by the Commission or by a newly created European Board for Digital Services to investigate a suspected infringement. Where infringements persist, the Commission could itself intervene and the DSC would be removed from the case. The DSA further provides for enhanced cooperation among national DSCs, to guarantee effective oversight and enforcement. The proposal sets clear responsibilities for the Member State supervising the compliance of service providers established in its territory with the obligations set by the proposed Regulation.

Additional jurisdiction rules: The general rules of jurisdiction of the DSA follow the e-Commerce Directive's internal market clause (see below) as well as limited liability principle. The DSA adapts the e-Commerce directive, but then proposes an asymmetric framework of due diligence obligations and a common framework for enforcement.

Space for action under the present initiative

The DSA addresses the responsibilities of a sector. In contrast, the issues identified in this impact assessment with respect to political advertising are specific to this particular service, not to a sector in general, and while political advertising can involve a range of diverse services, its specific national regulation stems from the role that political ads play in the political system. Horizontal legislation of general application is not suitable for this purpose.

The DSA will require online platforms to label ads and provide certain information about the advertiser, extending the scope of requirements provided by the e-Commerce Directive to all

types of ads, beyond commercial ads. The DSA is therefore highly relevant for the *transparency in political ads* initiative as it will introduce a number of relevant or overlapping obligations for online platforms that publish ads (including political ads) on their interfaces, as well as some due diligence obligations. The *political ads* initiative is designed to articulate with the proposed provisions of the DSA, and rely on the transparency measures that this instrument will introduce:[449] options 1 and 2 introduce sectoral specification within this framework, as well as certain analogous measures addressing offline actors.

However, the DSA was conceived to address a different issue, and its scope is different. In particular, the obligations the DSA introduces do not address the specificities of political ads, especially regarding the substantive transparency that is needed. The DSA alone would not be sufficient to fully address the problem tackled by the *political ads* initiative, as it will not cover all the data required for political accountability (depending on the policy option adopted, the present initiative may for instance require the disclosure of the amount of money spent on the ad or of the affiliation with a campaign). The DSA does not require that political ad spending is retained or provided to a broad range of interested actors – something needed and foreseen under the present initiative – and, similarly, the DSA does not require ad publishers to publish reports on the amounts spent on political advertising, including on its targeting, aggregated to specific actors of interest, whereas the initiative foresees this – aggregated to campaign or candidate.

Further, the DSA's transparency requirements will fall upon a range of economic actors that is too narrow, instead of falling upon all the relevant actors and intermediaries of the adtech sector described in Annex 6; these transparency requirements will therefore not apply to the full range of political ads that can be encountered online, especially on third party websites which are not online platforms. In contrast, the *political ads* initiative will apply to a broader range of actors, and in particular will require the relevant data to be transmitted along the chain of intermediaries involved in the provision of political ads, so as to ensure that the last actor of the chain is able to provide the adequate level of transparency to those viewing the ad. It will also require (under Policy Option 2) that ad publishers who publish ads on their app, platform, website or other online service will make available ex ante (i.e. alongside the ad) information regarding the advertising brokers whose adverts they carry, with an indication of their use of personal data and the qualities of the data used for targeting (such as location, language, age, gender, and other relevant information used), and links to an independent assessment of their compliance with relevant norms and of the risks posed to the democratic debate and fair elections. Further, the initiative will also apply to offline actors involved in the broader process as well as to political parties (to a certain extent), whereas the DSA's scope excludes them.[450]

To put it differently:

The DSA currently obliges VLOPs to disclose to a data subject viewing an ad, and to anyone looking in the ad repository, information about: the person on whose behalf the advertisement is displayed; meaningful information about the main parameters used to determine the

[449] See the table "Detail of envisaged obligations introduced under solutions 1 and 2, alongside those anticipated for the DSA (baseline)."
[450] Which can be covered by national measures or the AVMSD.

recipient to whom the advertisement is displayed; the period during which the advertisement was displayed; whether the advertisement was intended to be displayed specifically to one or more particular groups of recipients of the service and if so, the main parameters used; the total number of recipients reached and, where applicable, aggregate numbers for the group or groups of recipients to whom the advertisement was targeted specifically.

The political ads initiative will oblige the publication of information about: the political affiliation of the ad; the money spent on it and its source; the chain of actors involved in the preparation, placement and dissemination of the ad. It will also codify the elements about the targeting which are either implicit in the GDPR or indicated as desirable in EDPB Guidance, in particular requiring the publication of: the inclusion and exclusion parameters used; the means by which these parameters were established; the targeting methods used; the use and nature of third party analytical services; the source of the personal data used, and in particular a notice when the data was derived, inferred, and/or provided by a third party. The above information will be made available to all individuals to whom a political ad is displayed (not just for publishers that are VLOPs), as well as in the DSA's VLOPs' ad repositories, and to interested actors who requests such information from other ad publishers.

By creating the special category of political ads, the initiative enables research and scrutiny into political ads to a scale and extent not possible with the DSA alone. Further, the DSA foresees special access to VLOPs' data by vetted researchers, whereas the political ads initiative also foresees access by others, such as accredited election observers, journalists and Civil Society Organisations.

In conclusion, compared to the DSA the present initiative foresees additional measures on the type of data and information to be provided on the face of political ads – and in the ad repositories, where applicable – and broadens the range of actors upon which the obligations are imposed. With its harmonised obligations regarding political ads, the present initiative enables research and scrutiny into political ads to a scale and extent not possible with the DSA alone – particularly by interested actors such as journalists, academics and civil society.

Delta – obligations under the DSA and under the proposal:

The DSA currently obliges VLOPs to disclose to a data subject viewing an ad, and to anyone looking in the ad repository, information about: the person on whose behalf the advertisement is displayed; meaningful information about the main parameters used to determine the recipient to whom the advertisement is displayed; the period during which the advertisement was displayed; whether the advertisement was intended to be displayed specifically to one or more particular groups of recipients of the service and if so, the main parameters used; the total number of recipients reached and, where applicable, aggregate numbers for the group or groups of recipients to whom the advertisement was targeted specifically.

The political ads initiative will oblige the publication of information about: the political affiliation of the ad; the money spent on it and its source; the chain of actors involved in the preparation, placement and dissemination of the ad. It will also codify the elements about the targeting which are either implicit in the GDPR or indicated as desirable in EDPB Guidance, in particular requiring the publication of: the inclusion and exclusion parameters used; the means by which these parameters were established; the targeting methods used; the use and nature of third party analytical services; the source of the personal data used, and in particular

a notice when the data was derived, inferred, and/or provided by a third party. The above information will be made available to all individuals to whom a political ad is displayed (not just for publishers that are VLOPs), as well as in the DSA's VLOPs' ad repositories, and to anyone who requests such information from other (smaller) publishers.

The key additions made by the political ads initiative are highlighted in the delta table below:

	DSA	Political ads proposal
Operators which have to be transparent on political ads:	- VLOPs	- **All publishers** of political ads – VLOPs, but also smaller platforms, third party websites, apps, TV and radio broadcasters etc. - Not only publishers, but **also intermediaries involved in the preparation and dissemination** of political ads.
Information about the ad in the ad and in the repository:	The ad would need to ensure that the recipient can identify : - that the information displayed is an advertisement; - the person on whose behalf the advertisement is displayed; - meaningful information about the main parameters used to determine the recipient to whom the advertisement is displayed. The repository would in addition have to contain at least: - the content of the advertisement; - the period during which the advertisement was displayed; - whether the advertisement was intended to be displayed specifically to one or more particular groups of recipients of the service and if so, the main parameters used; - the total number of recipients reached and, where applicable, aggregate numbers for the group or groups of recipients to whom the advertisement was targeted specifically.	The ad and the repository would have to contain at least information on: - the advertiser and (**where different) sponsor** of the political ad; - the **amounts invoiced** for the services in terms of preparation, placement and dissemination (including specifically targeting): exact amount per ad, and aggregated amount per campaign; - the **sources** of these financial means; - any relevant **campaign or party** to which the advertisement is **affiliated**, and where possible an URL link to **official sources of information**; - the **identification of the full chain of operators involved** in the preparation, placement and dissemination of the advertisement, as well as their role; - where the main or sole focus of the ad service being paid for relates to the promotion of existing (e.g. user-generated) content (in users' social media feeds, sponsored search results etc.) – a **description of the effect** of this promotion (amplification); - the information on targeting pursuant to the GDPR (see delta table GDPR below), but **specifically**: - the inclusion **and exclusion** parameters used, - **the means by which these parameters were established**, - the targeting **methods** used, and particularly the use and characteristics of look-alike audience and similar techniques, - the **use and nature of third party analytical services**, - the categories of personal data used for the targeting **and for the elaboration of the targeting method**, - the source of the personal data used, and in particular **a notice when the data was derived, inferred, and/or provided by a third party**;
Special access :	To vetted researchers	To vetted researchers, **elections observers**, accredited **journalists,** registered **civil society organisations,** and **political actors.**

9.2 The Digital Markets Act (DMA proposal)[451]

The proposed Digital Markets Act (DMA) would apply to Core Platform Services designated by the Commission as gatekeepers, which are offered to business user or end-users that are located in the EU, irrespective of the place of residence/establishment of the gatekeeper. These Core Platform Services would be listed in an exhaustive manner in the proposed DMA and include for instance: online intermediation services; online search engines; online social networking services; video-sharing platform service; number-independent interpersonal communication services; and advertising services, including advertising intermediation services, as long as they are offered by providers of the above services.

Under the DMA, gatekeeper platforms would have to submit to the Commission an independently audited description of any consumer profiling techniques they use. They would also not be allowed to combine personal data sourced from these core platform services with personal data from any other services offered by the gatekeeper or with personal data from third-party services, unless the end user has been presented with the specific choice. This could limit the ability of gatekeeper platforms to engage in targeted and personalised advertising which draw on data from multiple sources.

The other rules are mainly aimed at providing more transparency in the relationship between business users, i.e. between the gatekeepers and the advertisers and publishers:

- Gatekeepers would also have to provide information to advertisers and publishers (if they ask for it) on the price paid by each of them, as well as the amount or remuneration paid to the publisher, for the publishing of a given ad and for each of the relevant advertising services provided by the gatekeeper;
- Gatekeepers could also be asked to provide advertisers and publishers, upon their request and free of charge, with access to the performance measuring tools of the gatekeeper and the information necessary for advertisers and publishers to carry out their own independent verification of the ad inventory; and
- Gatekeepers shall also refrain from engaging in self-preferencing in relation for instance to the ranking of their products and services compared to products and services of third parties.

Governance

The European Commission would be the competent regulatory body to enforce the DMA. The Commission would have the power to develop, through delegated and implementing acts, further aspects of the DMA, such as the list of gatekeepers' obligations. It would have the power to request information from all undertakings, conduct on-site inspections and order interim measures. The Commission could also make binding commitments proposed by gatekeepers. In case of non-compliance or of infringements, the Commission could impose fines.

Space for action under the present initiative

The DMA therefore puts forward information obligations for gatekeepers toward their business users, including with regard to political advertising. The existence of these

[451] Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act). https://eur-lex.europa.eu/legal-content/en/TXT/?uri=COM%3A2020%3A842%3AFIN

obligations, as well as the existing mechanisms for the provision of information, is relevant for, and taken into consideration in the *transparency in political ads* initiative – although the scope of the DMA provisions is limited to a very narrow range of actors.

9.3. ePrivacy[452] and the GDPR[453]

Political targeted advertising is based on the tracking of online activities and processing of personal data. The GDPR and ePrivacy Directive currently regulating such activities. The Commission issued in 2018 a guidance on the application of data protection requirements in the electoral context including on micro-targeting[454].

The ePrivacy Directive contains rules protecting the terminal equipment of end users. Accordingly, storing information and gaining access to information already stored in terminal equipment of a subscriber/user (e.g. cookies on a computer) requires the prior informed consent of subscribers irrespective of any qualification of personal data of these information. There is therefore de facto an opt-in requirement regarding tracking[455] for the purpose of targeted advertising.

A new ePrivacy Regulation is currently being negotiated, and the Council's general approach allows further processing for compatible purposes, provided that, inter alia the information is not used to determine user characteristics or to build profiles.[456] The proposed Regulation also explicitly mentions that the concept of direct marketing includes 'messages sent by political parties that contact natural persons via electronic communications services in order to promote their parties', and 'messages sent by other non-profit organisations to support the purposes of the organisation'. Further, it also states the necessity "to prohibit the masking of the identity and the use of false identities" while sending unsolicited commercial communications for direct marketing purposes.

The e-Privacy Directive already prohibits unsolicited communications for the purpose of direct marketing without the person's prior consent; however, it leaves open whether political advertising also falls within the definition of direct marketing; some national implementations of the Directive (such as the Dutch[457] or the UK[458]) clearly indicate that this is nationally the case.

Under the e-privacy Directive, Member States must ensure that the competent national authority and, where relevant, other national bodies have the necessary investigative powers and resources, including the power to obtain any relevant information they might need to monitor and enforce national provisions adopted pursuant to this Directive. Under the proposed e-Privacy regulation, the authorities in charge would be the same as under the GDRP, the relevant elements of which will now be outlined.

[452] Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) http://data.europa.eu/eli/dir/2002/58/2009-12-19

[453] 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). http://data.europa.eu/eli/reg/2016/679/oj

[454] See the 2018 electoral package.

[455] Article 29 Data Protection Working Party, 2010, Opinion 2/2010 on online behavioural advertising, 22 June 2010, WP171, p. 25. Also European Data Protection Board, 2020, Guidelines 8/2020 on the targeting of social media users, 2 September 2020, pp. 19-21.

[456] General approach of the Council, Article 8(1)(h)(iii).

[457] Article 11.7 paragraph 1 Telecommunications Act.

[458] Information Commissioner's Office, 'Guidance on political campaigning', 2018, p. 6.

While cookies may be placed and accessed according to the ePrivacy Directive, the subsequent processing operations on personal data triggers application of the GDPR rules. The GDPR requires that all data processing operations respect the principles of:

- lawfulness, fairness and transparency: in addition to being processed lawfully, personal data must be used in a way that is fair, i.e. is not unduly detrimental, unexpected or misleading to the individuals concerned, and must be done in a way which is clear, open and honest – transparency is an overarching principle, with detailed provision on the 'right to be informed' and its modalities.
- purpose limitation: the GDPR requires controllers to collect personal data for specified, explicit and legitimate purposes and not further process that data in a manner incompatible with those purposes. The GDPR also limits the processing of personal data a new purpose other than that for which the data was collected, where this is not based on consent or on a clear obligation or function set out in law; in these cases the controller must assess whether processing for the new purpose is compatible with the original purpose.
- data minimisation: the personal data shall be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed.
- accuracy: every reasonable step must be taken to ensure that personal data that are inaccurate, including letting data subjects verify themselves and erase or rectify inaccurate data they may have been associated with (e.g. through profiling).[459]
- storage limitation: personal data shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed.
- integrity and confidentiality: personal data shall be processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage.
- accountability: the data controller is responsible for, and must be able to demonstrate, compliance with the above principles and with the rest of the GDPR.

Respect of these core principles may be particularly challenging[460] – but also particularly important – in the context of political targeted advertising. Beyond these fundamental axioms which are of particular relevance to the *political ads* initiative, the GDPR comprises further specific rules, delineated below.

Lawfulness. The GDPR requires that data processing operations rely on one of the limitative legal grounds provided in its Article 6 and, with regard to the processing of personal data for the purposes of (political) targeted advertising, interpretative guidelines adopted at the EU level indicate that the consent of the data subject is in practice the only appropriate legal basis.[461] Consent is presumed not to be freely given (and to therefore be invalid) if it does not allow separate consent to be given to different personal data processing operations despite this being appropriate, or if the provision of a service is dependent on the consent despite

[459] Article 29 Working Party, 2018, Guidelines on automated decision-making and profiling for the purposes of Regulation 2016/679, WP251 rev.01, pp17-18.
[460] Blasi and Vermeulen, "Reflections on the murky legal practices of political micro-targeting from a GDPR perspective," International Data Privacy Law, 2021 (forthcoming). https://doi.org/10.1093/idpl/ipab018
[461] European Data Protection Board Guidelines 8/2020 on the targeting of social media users, 2 September 2020, paragraphs 56, 65 and 66; and European Commission Guidance on the application of Union data protection law in the electoral context, A contribution from the European Commission to the Leaders' meeting in Salzburg on 19-20 September 2018. https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52018DC0638

such consent not being necessary for such performance. Further, even if the processing of personal data is based on consent of the data subject, this would not legitimize targeting which is disproportionate or unfair.[462]

Special categories of data. The targeting of political or issue-based ads is likely to involve the processing of sensitive (or special) personal data, a category which includes data relating to political opinions (as well as relating to racial or ethnic origin, religious or philosophical beliefs, or trade union membership). There is a general prohibition from processing such data; there are exemptions to this prohibition, the most relevant of which are the data subject having given *explicit* consent to the processing of those personal data for one or more specified purposes, or (for political parties) having a substantial public interest in compiling people's political opinions, provided this is laid down in Union or Member State law and provided that appropriate safeguards are established.[463] In the absence of such law,[464] this means that the prior, explicit consent of the data subject is required in order to deliver targeted political ads – except where Member States have introduced further conditions or limitations, such as in the Spanish Organic Law on Protection of Personal Data and Guarantee of Digital Rights, which provides that the prohibition may not be lifted with the data subject's consent.

Automated decision-making. The targeting of political or issue-based ads is also a processing activity that is likely to require automated decision-making (if not for the attribution of a specific ad to a given individual, at least for their profiling). However, data subjects have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning them or similarly significantly affects them, unless such processing is carried out under strict conditions (in particular, with the data subject's explicit consent). Interpretative guidelines adopted at the EU level indicate that targeted political advertising falls into this processing category at least when: it has the potential to significantly affect the circumstances, behaviour or choices of the individuals; it has a prolonged or permanent impact on the individual; it involves intrusive tracking and/or profiling; it exploits knowledge of the vulnerabilities of the data subjects targeted.[465] Given the significance of the exercise of the democratic right to vote, personalised messages which have for instance the possible effect to stop individuals from voting or to make them vote in a specific way could have the potential of meeting the criterion of significant effect (to be assessed by the data controller). Hence, in this regard too, the provision of targeted political ads likely in practice requires the explicit prior consent of those who are to view them.

Right of access. Under the GDPR, the data subject has the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information: (a) the purposes of the processing; (b) the categories of personal data concerned; (c) the recipients or

[462] European Data Protection Board Guidelines 8/2020 on the targeting of social media users, 2 September 2020, p18.
[463] GDPR recital 56 and article 9(2)(g). Cf. also EDPS Opinion 3/2018 on online manipulation and personal data. https://edps.europa.eu/sites/default/files/publication/18-03-19_online_manipulation_en.pdf
[464] One such law existed in Spain, but it was partially struck down by the Spanish Constitutional Court for not foreseeing the adequate safeguards; parts of it remain, allowing the political parties to target people based on their sensitive data if such data is publicly accessible (including online), during electoral periods. https://www.tribunalconstitucional.es/NotasDePrensaDocumentos/NP_2019_076/2019-1405STC.pdf
[465] Commission Guidance on the application of Union data protection law in the electoral context, A contribution from the European Commission to the Leaders' meeting in Salzburg on 19-20 September 2018, pp7-8. And EDPB Guidelines of the European Data Protection Board on automated decision making, WP251rev.01 as last revised and adopted on 06.02.2018.

categories of recipient to whom the personal data have been or will be disclosed; (d) where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period; (e) the existence of the rights to rectification, to erasure and to object; (f) the right to lodge a complaint with a supervisory authority; (g) where the personal data are not collected from the data subject, any available information as to their source; (h) the existence of automated decision-making, including profiling, and meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

These user-oriented transparency obligations are very relevant for the *transparency in political ads* initiative, where there will be some overlap. To ensure full transparency in the broader context of targeted advertising, EDPB guidance indicates that controllers may want to consider implementing a mechanism for data subjects to easily check their profile, including details of the information and sources used to develop it.[466] The data subject should be able to learn the identity of the entity that is targeting him or her with ads, and controllers should moreover facilitate access to information regarding the targeting, including the targeting criteria that were used and the segments into which the data subject has been placed.

Joint controllership. Following CJEU Jurisprudence,[467] those relying on a platform's targeted advertising services to run ads, and who thereby decide who to target and through what means, will likely be joint controllers with the platform, with the responsibilities that come with this role. This is relevant regarding the transparency of political advertising and the accountability of the various actors involved in the process. They shall in a transparent manner determine their respective responsibilities for compliance with the obligations under the GDPR, and their arrangement shall duly reflect the respective roles and relationships of the joint controllers vis-à-vis the data subjects. The data subjects should be able to learn from the platform the identity of the joint controller they are not in contact with (here, the advertiser), the essence of the arrangement between the joint controllers, and how to exercise their rights, because they can exercise their rights in respect to and against each of them.

Impact assessment. Where a type of processing, in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data (DPIA). A DPIA is required in particular in the case of a systematic and extensive evaluation of personal aspects relating to natural persons which is based on automated processing, including profiling, and on which decisions are based that produce legal effects concerning the natural person or similarly significantly affect the natural person – a condition which, as indicated above, some forms of targeted political ads are likely to fulfil.

EDPB guidance highlights the fact that additional risks may emerge depending on the purposes of the advertising campaign and its intrusiveness, or if the targeting involves the processing of observed, inferred or derived personal data.[468] Risks need to be mitigated, and, where not possible, the authority needs to be consulted; the authority can always request access to the documented DPIA.

[466] European Data Protection Board Guidelines 8/2020 on the targeting of social media users, 2 September 2020, p29.
[467] Wirtschaftsakademie, Jehovah's Witnesses, Fashion ID.
[468] European Data Protection Board Guidelines 8/2020 on the targeting of social media users, 2 September 2020, p17.

Codes of conduct. Further, compliance with approved codes of conduct by the relevant controllers or processors shall be taken into due account in assessing the impact of the processing operations performed by such controllers or processors, in particular for the purposes of a data protection impact assessment. The drawing up of codes of conduct is encouraged, taking account of the specific features of the processing sector at hand. The GDPR foresees that associations and other bodies representing categories of controllers or processors may prepare codes of conduct, or amend or extend such codes, for the purpose of specifying the application of the GDPR – to be approved by the authority. A code of conduct for targeted political advertising may be relevant and appropriate as foreseen under the present initiative. Similarly, a data protection certification mechanisms, seals and marks, may be established for the purpose of demonstrating compliance with the GDPR.

Research. The GDPR adapts the data processing rules (i.e. applies some derogations, provided appropriate safeguards are in place) where personal data are processed for scientific or historical research purposes, statistical purposes or for archiving purposes in the public interest. The rules amount to a special regime affording a degree of flexibility for genuine research projects that operate within an ethical framework and aim to grow society's collective knowledge and wellbeing. This is highly relevant for research into political ads, including through the ad repository and its API which is foreseen both in the DSA and in the *political ads* initiative.

International transfers. Finally, the GDPR also provides a framework for the transfer of personal data to non-EU/EEA countries; such transfers are allowed under certain conditions, such as the third-country being the beneficiary of an adequacy decision. Of particular relevance for online political ads is the 2020 CJEU Schrems II decision[469], which struck down a mechanism allowing transfers of personal data to the United States and therefore required that controllers adduce other appropriate safeguards. Both the EU Commission and the US government and working on a successor instrument. This situation is relevant because the online platforms involved in the provision of targeted ads, as well as many of the ad exchanges and ad intermediaries, are based in the US (or require data transfers thereto), which means that targeted political ads using their services can currently in a lot of cases be legally impossible.

Governance

Regarding the governance mechanism of the data protection rules, the GDPR foresees one or more independent public authorities (the national data protection authorities (DPA)) with investigative, corrective, authorisation and advisory powers with regard to the application of the rules on its territory. National DPAs are to cooperate with each other where appropriate by sharing information and providing mutual assistance. Where a data controller operates in multiple member states, the DPA of the Member State where it has its main establishment in is the lead authority for the cross-border processing, and can handle the case, cooperating with the other authorities concerned (One-Stop-Shop mechanism).

The GDPR also foresees the European Data Protection Board (EDPB), a body of the Union with legal personality, which is represented by its Chair, and composed of the head of one supervisory authority of each Member State and of the European Data Protection Supervisor

[469] Judgement of the Court (Grand Chamber) of 16 July 2020, *Data Protection Commissioner v Facebook Ireland Ltd, Maximillian Schrems,* ECLI:EU:C:2020:559.

(the DPA for the EU Institutions). Among other tasks, the EDPB ensures the consistent application of the GDPR through coordinated decisions, guidelines and recommendations.

Space for action under the present initiative

This initiative will build on the data protection acquis and on the governance structures established by the GDPR and e-Privacy. No derogations from existing structure are envisaged and complementarity will be ensured. Part of the rationale for the additional rules under the initiative is that the GDPR and ePrivacy, while very relevant, do not address all the aspects of political ads that need to be harmonised or addressed according to the problem-definition in the impact assessment.

More transparency is required for political ads than is provided under the privacy and data protection rules. Transparency is user-oriented in the latter, whereas political ads also call for transparency toward society at large (e.g. through publicly-accessible ad repositories, and publicly-available DPIAs). Further, and as indicated already by the authority who is the lead DPA for an important proportion of the controllers involved in online advertising, "data protection law does not mandate the provision of information which is crucial to fair and transparent online political advertising, including the source of funding for an advertisement in either an online or offline context.[470]

The accountability principle requires that data controllers be able to demonstrate its compliance with the GDPR, and this accountability is overseen by the DPAs. However, given there is a strong democratic aspect to the issues related to political advertising and its targeting, it is necessary that the wider democratic society be, too, able to exercise some form of scrutiny. This is why any DPIA conducted on the targeting aspect of the data processing needs to be available to the public, not just to the DPAs on demand. That is, both transparency *and* accountability need to be public-oriented in the context of political advertising.

Further, not all political ads involve the processing of personal data, for instance where the advertisement is not targeted (e.g. contextual advertising). The data protection rules, while very relevant, are not sufficient to address the whole range of political ads. Related to this aspect is the initiative's goal of bringing as much harmonisation and clarity as possible in the offline environment too. A timely example of 'offline' political targeting is the 2018 decision of the UK's DPA (the Information Commissioner's Office) involving "Emma's Diary,"[471] where transparency requirements beyond those resulting from data protection rules would have been appropriate.

[470] Submission of the Irish Data Protection Commission to the Parliament consultation regarding the proposal for a Regulation of Online Political Advertising in Ireland, 2021, p5. https://assets.gov.ie/3709/041218154738-73333d7db148411ab052af6a6352bb1f.pdf

[471] The ICO fined Lifecycle Marketing (Mother and Baby) Ltd, known as "Emma's Diary", £140,000 for illegally collecting and selling personal information of more than one million individuals. Emma's Diary, which provides advice on pregnancy and childcare, sold the information to a third party data broker for use by the UK Labour Party. On foot of this, the data broker created a database which the Labour party used to profile new mothers in advance of the 2017 General Election. The Labour Party was able to profile and send political ads, in the form of targeted direct mail, to mums living in areas with marginal seats – a purpose incompatible with the purpose for which the relevant personal data had initially been collected. The ICO found that Emma's Diary's privacy policy did not detail that personal data would be used for political marketing or by political parties. https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/08/emma-s-diary-fined-140-000-for-selling-personal-information-for-political-campaigning/

Also, while the obligations related to transparency address the facilitation of the monitoring and enforcement of rules relevant to data protection and hence an aspect of the issues connected to targeting – with in particular the different actors in the value chain having to be very transparent about their use of targeting – a further line in the *transparency in political ads* initiative specifically addresses targeting beyond its transparency dimension, with limitations during certain periods or regarding certain techniques.

Delta – obligations under the GDPR and under the proposal:

The GDPR currently obliges data controllers to disclose to a data subject at the moment of first collection, and then on request information about: the purposes of the processing; the categories of personal data concerned; the recipients or categories of recipient to whom the personal data have been disclosed; where the personal data are not collected from the data subject, any available information as to their source; and the existence of automated decision-making, including profiling, and meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject. Data controllers may, according to non-binding EDPB guidance on targeting, also offer information about: how they have been profiled; what data is processed; who is targeting them; and what criteria are being used and what segments they are placed into. However, this is in practice often not done. The above information is only made available to the data subject.

The political ads initiative will oblige the publication of information about: the political affiliation of the ad; the money spent on it and its source; the chain of actors involved in the preparation, placement and dissemination of the ad. It will also codify the elements about the targeting which are either implicit in the GDPR or indicated as desirable in EDPB Guidance, in particular requiring the publication of: the inclusion and exclusion parameters used; the means by which these parameters were established; the targeting methods used; the use and nature of third party analytical services; the source of the personal data used, and in particular a notice when the data was derived, inferred, and/or provided by a third party. The above information will be made available to the data subject, but also to anyone who looks into the VLOPs' ad repositories, and to interested actors upon request for other (smaller) publishers.

The key additions made by the political ads initiative are highlighted in the table below:

	GDPR	Political ads proposal
Identity and contact details of:	- The data controller, its representative; - The data protection officer; - The joint controller where applicable [In the context of targeted advertising, the advertiser will sometimes be a joined controller, and therefore its identity is already to be disclosed to the data subject pursuant to the GDPR];	- the advertiser; - the **sponsor** of the advertising (where ≠ advertiser); - information regarding their **place of establishment or residence;**
Information on the targeting:	To the individual, during the first contact prior to the collection of the data, then upon request: - the purposes of the processing; - the categories of personal data concerned; - the recipients or categories of recipient to whom the personal data have been disclosed; - where the personal data are not collected from the data subject, any available information as to their source; - the existence of automated decision-making, including profiling, and meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject (Article 15(h)). EDPB guidance: controllers *may* want to consider implementing a mechanism for data subjects to know: - how they have been profiled; - what data is processed (and what for, where does it come from, etc.); - who is targeting them with this ad [iff that person is also a joint controller, a priori]; - what criteria are being used and what segments they are placed into [unclear whether per ad or in general];	To the individual, **directly accessible in a transparency notice available in each ad**; but **also** to **everyone** through a repository for VLOPs, and to interested actors upon request for other publishers: - **who is targeting you with this specific ad** [if ≠ joint controller]; - the **number of individuals** expected to be **reached** by the ad; - any relevant **campaign or party** to which the advertisement is **affiliated**, and where possible an URL link to **official sources of information**; - the **identification of the full chain of operators involved** in the preparation, placement and dissemination of the advertisement, as well as their role; - the **amounts invoiced** for the services in terms of preparation, placement and dissemination; - the **sources** of these financial means; - the info on targeting codifying elements which were either implicit in the GDPR or indicated as desirable in EDPB Guidance, **specifically requiring**: - the inclusion **and exclusion** parameters used, - **the means by which these parameters were established**, - the targeting **methods** used, - the **use and nature of third party analytical services**, - the categories of personal data used for the targeting **and for the elaboration of the targeting method**, - the source of the personal data used, and in particular **a notice when the data was derived, inferred, and/or provided by a third party**.

Policies	- a data protection policy if you process personal data;	- a policy specifically on the internal rules of the service provider regarding targeting and amplification, if they engage in such practices, and delineating the steps take to comply with the proposal; - **annual reporting**
Sensitive data	- a general prohibition from processing sensitive data; there are exemptions to this prohibition, the most relevant of which are the data subject having given explicit consent to the processing of those personal data for one or more specified purposes, or (for political parties) having a substantial public interest in compiling people's political opinions, provided this is laid down in Union or Member State law and provided that appropriate safeguards are established.	- **a specific prohibition from targeting data subjects with political ads based on sensitive data and/or based on too small of a threshold, with exemptions**.

9.4. The e-Commerce Directive (ECD)[472]

The basic framework regulating the provision of digital services in the internal market is the 2000 E-Commerce Directive. The goal of that directive is to allow borderless access to digital services across the EU and to harmonise the core aspects for such services, including information requirements and online advertising rules, as well as setting the framework for the liability regime of intermediary services – categorised as 'mere conduits', 'caching services', and 'hosting services' – for third party content.

The e-Commerce Directive applies to "information society services". This refers to "any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services", regardless of whether the recipient is a consumer or a trader. The concept of "commercial communications" is defined broadly as "any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession."

Freedom to provide services and freedom of establishment. Under the internal market clause of Article 3, the provider of information society services can "freely" offer its service across the single market by complying with the rules of the country in which it is established ('country of establishment'). In parallel, none of its host Member States (i.e. Member States where it provides its service; 'country of destination') can require the same service provider to comply with additional rules in this Member State. Thus, as a matter of principle, the information society service provider cannot face any restriction from another Member State (except exceptionally and on a case-by-case basis, following the principle of proportionality and a limited list of derogation conditions provided in Article 3(4)).

Measures protecting users of information society service. The e-Commerce Directive lays down several measures that seek to protect users (e.g. consumers, business users, public authorities) by harmonising certain obligations, primarily concerning identification and transparency requirements imposed on providers of information society services. They include:

- Obligation on the information society service provider to make available its identity, name, geographic address, and details enabling rapid contact, relevant registration information (in trade or similar registers), and VAT number where relevant.

- Obligation to clearly identify commercial communications designed to promote directly or indirectly the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession as well as the natural or legal person on behalf of whom the commercial communication is made. Further, commercial ads must be clearly identifiable as such (labelled), and the natural or legal person on whose behalf the commercial communication is made shall be clearly identifiable.

[472] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'). http://data.europa.eu/eli/dir/2000/31/oj

Governance

The e-Commerce Directive also lays down basic principles seeking to ensure effective cooperation between Member States and effective enforcement of the Directive, which is effectively to be carried out by the Member States. To this end, the Directive envisages that any sanction in case of a violation of the e-Commerce Directive should be effective, proportionate and dissuasive. In addition, the available national court actions should be effective allowing for the rapid adoption of corrective measures, including interim measures. The Directive also envisages and encourages cooperation and mutual assistance between Member States and with the Commission for the implementation of the Directive, in particular through the establishment of national contact points. Such a cooperation is particularly relevant in view of the envisaged close cooperation between country of origin and country of destination as regards implementation of the internal market principle laid down in Article 3 of the Directive. Finally, the Directive encourages the use of alternatives enforcement instruments such as codes of conduct at the EU level or out-of-court dispute settlement schemes.

Space for action under the present initiative

The e-Commerce Directive's internal market clause is crucial for the cross-border provision of services, including of political ads. In contrast however, there is space for action on other provisions, as the information provisions are limited to commercial communications, and the online advertising landscape has changed dramatically since the Directive was adopted.

9.5. The Audiovisual Media Services Directive (AVMSD)[473]

The AVMSD requires that Member States ensure that video-sharing platform services take appropriate measures to protect minors from harmful content, and to protect the general public from illegal hate speech and content whose dissemination constitutes a criminal offence under Union law (related to terrorism, child abuse images, racism and xenophobia) as well as measures to ensure compliance with commercial communications requirements under the AVMSD. The AVMSD is a minimum harmonisation directive, meaning that the Member States are allowed to introduce more detailed or stricter provisions than the minimum set of rules it contains.

The AVMSD was revised in 2018 and now specifies that that data collected by video sharing platforms (a category which includes some social media platforms) to protect children may not be processed for commercial purposes, such as for direct marketing, profiling and behaviourally targeted advertising. This rule mirrors the one which is already in place for (linear and non-linear) audiovisual media service providers. Similarly, platforms now need to make sure that their audiovisual commercial communications are recognisable as such,[474] does not cause any physical, mental or moral detriment to minors, and does not include or promote discrimination on the basis of sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation. The video sharing platforms in scope need to take "appropriate measures" to make sure that audiovisual commercial communications (a wide term that covers

[473] 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) (codified version). http://data.europa.eu/eli/dir/2010/13/oj

[474] The European Commission's 2018 Recommendation on disinformation and elections includes the suggestion that member states can 'draw inspiration' from the AVMSD's rules on the recognisability of audio-visual commercial communications when considering how to ensure transparency in paid online political advertisements.

television advertising, sponsorship, teleshopping and product placement) also comply with these rules – including those communications that are not marketed, sold or arranged by them. Having a functionality for uploaders to declare whether videos contain commercial communications (as far as they know or can be reasonably expected to know) is one of the foreseen potentially appropriate measure.

Paid political advertising is not covered by the definition of audiovisual commercial communications. However, the definition of user-generated video may apply to campaign videos and videos containing political communication uploaded by a political party or group on a video-sharing platform, where this type of organic content would still be covered by the rules of the AVMSD.

Governance

The assessment of whether the measures are appropriate needs to be carried out by the national regulatory authority of the Member State where the video-sharing platform is established. Availability of out-of-court redress needs to be ensured and, for the rest (penalties and other sanctions), Member States should decide. A cooperation mechanism is envisaged between the country of origin of a media service provider and the country where one or some of its services are wholly or mostly targeted to, with a view to ensure that certain public interest obligations in that latter country are complied with. Such system of cooperation is subject to specific substantive and procedural requirements that do prevail over those provided by the e-Commerce Directive, with regard to the specific services at stake. This system of cooperation applies to broadcasting and video on demand service providers but not to video-sharing platform service providers.

The cooperation mechanism set out in the AVMSD aims to ensure that such services do not purposely establish themselves in the territory of one Member State while targeting another Member State with the aim of avoiding the stricter regulation of the later when it comes to matters of general interest. The main purpose is thus to reinforce the country of origin supervision and enforcement of the rules to services established in its territory while allowing certain role for the targeted Member State to safeguard certain public interests.

In 2014, the Commission implemented its Decision on establishing the European Regulators Group for Audiovisual Media Services[475] (ERGA) – an advisory body to the Commission. The group's task is to advise and assist the Commission in its work, both to ensure a consistent implementation in all Member States of the regulatory framework for audiovisual media services; to any matter related to audiovisual media services within the Commission's competence. The ERGA was created specifically to facilitate a closer and more regular cooperation between the competent independent regulatory bodies in order to achieve a successful development of an internal market for audiovisual media services, notably in view of increased cross-border distribution and the regulatory challenges linked to on-demand services. The role of ERGA was strengthened with the revised AVMSD.

[475] Commission Decision on establishing the European Regulators Group for Audiovisual Media Services, 2014. https://digital-strategy.ec.europa.eu/en/library/commission-decision-establishing-european-regulators-group-audiovisual-media-services

9.6. The Unfair Commercial Practices Directive (UCPD)[476] and the Regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws (CPC Regulation)[477] A strong consumer protection framework regulates the content of advertising, though political advertising rarely also falls within the scope of commercial advertising. The relevant Directives contain provisions and elements which could be of general pertinence for political ads – such as transparency obligations, clauses relating to actions that impair the consumer's ability to make an informed decision, or relating to the exploitation of a specific misfortune or circumstance of such gravity as to impair the consumer's judgement. However, these consumer protection-oriented rules focus on commercial practices and pecuniary or physical harm, hence do not apply to political ads.

Since these consumer protection laws are Directives, they leave to Member States the governance aspect of the law. The CPC Regulationwas introduced in 2017 to address the "ineffective enforcement in cases of cross-border infringements, including infringements in the digital environment." It requires Member States to designate one or more competent authorities and a single liaison office that are responsible for the application of the Regulation. The national liaison office is responsible for coordinating the investigation and enforcement activities of the competent authorities. It also foresees a Mutual Assistance Mechanism, which allows national competent authorities to request information and enforcement measures from another national competent authority. There is also a possibility for coordinated investigation and enforcement, for widespread infringements (especially if they have a Union Dimension). Where appropriate, the competent authorities may invite Commission officials and other accompanying persons, who have been authorised by the Commission, to participate in the coordinated investigations, enforcement actions and other measures.

The UCPD prohibits unfair business-to-consumer commercial practices, including misleading and aggressive practices occurring in information society services. The concept of "commercial practices" is defined broadly: advertising and marketing related to products are expressly included, regardless of whether these activities are carried out online or offline. This Directive complements the e-Commerce Directive and ensures complementary protection of the users of the information society services when they act as consumers, i.e. for purposes outside their trade, business, craft or profession. Transparency and requirements on commercial communications already established in the E-Commerce Directive are further reinforced by this Directive – e.g. in making clearly identifiable a sponsored result on a search engine.

Misleading omissions may be qualified as unfair practices, especially when information requirements prescribed by Union Law in the field of advertising or advertising are violated (a non-exhaustive list of which is contained in Annex II to the Regulation). Following the modifications introduced by the Better Enforcement Directive, the main parameters used for ranking of products and their importance are considered as material information under UPCD if the consumers have the possibility to search products on the

[476] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'). https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02005L0029-20220528&from=EN

[477] Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32017R2394

basis of a query. Under the UCPD, consumers should therefore be informed of any paid advertisement or payment specifically for achieving higher ranking of products within the search results.

Governance

Adequate and effective means should be implemented by the Member States to ensure that the practices carried out on the market comply with the rules of the UCPD.

9.8. The Misleading and Comparative Advertising Directive[478]

Under the Directive on misleading and comparative advertising, traders are protected against misleading advertising (from other traders). Advertising directed at businesses that is deceptive and is likely to injure a competitor is prohibited.

Governance

Adequate and effective means should be implemented by the Member States.

9.9. Consumer Rights Directive (CRD)[479]

The CRD applies to the conclusion of sales and services contracts, between consumers and professional traders.

The CRD ensures that consumers are provided with a minimum set of information before being bound by a contract with a professional trader. Among other things, the trader must provide consumers with information about the main characteristics of the goods or services, the identity of the trader, the total price of the goods or services, etc.

Following the modifications introduced by the Better Enforcement Directive, the CRD makes it mandatory to inform consumers when prices were personalised by means of automated decision making, before the conclusion of a distance contract. Since prices may be automatically personalised in advertising materials displayed to consumers, this modification of the CRD may be of relevance for commercial ads (and hence for commercial ads that are also political). In addition, if the contract is concluded on online marketplaces, the provider must inform consumers about the main parameters used for the ranking of offers and their relative importance. The burden of proof is upon the traders, regarding their information obligations.

Governance

Adequate and effective means should be implemented by the Member States to ensure the compliance with the Directive.

9.10. The Directive on services in the internal market[480]

The Services Directive establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services. It is a Directive mandating Member States to provide the right conditions for allowing cross-border services in the EU, by: simplifying administrative procedures for access to,

[478] Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (codified version) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0114

[479] Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32011L0083

[480] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (the Information Society Services Directive). http://data.europa.eu/eli/dir/2006/123/oj

provision and exercise of services; providing points of single contact for administrative requirements; and providing the necessary information. Member States must assist, and cooperate with each other to achieve the goals of the Directive.

The Directive reminds Member States of the principle of free movement, while accepting inroads when free movement collides with other public interests. However, before making such encroachments, authorities have to verify and recognize any protection already provided in the country of origin - under the mutual recognition principle, they need to take into account what takes place in other countries before proceeding.

The Services Directive does not concern services providers that are online platforms and intermediaries, nor does it concern electronic communications services and networks (for which the ePrivacy Directive applies), audiovisual services and radio broadcasting.

Space for action under the present initiative

The Services Directive enables such providers to provide their services wherever in the Union they are established. The present initiative will not conflict with it; this Directive is relevant for the problem-definition of the present impact assessment, however, because its existence means that where such service providers are unable to provide their services across borders, it is not because they are not allowed, but for other reasons – e.g. because they are discouraged by the complexity and costs.

9.11. The Platform-to-Business Regulation (P2B)[481]

The P2B deals with the relationships between online intermediation services or online search engines and professional users of those online services. It establishes, at a European level, a set of mandatory rules ensuring "appropriate transparency, as well as effective redress possibilities" for professional users of online intermediation services. The relationships considered are business (platform) to business (professional users) relationships as long as the business users concerned target consumers through their use of the online platform services.

Both online intermediation services and online search engine must inform their professional users of the main parameters determining ranking and the importance of those main parameters (including on the possibility to influence ranking against remuneration). Under the P2B Regulation, they must also inform their professional users about any differentiated treatment which they may give, in relation to goods or services offered to consumers, through their services. Finally, terms and conditions of online intermediation services must contain a description of technical and contractual access, if any, to personal data and/or other data provided by professional users when using the service or generated through the use of the services.

Governance

The Member States must ensure accurate and effective enforcement of the P2B Regulation. They are not obliged neither to create new enforcement bodies (they can entrust existing authorities for ensuring such an implementation) nor to provide for *ex officio* enforcement or to impose fines.

9.11. The Code of Practice on Disinformation[482]

[481] Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R1150

[482] Code of Practice on Disinformation https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation

As part of the European Democracy Action Plan, the Commission encouraged the drawing of a Code of Practice on Disinformation, in which various signatories (online platforms, leading social networks, advertisers and advertising industry) made voluntary commitments to address the risk of disinformation and information manipulation occurring through their services. Signatories signed up to commitments which correspond to the product and/or service they offer, their role in the value chain, their technical capabilities and their liability regimes as provided under EU Law, which vary depending on the role they play in the creation and dissemination of the content at stake, and which includes, in some cases, political ads.

The commitments under the Code are thus non-binding, and heterogeneous both in kind and in scope. The Code and its implementation have shortcomings, which were partly addressed in 2021 with the Commission Guidance,[483] which strengthened the Code and already made way for it to evolve towards a co-regulatory instrument as outlined in the Digital Services Act. Table 2 below maps these commitments to the obligations foreseen under the *transparency in political ads* initiative, as the latter strengthens further some of the Code's commitments, or renders some binding.

The Code includes commitments to ensure some level of transparency about political and issue-based advertising, either on the face of the ad or in an ad repository: on labelling, on the targeting behind the ad, the sponsor's identity, the amount spent, the volume and budget of political ads served by political advertisers in the Member States, the number of times each ad has been displayed online. Signatories to which this is relevant further commit to make reasonable efforts to ensure, through effective identity verification and authorisation systems, that all the necessary (transparency) conditions are met before allowing the placement of political ads.

Signatories further commit to contribute to limit or avoid risks associated with microtargeting of political and issue-based ads. In this regard, they are to ensure full compliance with the GDPR and other relevant laws, in particular regarding the acquisition of valid consent where required.

The Guidance[484] exhorts Signatories to allow for a sufficient level of access for stakeholders such as such as civil society organisations, non-academic research centres and investigative journalists, in particular in Member States where there is not adequate academic capacity.

Part of the commitment on disinformation is for Signatories to facilitate cooperation with, and information-facilitation toward competent authorities. In terms of governance, while Signatories are to produce regular self-assessment reports and maintain a transparency center (where policies and measures are clearly communicated), it is the European Regulators Group for Audiovisual Media Services (ERGA) that is to monitor the implementation of the Code at Member State level. Key Performance Indicators (KPIs) are defined in the Commission Guidance in order to measure the implementation and effectiveness of the Code's commitments and the Code's impact on the disinformation phenomenon.

[483] Guidance on Strengthening the Code of Practice on Disinformation https://digital-strategy.ec.europa.eu/en/library/guidance-strengthening-code-practice-disinformation

[484] The Guidance calls for reinforcing the Code of Practice on Disinformation in the following areas: larger participation with tailored commitments, better demonetising of disinformation, ensuring the integrity of services, improving empowerment of users, increasing the coverage of fact-checking and providing increased access to data to researches and creating a more robust monitoring framework.

Table 9.1: Substantive obligations and other relevant provisions in the acquis

Obligation/actor[485] **DSA**	**Very large online platform (VLOPs)**	**Other online platforms**	**Intermediaries**
Orders to provide information to national authorities – article 9 DSA	x	x	x
Point of contact and legal representative – article 10 and 11 DSA	x	x	x
Traceability data – article 22 DSA [for third parties offering services through platforms]: • the name, address, telephone number and email address of economic operator • a copy of the identification document of the economic operator • the bank account details of natural person; • [etc.]	x	x	
User-facing transparency of online advertising (labelling) – article 24 DSA: • the information displayed is an advertisement; • the natural or legal person on whose behalf the advertisement is displayed; • meaningful information about the main parameters used to determine the recipient to whom the advertisement is displayed (microtargeting transparency)	x	x	
Provide ad repository – article 30(1) DSA	x		
Ad repository transparency – article 30(2) DSA • the content of the advertisement; • the natural or legal person on whose behalf the advertisement is displayed; • the period during which the advertisement was displayed; • whether the advertisement was intended to be displayed specifically to one or more particular groups of recipients of the service and if so, the main parameters used for that purpose (microtargeting transparency); • the total number of recipients of the service reached and, where applicable, aggregate numbers for the group or groups of recipients to whom the advertisement was targeted specifically.	x		
External risk assessment, auditing and public accountability – articles 25 – 33 DSA • VLOPs shall identify, analyse, assess and mitigate any significant systemic risks stemming from the functioning and use made of their services in the Union, including:	x		

[485] The DSA essentially groups the subjects of obligations into three groups: obligations applicable to all intermediaries, those applicable to online platforms and those applicable to very large platforms. There are some additional (not relevant to this initiative) distinctions for hosting and other services. The categories of subject identified for the political ads initiative do not map perfectly to this, but "Ad exchanges, ad networks, ad platforms" "Other online ad services" and "Other ad services" will sometimes fall under the DSA category of intermediary. These are items which might need to be covered by both instruments to ensure that relevant subjects are covered.

○ (c) intentional manipulation of their service, including by means of **inauthentic use or automated exploitation of the service**, with an **actual or foreseeable negative effect** on the protection of public health, minors, civic discourse, or **actual or foreseeable effects related to electoral processes** and public security. • When conducting risk assessments, very large online platforms shall take into account, in particular, how their content moderation systems, recommender systems and **systems for selecting and displaying advertisement influence any of the systemic risks referred to above**, including the potentially rapid and wide dissemination of illegal content and of information that is incompatible with their terms and conditions.			
Oversight and sanctions[486]	x	x	x

E-Commerce directive[487]	
Definitions (article 2)	*"information society services"* *"service provider"* *"recipient of the service"* *"consumer"* *"commercial communication"*
Internal market (article 3)	Member States may not restrict the freedom to provide information society services from another Member State.
Principle excluding prior authorisation (article 4)	Member States shall ensure that the taking up and pursuit of the activity of an information society service provider may not be made subject to prior authorisation or any other requirement having equivalent effect.
Information to be provided (article 6)	In addition to other information requirements established by Community law, Member States shall ensure that commercial communications which are part of, or constitute, an information society service comply at least with the following conditions: (a) the commercial communication shall be clearly identifiable as such; (b) the natural or legal person on whose behalf the commercial communication is made shall be clearly identifiable; (…)
Cooperation (article 19)	1. Member States shall have adequate means of supervision and investigation necessary to implement this Directive effectively and shall ensure that service providers supply them with the requisite information.

[486] Oversights and sanctions vary depending on the actors but all actors are subject to some kind of oversight and sanctions.
[487] http://data.europa.eu/eli/dir/2000/31/oj

	2. Member States shall cooperate with other Member States; they shall, to that end, appoint one or several contact points, whose details they shall communicate to the other Member States and to the Commission. 3. Member States shall, as quickly as possible, and in conformity with national law, provide the assistance and information requested by other Member States or by the Commission, including by appropriate electronic means. 4. Member States shall establish contact points which shall be accessible at least by electronic means and from which recipients and service providers may: (a) obtain general information on contractual rights and obligations as well as on the complaint and redress mechanisms available in the event of disputes, including practical aspects involved in the use of such mechanisms; (b) obtain the details of authorities, associations or organisations from which they may obtain further information or practical assistance. 5. Member States shall encourage the communication to the Commission of any significant administrative or judicial decisions taken in their territory regarding disputes relating to information society services and practices, usages and customs relating to electronic commerce. The Commission shall communicate these decisions to the other Member States.
Audiovisual Media Services Directive[488]	
Scope (recitals 21 and 22)	For the purposes of this Directive, the definition of an audiovisual media service should cover only audiovisual media services, whether television broadcasting or on-demand, which are mass media, that is, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public. Its scope should be limited to services as defined by the Treaty on the Functioning of the European Union and therefore should cover any form of economic activity, including that of public service enterprises, but should not cover activities which are primarily non-economic and which are not in competition with television broadcasting, such as private websites and services consisting of the provision or distribution of audiovisual content generated by private users for the purposes of sharing and exchange within communities of interest. For the purposes of this Directive, the definition of an audiovisual media service should cover mass media in their function to inform, entertain and educate the general public, and should include audiovisual commercial communication but should exclude any form of private correspondence, such as e-mails sent to a limited number of recipients.
Definitions (article 1)	• *'audiovisual media service'*.

[488] http://data.europa.eu/eli/dir/2018/1808/oj

	• *'audiovisual commercial communication'* • *'programme'* • *'editorial responsibility'* • *'media service provider'* • *'broadcaster'* • *'on-demand audiovisual media service'* • *'audiovisual commercial communication'* • *'television advertising'* • *'surreptitious audiovisual commercial communication'* • *'sponsorship'* • *'product placement'*
Requirements for the AVS providers to be identifiable (article 5)	The provider shall make easily, directly and permanently accessible to recipients its name, address, contact details (email address), and where relevant, the competent supervisory authority.
Prohibition to use some data for advertising ('Article 6a and Article 28b (3))	Personal data of minors collected or otherwise generated by media service providers and video-sharing platform providers to protect children shall not be processed for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.
Requirements on commercial and sponsored content (articles 9 and 10)	9 (1) (a), audiovisual commercial communications shall be readily recognisable as such. Surreptitious audiovisual commercial communication shall be prohibited; (b) audiovisual commercial communications shall not use subliminal techniques; (c) audiovisual commercial communications shall not: (i) prejudice respect for human dignity; (ii) include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation; (iii) encourage behaviour prejudicial to health or safety; (iv) encourage behaviour grossly prejudicial to the protection of the environment; (g) audiovisual commercial communications shall not cause physical, mental or moral detriment to minors. 10 (1) (c) viewers shall be clearly informed of the existence of a sponsorship agreement. Sponsored programmes shall be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or at the end of the programmes.
Compliance of providers regardless of whether the sponsored communications are theirs (Article 28b (2))	Video-sharing platform providers shall comply with the requirements set out in Article 9(1) with respect to audiovisual commercial communications that are marketed, sold or arranged by them, and shall take appropriate measures to

	comply with the requirements set out in Article 9(1) with respect to audiovisual commercial communications that are not marketed, sold or arranged by them, taking into account the limited control they may potentially exercise over those audiovisual commercial communications. Video-sharing platform providers shall clearly inform users where programmes and user-generated videos contain audiovisual commercial communications, provided that such communications are declared by the uploading user, or provided the provider has knowledge of that fact.
Unfair Commercial Practices Directive[489]	
Definitions (article 2)	'commercial practices' (includes advertising and marketing related to products, regardless of whether carried out online or offline). 'to materially distort the economic behaviour of consumers' means using a commercial practice to appreciably impair the consumer's ability to make an informed decision, thereby causing the consumer to take a transactional decision that he would not have taken otherwise.'trader' means any natural or legal person who, in commercial practices covered by this Directive, is acting for purposes relating to his trade, business, craft or profession 'business-to-consumer commercial practices' means any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers; 'professional diligence' means the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principle of good faith in the trader's field of activity. 'undue influence' means exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer's ability to make an informed decision;
Prohibition of unfair commercial practices (article 5)	A commercial practice shall be unfair if: (a) it is contrary to the requirements of professional diligence, and (b) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers. In particular, commercial practices shall be unfair if they are misleading or aggressive.
Misleading actions and omissions (Articles 6 and 7)	A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information

[489] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02005L0029-20220528&from=EN

	is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise: (c) the extent of the trader's commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the trader or the product; A commercial practice shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.
Use of harassment, coercion and undue influence (article 9)	In determining whether a commercial practice uses harassment, coercion, including the use of physical force, or undue influence (and is therefore unfair and prohibited), account shall be taken of: (a) its timing, location, nature or persistence; (c) the exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement, of which the trader is aware, to influence the consumer's decision with regard to the product.
Commercial practices which are in all circumstances considered unfair (Annex I)	11. Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial).
Misleading and Comparative Advertising Directive[490]	
Ad for commercial purposes (article 2)	(a) 'advertising' means the making of a representation in any form in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations; (b) 'misleading advertising' means any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor; (c) 'comparative advertising' means any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor;
Consumer Rights Directive[491]	
Information requirements for distance and off-premises contracts (Article 6)	1. Before the consumer is bound by a distance or off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner:

[490] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0114
[491] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32011L0083

	(a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services; (b) the identity of the trader, such as his trading name; (c) the geographical address at which the trader is established and the trader's telephone number, fax number and e-mail address; in addition, where the trader provides other means of online communication which guarantee that the consumer can keep any written correspondence, including the date and time of such correspondence, with the trader on a durable medium, the information shall also include details of those other means; all those means of communication provided by the trader shall enable the consumer to contact the trader quickly and communicate with him efficiently; where applicable, the trader shall also provide the geographical address and identity of the trader on whose behalf he is acting; (d) if different from the address provided in accordance with point (c), the geographical address of the place of business of the trader, and, where applicable, that of the trader on whose behalf he is acting, where the consumer can address any complaints; (e) the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated; (ea) where applicable, that the price was personalised on the basis of automated decision-making; 9. As regards compliance with the information requirements laid down in this Chapter, the burden of proof shall be on the trader.
Additional specific information requirements for contracts concluded on online marketplaces (Article 6a)	1. Before a consumer is bound by a distance contract, or any corresponding offer, on an online marketplace, the provider of the online marketplace shall, without prejudice to Directive 2005/29/EC, provide the consumer with the following information in a clear and comprehensible manner and in a way appropriate to the means of distance communication: (a) general information, made available in a specific section of the online interface that is directly and easily accessible from the page where the offers are presented, on the main parameters determining ranking, as defined in point (m) of Article 2(1) of Directive 2005/29/EC, of offers presented to the consumer as a result of the search query and the relative importance of those parameters as opposed to other parameters; (b) whether the third party offering the goods, services or digital content is a trader or not, on the basis of the declaration of that third party to the provider of the online marketplace; (c) where the third party offering the goods, services or digital content is not a trader, that the consumer rights stemming from Union consumer protection law do not apply to the contract; (d) where applicable, how the obligations related to the contract are shared between the third party offering

	the goods, services or digital content and the provider of the online marketplace, such information being without prejudice to any responsibility that the provider of the online marketplace or the third-party trader has in relation to the contract under other Union or national law. 2. Without prejudice to Directive 2000/31/EC, this Article does not prevent Member States from imposing additional information requirements for providers of online marketplaces. Such provisions shall be proportionate, non-discriminatory and justified on grounds of consumer protection.
Platform-to-Business Regulation[492]	
Ranking (article 5)	1. Providers of online intermediation services shall set out in their terms and conditions the main parameters determining ranking and the reasons for the relative importance of those main parameters as opposed to other parameters. 2. Providers of online search engines shall set out the main parameters, which individually or collectively are most significant in determining ranking and the relative importance of those main parameters, by providing an easily and publicly available description, drafted in plain and intelligible language, on the online search engines of those providers. They shall keep that description up to date. 3. Where the main parameters include the possibility to influence ranking against any direct or indirect remuneration paid by business users or corporate website users to the respective provider, that provider shall also set out a description of those possibilities and of the effects of such remuneration on ranking in accordance with the requirements set out in paragraphs 1 and 2. 4. Where a provider of an online search engine has altered the ranking order in a specific case or delisted a particular website following a third party notification, the provider shall offer the possibility for the corporate website user to inspect the contents of the notification.
Differentiated treatment (Article 7)	1. Providers of online intermediation services shall include in their terms and conditions a description of any differentiated treatment which they give, or might give, in relation to goods or services offered to consumers through those online intermediation services by, on the one hand, either that provider itself or any business users which that provider controls and, on the other hand, other business users. That description shall refer to the main economic, commercial or legal considerations for such differentiated treatment. 2. Providers of online search engines shall set out a description of any differentiated treatment which they give, or might give, in relation to goods or services offered to consumers through those online search engines by, on the one hand, either that provider itself or any corporate website users which that provider controls and, on the other hand,

[492] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R1150

	other corporate website users. 3. The descriptions referred to in paragraphs 1 and 2 shall cover in particular, where applicable, any differentiated treatment through specific measures taken by, or the behaviour of, the provider of online intermediation services or the provider of the online search engine relating to any of the following: (a), access that the provider, or that the business users or corporate website users which that provider controls, may have to any personal data or other data, or both, which business users, corporate website users or consumers provide for the use of the online intermediation services or the online search engines concerned or which are generated through the provision of those services; (b), ranking or other settings applied by the provider that influence consumer access to goods or services offered through those online intermediation services by other business users or through those online search engines by other corporate website users; (c), any direct or indirect remuneration charged for the use of the online intermediation services or online search engines concerned; (d), access to, conditions for, or any direct or indirect remuneration charged for the use of services or functionalities, or technical interfaces, that are relevant to the business user or the corporate website user and that are directly connected or ancillary to utilising the online intermediation services or online search engines concerned.
Access to data (Article 9)	1. Providers of online intermediation services shall include in their terms and conditions a description of the technical and contractual access, or absence thereof, of business users to any personal data or other data, or both, which business users or consumers provide for the use of the online intermediation services concerned or which are generated through the provision of those services. 2. Through the description referred to in paragraph 1, providers of online intermediation services shall adequately inform business users in particular of the following: (a) whether the provider of online intermediation services has access to personal data or other data, or both, which business users or consumers provide for the use of those services or which are generated through the provision of those services, and if so, to which categories of such data and under what conditions; (b) whether a business user has access to personal data or other data, or both, provided by that business user in connection to the business user's use of the online intermediation services concerned or generated through the provision of those services to that business user and the consumers of the business user's goods or services, and if so, to which categories of such data and under what conditions; (c) in addition to point (b), whether a business user has access to personal data or other data, or both, including in aggregated form, provided by or generated through the provision of the online intermediation

	services to all of the business users and consumers thereof, and if so, to which categories of such data and under what conditions; and (d) whether any data under point (a) is provided to third parties, along with, where the provision of such data to third parties is not necessary for the proper functioning of the online intermediation services, information specifying the purpose of such data sharing, as well as possibilities for business users to opt out from that data sharing.
GDPR[493]	
Principles relating to processing of personal data (article 5)	• lawfulness, fairness and transparency • purpose limitation • data minimisation • accuracy • storage limitation • integrity and confidentiality • accountability
Lawfulness of processing (article 6)	Processing shall be lawful only if and to the extent that at least one of the 6 legal bases applies. In the case of targeted political advertising however, EDPB guidelines show the difficulty of justifying the processing under a legal basis other than consent.[494]
Conditions for consent (article 7)	'Consent' of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her. Silence, pre-ticked boxes or inactivity should not therefore constitute consent.
Conditions specific to children (article 8)	Processing based on a child's consent is only lawful if the child is aged 16 or more, or to the extent that consent is given or authorised by the holder of parental responsibility over the child below that age. The controller shall make reasonable efforts to verify in such cases that consent is give or authorised by the holder of parental responsibility over the child, taking into consideration available technology. Children merit specific protection with regard to their personal data, as they may be less aware of the risks,

[493] https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32016R0679
[494] European Data Protection Board, *EDPB guidelines on the targeting of social media users* (2021), paragraphs 56, 65 and 66.

	consequences and safeguards concerned and their rights in relation to the processing of personal data. Such specific protection should, in particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to a child. Any information and communication, where processing is addressed to a child, should be in such a clear and plain language that the child can easily understand.
Processing of special categories of personal data (article 9) ('sensitive data')	General prohibition from processing sensitive data, i.e. data relating to racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership. Relevant exemptions to this prohibition include: • if the data subject has given explicit consent to the processing of those personal data for one or more specified purposes • if processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, 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 • if processing relates to personal data which are manifestly made public by the data subject • if processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject. This last exemption is to be read together with Recital 56: Where in the course of electoral activities, the operation of the democratic system in a Member State requires that political parties compile personal data on people's political opinions, the processing of such data may be permitted for reasons of public interest, provided that appropriate safeguards are established.
Right of access (article 15)	The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information: (a) the purposes of the processing; (b) the categories of personal data concerned; (c) the recipients or categories of recipient to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organisations; (d) where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;

	(e) the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing; (f) the right to lodge a complaint with a supervisory authority; (g) where the personal data are not collected from the data subject, any available information as to their source; (h) the existence of automated decision-making, including profiling, and meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.
Automated decision-making, including profiling (article 22)	The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her, unless such processing is carried out under strict conditions (particularly relevant: with the data subject's explicit consent).
Joint controllership (article 26)	Where two or more controllers jointly determine the purposes and means of processing, they shall be joint controllers. They shall in a transparent manner determine their respective responsibilities for compliance with the obligations under the GDPR. Their arrangement shall duly reflect the respective roles and relationships of the joint controllers vis-à-vis the data subjects. The essence of the arrangement shall be made available to the data subject.
Risks, Data protection impact assessment (article 35) and prior consultation (article 36)	Where a type of processing, in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. A data protection impact assessment (DPIA) shall in particular be required in the case of a systematic and extensive evaluation of personal aspects relating to natural persons which is based on automated processing, including profiling, and on which decisions are based that produce legal effects concerning the natural person or similarly significantly affect the natural person (on these 'legal effects', see the reference above to the 2018 Commission Guidance on the application of Union data protection law in the electoral context). Where appropriate, the controller shall seek the views of data subjects or their representatives on the intended processing. Article 36 GDPR: the controller shall consult the supervisory authority prior to processing where a DPIA under Article 35 indicates that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk.
Codes of conduct (article 40) and their monitoring (article 41)	The Member States, the supervisory authorities, the Board and the Commission shall encourage the drawing up of codes of conduct intended to contribute to the proper application of this Regulation, taking account of the specific features of the various processing sectors and the specific needs of micro, small and medium-sized enterprises. Associations and other bodies representing categories of controllers or processors may prepare codes of conduct, or

	amend or extend such codes, for the purpose of specifying the application of this Regulation, such as with regard to (among others): (c) the collection of personal data; (d) the pseudonymisation of personal data; (e) the information provided to the public and to data subjects; (f) the exercise of the rights of data subjects; (g) the information provided to, and the protection of, children, and the manner in which the consent of the holders of parental responsibility over children is to be obtained;
Certification (article 42)	The Member States, the supervisory authorities, the Board and the Commission shall encourage, in particular at Union level, the establishment of data protection certification mechanisms and of data protection seals and marks, for the purpose of demonstrating compliance with this Regulation of processing operations by controllers and processors.
Governance, supervision	see table below, 'Relevant EU level governance'
Processing for research purposes *Presumption of compatibility* *(article 5(1)(b))* *(article 6(4))* *Information requirements regarding the further processing (article 13(3) and 14(4))*	Personal data shall be: (b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes ('purpose limitation') The personal data may be processed for a purpose other than that for which it has been collected if it can be ascertained as compatible with the initial purpose, taking into account, inter alia: a) any link between the purposes for which the personal data have been collected and the purposes of the intended further processing; (b) the context in which the personal data have been collected, in particular regarding the relationship between data subjects and the controller; (c) the nature of the personal data, in particular whether special categories of personal data are processed, pursuant to Article 9, or whether personal data related to criminal convictions and offences are processed, pursuant to Article 10; (d) the possible consequences of the intended further processing for data subjects; (e) the existence of appropriate safeguards, which may include encryption or pseudonymisation. Where the controller intends to further process the personal data for a purpose other than that for which the personal data were collected, the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information (on the processing, on the data subject's rights)

Longer storage for research purposes (article 5(1) (e))	Personal data shall be: (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject ('storage limitation');
Derogation from the prohibition to process sensitive personal data (article 9(2) (j))	The prohibition on the processing of sensitive personal data shall not apply where: (j) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.
Derogation from certain information requirements in the context of research (article 14(5) (b))	Where personal data have not been obtained from the data subject, the controller shall provide the data subject with the information (listed), except where and insofar as: (b) the provision of such information proves impossible or would involve a disproportionate effort, in particular for processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, subject to the conditions and safeguards referred to in Article 89(1) or in so far as the obligation referred to in paragraph 1 of this Article is likely to render impossible or seriously impair the achievement of the objectives of that processing. In such cases the controller shall take appropriate measures to protect the data subject's rights and freedoms and legitimate interests, including making the information publicly available;
Derogation from erasure requirements (article 17(3) (d))	The right to erasure ('right to be forgotten') shall not apply to the extent that processing is necessary: (d) for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of that processing;
Right to object (article 21(6))	Where personal data are processed for scientific or historical research purposes or statistical purposes pursuant to

Safeguards and derogations relating to processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes (article 89)	Article 89(1), the data subject, on grounds relating to his or her particular situation, shall have the right to object to processing of personal data concerning him or her, unless the processing is necessary for the performance of a task carried out for reasons of public interest. Where personal data are processed for scientific or historical research purposes or statistical purposes, Union or Member State law may provide for derogations from the rights referred to in Articles 15 (right of access), 16 (right to rectification), 18 (right to restriction of processing) and 21 (right to object) subject to specific conditions and under appropriate safeguards (such as, for instance, pseudonymisation of the data), in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of those purposes.
Transfers of personal data to third countries or international organisations (articles 44, 45, 46, 47)	Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation shall take place only if - the Commission has decided that the third country, a territory or one or more specified sectors within that third country, or the international organisation in question ensures an adequate level of protection. Or, in the absence of such a decision, if - the controller or processor has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available. Binding corporate rules are also relevant.
ePrivacy Directive[495]	
Definitions (article 2)	'communication' means any information exchanged or conveyed between a finite number of parties by means of a publicly available electronic communications service. This does not include any information conveyed as part of a broadcasting service to the public over an electronic communications network except to the extent that the information can be related to the identifiable subscriber or user receiving the information
Confidentiality of the communications, store and/or access information in a user/subscriber's terminal (article 5)	Listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data by persons other than users is prohibited without the consent of the users concerned. The use of electronic communications networks to store information or to gain access to information (e.g. cookies' ID) stored in the terminal equipment of a subscriber or user is only allowed on condition that the subscriber or user concerned is provided with clear and comprehensive information, inter alia about the purposes of the processing, and is

[495] https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002L0058

	offered the right to refuse such processing by the data controller. Therefore, where the display of targeted advertisements on the users' page requires tracking, and read/write operation to match their "likes" with information already held by the platform, the users' prior consent will be required.
Unsolicited communications (Article 13)	The use of automated calling systems without human intervention (automatic calling machines), facsimile machines (fax) or electronic mail for the purposes of direct marketing may only be allowed in respect of subscribers who have given their prior consent.
DMA[496]	
Definitions (article 2)	'Gatekeeper' 'Core platform service' – which comprises: (h) advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by a provider of any of the core platform services. 'Information society service' 'Ancillary service' – which means services provided in the context of or together with core platform services, including fulfilment, identification or advertising services. 'End user' 'Business user' 'Ranking'
Obligations for gatekeepers (article 5)	In respect of each of its core platform services identified pursuant to Article 3(7), a gatekeeper shall: (a) refrain from combining personal data sourced from these core platform services with personal data from any other services offered by the gatekeeper or with personal data from third-party services, and from signing in end users to other services of the gatekeeper in order to combine personal data, unless the end user has been presented with the specific choice and provided consent (g) provide advertisers and publishers to which it supplies advertising services, upon their request, with information concerning the price paid by the advertiser and publisher, as well as the amount or remuneration paid to the publisher, for the publishing of a given ad and for each of the relevant advertising services provided by the gatekeeper.

[496] https://eur-lex.europa.eu/legal-content/en/TXT/?uri=COM%3A2020%3A842%3AFIN

Obligations for gatekeepers susceptible of being further specified (article 6)	In respect of each of its core platform services, a gatekeeper shall: (d) refrain from treating more favourably in ranking services and products offered by the gatekeeper itself or by any third party belonging to the same undertaking compared to similar services or products of third party and apply fair and non-discriminatory conditions to such ranking; (g) provide advertisers and publishers, upon their request and free of charge, with access to the performance measuring tools of the gatekeeper and the information necessary for advertisers and publishers to carry out their own independent verification of the ad inventory; (j) provide to any third party providers of online search engines, upon their request, with access on fair, reasonable and non-discriminatory terms to ranking, query, click and view data in relation to free and paid search generated by end users on online search engines of the gatekeeper, subject to anonymisation for the query, click and view data that constitutes personal data;
Obligation of an audit (article 13)	A gatekeeper shall annually submit to the Commission an independently audited description of any techniques for profiling of consumers that the gatekeeper applies to or across its core platform services.
The Directive on services in the internal market[497]	
Scope (Article 2)	This Directive shall not apply to the following activities: (c) electronic communications services and networks; (g) audiovisual services and radio broadcasting.
Definitions (Article 4)	'service' 'provider' 'overriding reasons relating to the public interest' 'commercial communication'
Administrative simplification (Articles 5 to 8)	Simplification of procedures Points of single contact Right to information Procedures by electronic means
Administrative cooperation among Member States (Article	Mutual assistance obligations

[497] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market. http://data.europa.eu/eli/dir/2006/123/oj

28)	

Table 9.2 – Mapping of Code of Practice commitments to proposed obligations under the political ads initiative

Obligations (on VLOPs)[498] under the *political ads* initiative	Existing Code of Practice[499] commitments and Guidance[500] proposals
Orders to provide information to national authorities	**Code of Practice:** Annual self-assessment reports, and further cooperation with the Commission, including responding to questions and making information available upon request **Guidance:** Access to information facilitated to enable competent authorities to perform their monitoring and enforcement function ERGA to monitor implementation of Code at Member State level
Point of contact and legal representative	**Guidance:** Possible further cooperation between platforms and Member States via the Rapid Alert System (not linked specifically to advertising)
Retain relevant basic information (client account number, amount, data, …) on political ads transactions	
Participate in transaction data sharing (to enable complete disclosures)	**Guidance:** Access to information facilitated to enable competent authorities to perform their monitoring and enforcement function
Political ads 'know your client' data (traceability data +): • the name, address, telephone number and email address of economic operator • a copy of the identification document of the economic operator • the bank account details of natural person; • [etc] • where the advertiser is registered as a political campaign or as a political candidate, the register in which the advertiser is registered and its registration number or equivalent means of identification in that register; • undertaking that applicable national rules have been complied with • certification that relevant personal data was handled in a manner which complies with the GDPR	**Guidance:** Reasonable efforts to ensure, through effective identity verification and authorisation systems, that all the necessary conditions are met before allowing the placement of these types of ads**.**
User-facing transparency of online advertising (labelling) that the information displayed is an advertisement; • the natural or legal person on whose behalf the advertisement is displayed; • meaningful information about the main parameters	**Code of Practice** All advertisements should be clearly distinguishable from editorial content and recognisable as paid-for content or labelled as such

[498] These obligations are understood cumulatively to the obligations foreseen in the DSA proposals
[499] https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation
[500] https://digital-strategy.ec.europa.eu/en/library/guidance-strengthening-code-practice-disinformation

used to determine the recipient to whom the advertisement is displayed (microtargeting transparency) • the name of any associated political campaign (plus registration information where relevant) • undertaking that a political ("issues") ad not associated with political campaign • Indication on the face of the ad that it was targeted (going beyond the DSA provision)	Commit to enable "public disclosure" of of political advertising (defined as advertisements advocating for or against the election of a candidate or passage of referenda in national and European elections). Commit to use "reasonable efforts towards devising approaches to "publicly disclose" "issue-based advertising" (no definition). NB: No commitment to provide disclosure info in the face of the label **Guidance:** Commit to ensure effective labelling as paid-for content and that ad relates to political or social issues; possible set of common criteria and examples of labels/marking Commit to integrate research on effectiveness of labels in informing users Commit to ensure that labels remain in place when users share political or issue-based ads in an organic way, so that they continue to be clearly identified as ads (even in messaging platforms)
Provide ad repository – article 30(1) DSA	**Code of Practice:** Commit to enable public disclosure of political advertising (defined as advertisements advocating for or against the election of a candidate or passage of referenda in national and European elections), <u>which could include;</u> • <u>actual sponsor identity; and</u> • <u>amounts spent.</u> Commit to use reasonable efforts towards devising approaches to publicly disclose "issue-based advertising" (no definition) Commit to encourage market uptake of tools that help consumers understand why they are seeing particular advertisements. **Guidance:** Improve quality and completeness of ad repositories (see ad repository transparency below) Creation of a common repository of rejected ads
Interoperable repositories	**Guidance:** Cross-platform cooperation - exchange of information on disinformation ads refused by one platform to prevent their appearance on other platforms. APIs (application programming interfaces) for political ad repositories should include a set of minimum functionalities and search criteria enabling (users and researchers to perform) customized searches to retrieve real time data in standard formats permitting cross-platform comparisons, research and monitoring If repositories of issue-based ads are established their APIs should have similar capabilities

Ad repository transparency – article 30(2) DSA • the content of the advertisement; • the natural or legal person on whose behalf the advertisement is displayed; • the period during which the advertisement was displayed; • whether the advertisement was intended to be displayed specifically to one or more particular groups of recipients of the service and if so, the main parameters used for that purpose (microtargeting transparency); • the total number of recipients of the service reached and, where applicable, aggregate numbers for the group or groups of recipients to whom the advertisement was targeted specifically • spend data • financing sources	**Code of Practice:** Commit to enable public disclosure of political advertising (defined as advertisements advocating for or against the election of a candidate or passage of referenda in national and European elections), <u>which could include;</u> • <u>actual sponsor identity; and</u> • <u>amounts spent.</u> Commit to use reasonable efforts towards devising approaches to publicly disclose "issue-based advertising" (no definition) Commit to encourage market uptake of tools that help consumers understand why they are seeing particular advertisements. **Guidance** Commitment to improve the completeness and quality of the information in their repositories of political ads, so that these effectively contain all sponsored political content served. These repositories should provide current, regularly updated information on the volume and budget of political ads served by political advertisers in the Member States, the number of times each ad has been displayed online, and the targeting criteria used by the advertiser
External risk assessment, auditing and public accountability	**Guidance** Signatories should integrate relevant research to improve the effectiveness of labels in informing users.
Maintain and report on political ads policy (including on targeting)	
Microtargeting: "clean targeting" label[501]/info to be included on websites hosting banner ads	**Code of Practice** Commit to encourage market uptake of tools that help consumers understand why they are seeing particular advertisements
Microtargeting limits	**Guidance** Commit to contribute to limit or avoid risk associated with microtargeting of political and issue-based ads Full compliance with GDPR and other relevant laws Acquiring valid consent for collection of data Informing individuals that they are being micro targeted and what criteria and data is being used for that purpose
Public interest information promotion	**Guidance** Promotion of public awareness and social resilience.
A code of conduct for online advertising (Article 36 DSA)	
Oversight - Competent authorities and Digital Services Coordinators	**Code of Practice** Annual self-assessment reports, and further cooperation with the Commission, including

[501] Not specifically covered in the existing Code or Guidance.

- Jurisdiction (country of origin), requirements and powers - Complaints and Penalties - Cross-border cooperation and joint investigation - European Board for Digital Services - Additional tasks (where the designated competent authorities already supervise the relevant economic actors/services and the tasks of the DSC can be adapted) - Requirement to coordinate with additional national competent authorities - Additional enhanced supervision task to ensure compliance with political ads initiative	responding to questions and making information available upon request **Guidance** Regular reporting via harmonized template ERGA to monitor implementation of Code at Member State level Definition of KPIs and provision of information on KPIs Creation of a Transparency centre, with regular updating

Table 9.3 – Detail of envisaged obligations introduced under policy options 1 and 2 of the *transparency in political ads* initiative, alongside those anticipated for the DSA (baseline – in grey)

Obligation/actor[502]	**Very large online platform (VLOPs)**		**Other online platforms**		**Ad exchanges, ad networks, ad platforms**		**Other online ad services**		**Other ad services**		**Offline ad publishers**
	DSA	*Pol.Ads*	*DSA*	*Pol.Ads*	*DSA*	*Pol.Ads*	*DSA*	*Pol.Ads*	*DSA*	*Pol.Ads*	*Pol.Ads*
Orders to provide information to national authorities on the basis of an order – article 9 DSA	x		x		x	(x)	x	(x)	x	(x)	x
Provision empowering competent national authorities to make orders to support disclosures relevant and required under the political ads initiative		x		x		x		x		x	x
Point of contact and legal representative – article 10 and 11 DSA	x		x		x	(x)	x	(x)	x	(x)	x
Retain relevant basic information (client account number, amount, data) on political ads transactions		x		x		x		x		x	x
Participate in transaction data sharing (to enable complete disclosures)		x		x		x		x		x	
Traceability data – article 22 DSA [for third parties offering services through platforms]: • the name, address, telephone number and email address of economic operator • a copy of the identification document of the economic operator • the bank account details of natural person; • [etc.]	x		x								
Political ads 'know your client' data (traceability data +): • where the advertiser is registered as a political campaign or as a political candidate, the register in which the advertiser is registered and its registration number or equivalent means of identification in that register; • undertaking that applicable national rules have been complied with		x		x		x		x			

[502] The DSA essentially groups the subjects of obligations into four groups: obligations applicable to all intermediaries, those applicable to hosting services, those applicable to platforms (public facing hosting services) and those applicable to very large platforms. The categories of subject identified for the political ads initiative do not map perfectly to this, but "Ad exchanges, ad networks, ad platforms" "Other online ad services" and "Other ad services" will usually fall under the DSA category of hosting service.

• certification that relevant personal data was handled in a manner which complies with the GDPR											
User-facing transparency of online advertising (labelling) – article 24 DSA: • that the information displayed is an advertisement; • the natural or legal person on whose behalf the advertisement is displayed; • meaningful information about the main parameters used to determine the recipient to whom the advertisement is displayed (microtargeting transparency)	x		x			x					x
User-facing transparency of online advertising (labelling) – extra (where relevant): • the name of any associated political campaign (plus registration information where relevant) • undertaking that a political ("issues") ad not associated with political campaign • Indication on the face of the ad that it was targeted (going beyond the DSA provision)		x		x		x					x
Provide ad repository – article 30(1) DSA	x			x		x					
Interoperable repositories		x		x		x					
Ad repository transparency – article 30(2) DSA • the content of the advertisement; • the natural or legal person on whose behalf the advertisement is displayed; • the period during which the advertisement was displayed; • whether the advertisement was intended to be displayed specifically to one or more particular groups of recipients of the service and if so, the main parameters used for that purpose (microtargeting transparency); • the total number of recipients of the service reached and, where applicable, aggregate numbers for the group or groups of recipients to whom the advertisement was targeted specifically.	x			x		x					
Ad repositories: spend and financial data transparency		x		x		x					
External risk assessment, auditing and public accountability – articles 25 – 33 DSA	x										

Maintain and report on political ads policy (including on targeting)		x		x		x		x		x	x
Microtargeting: "clean targeting" label/info to be included on websites hosting banner ads		x		x							
Microtargeting limits (specified below)		x		x		x		x			
Public interest information promotion		x		x		x					
Code of conduct for online advertising – article 33 DSA	x		x		x		x		x		(?)
Oversight – articles 38-49 - Competent authorities and Digital Services Coordinators - Jurisdiction (country of origin), requirements and powers - Complaints and Penalties - Cross-border cooperation and joint investigation - European Board for Digital Services	x		x		x		x		x		
Extension of oversight - Additional tasks (where the designated competent authorities already supervise the relevant economic actors/services and the tasks of the DSC can be adapted) - Requirement to coordinate with additional national competent authorities		x		x		x		x		x	x
Enhanced supervision for VLOPs (power to intervene to enforce the DSA) articles 50-66 DSA - Investigatory powers - Fines	x										
Additional enhanced supervision task to ensure compliance with political ads initiative		x									

Table 9.4. Relevant EU-level governance bodies

Instrument	Governance responsibility/powers
Digital Services Act [503]	
National designated Digital Services Authorities	Member States shall designate one or more competent authorities, responsible for the application and enforcement of the DSA. One of the competent authorities shall be designated as the **Digital Services Coordinator**, responsible for ensuring coordination at a national level. *The Member States in which the main establishment of the provider of intermediary services is located shall have jurisdiction*. If the provider of intermediary services does not have an establishment in the EU, but offers services in the EU, it will be under the jurisdiction of the Member State where its legal representative resides or is established. If the provider of intermediary service does not have a legal representative, all Member States shall have jurisdiction. In these cases, where a Member State decides to exercise jurisdiction it shall inform all other Member States and ensure that the principle of *ne bis in idem* is respected. Digital Services Coordinators shall have **powers of investigation** (to require within a reasonable time period information relating to a suspected infringement, to carry out on-site inspections of premises, to ask for explanations and to record the answers), and **enforcement powers** (to accept the commitments by the providers and to make those commitments binding, to order the cessation of infringement and impose remedies proportionate to the infringement and necessary to bring the infringement effectively to an end, to impose fines and periodic penalty payments, to adopt interim measures to avoid the risk of serious harm). When all other powers have been exhausted, the infringement persists and causes serious harm, DSCs shall also have the power to require the management body of the providers, within a reasonable time period, to examine the situation, adopt and submit an action plan setting out the necessary measures to terminate the infringement, ensure that the provider takes those measures, and report on the measures taken and, where the DSC considers that the provider has not sufficiently complied with the requirements, that the infringement persists and causes serious harm, and that the infringement entails a serious criminal offence involving a threat to the life or safety of persons, request the competent judicial authority of that Member State to order the temporary restriction of access of recipients of the service concerned by the infringement or, only where that is not technically feasible, to the online interface of the provider of intermediary services on which the infringement takes place. **Member States shall lay down the rules on penalties applicable to infringements** of the DSA by

[503] https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608117147218&uri=COM%3A2020%3A825%3AFIN

	providers of intermediary services **under their jurisdiction**. Penalties shall be effective, proportionate and dissuasive. The maximum amount of penalties imposed for a failure to comply with the obligations laid down in this Regulation shall not exceed 6 % of the annual income or turnover of the provider of intermediary services concerned. Penalties for the supply of incorrect, incomplete or misleading information, failure to reply or rectify incorrect, incomplete or misleading information and to submit to an on-site inspection shall not exceed 1% of the annual income or turnover of the provider concerned. Member States shall ensure that the maximum amount of a periodic penalty payment shall not exceed 5% of the average daily turnover of the provider of intermediary services concerned in the preceding financial year per day, calculated from the date specified in the decision concerned. Where a Digital Services Coordinator has reasons to suspect that a provider of an intermediary service, not under the jurisdiction of the Member State concerned, infringed this Regulation, it shall request the Digital Services Coordinator of establishment to assess the matter and take the necessary investigatory and enforcement measures to ensure compliance with this Regulation. Digital Services Coordinators may participate in **joint investigations**, which may be coordinated with the support of the Board, with regard to matters covered by the DSA, concerning providers of intermediary services operating in several Member States. Where a Digital Services Coordinator of establishment has reasons to suspect that a **very large online platform infringed the DSA**, it may **request the Commission to take the necessary investigatory and enforcement measures**.
European Board for Digital Services	The European Board for Digital Services is an **independent advisory group of Digital Services Coordinators** on the supervision of providers of intermediary services. The Board shall advise the Digital Services Coordinators and the Commission. The Board shall support the coordination of joint investigations, support the competent authorities in the analysis of reports and results of audits of very large online platforms to be transmitted pursuant to the DSA, issue opinions, recommendations or advice to Digital Services Coordinators, advise the Commission to take measures, support and promote the development and implementation of European standards, guidelines, reports, templates and code of conducts as provided for in this Regulation, as well as the identification of emerging issues, with regard to matters covered by the DSA.
European Commission	The **Commission**, acting either upon the Board's recommendation or on its own initiative after consulting the Board, may initiate proceedings in view of the possible adoption of decisions in respect of the relevant conduct by the very large online platform (VLOP) that is suspected of having infringed any of the provisions of the DSA and the Digital Services Coordinator of establishment either did not take any investigatory or enforcement measures or requested the Commission to intervene. The Commission may require the VLOPs concerned, as well as any other persons acting for purposes related to their trade, business, craft or profession that may be reasonably be aware of information relating to the suspected infringement or the infringement, including organisations performing audits, to provide it with relevant information. The Commission may conduct on-site inspections at the premises of VLOPs; it

	may issue fines; it may make binding the commitments made by the VLOP; it may also take interim measures where there is an urgency due to the risk of serious damage for the recipients of the service.
E-Commerce directive[504]	
-	**The directive does not establish any European-level governance body**. It creates obligations for Member States to have adequate means of supervision and investigation necessary to implement the Directive effectively and to cooperate with other Member States, appointing one or several contact points.[505] The e-Commerce Directive also encourages the use of alternatives enforcement instruments such as codes of conduct at the EU level or out-of-court dispute settlement schemes.
Regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws (CPC Regulation)[506]	
Competent Authorities and single liaison office	Each Member State shall designate **one or more competent authorities and the single liaison office** that are responsible for the application of this Regulation (which concerns other consumer protection laws). Within each Member State, the single liaison office is responsible for coordinating the investigation and enforcement activities of the competent authorities.[507]
Mutual Assistance Mechanism	This Mechanism allows national competent authorities to request information and enforcement measures, from another national competent authority.[508]
Coordinated Investigation and Enforcement Mechanisms for Widespread Infringements and for Widespread Infringements with a Union Dimension	Where there is a reasonable suspicion that a widespread infringement or widespread infringement with a Union dimension is taking place, competent authorities concerned by that infringement and the Commission shall inform each other and the single liaison offices concerned by that infringement without delay. The competent authorities concerned by the widespread infringement or widespread infringement with a Union dimension shall coordinate the investigation and enforcement measures that they take to address those infringements. They shall exchange all necessary evidence and information and provide each other and the Commission with any necessary assistance without delay. Where appropriate, the

[504] https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32000L0031
[505] Article 19 of the Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce').
[506] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32017R2394
[507] Article 5 of the Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004.
[508] Articles 11, 12, 13 and 14 of the Regulation.

	competent authorities may invite Commission officials and other accompanying persons, who have been authorised by the Commission, to participate in the coordinated investigations, enforcement actions and other measures.[509]
Recommendation on election cooperation networks, online transparency, protection against cybersecurity incidents and fighting disinformation campaigns in the context of elections to the European Parliament[510]	
ECNE - European Cooperation Network on Elections	Each Member State should set up a national election network, involving national authorities with competence for electoral matters and authorities **in charge of monitoring and enforcing rules related to online activities relevant to the electoral context**. The European Cooperation Network on Elections (ECNE) should facilitate the swift, secured exchange of information on issues capable of affecting the elections to the European Parliament including by jointly identifying threats and gaps, sharing findings and expertise, and liaising on the application and enforcement of relevant rules in the online environment. This forum provides the nucleus for real time European alert process and a forum for exchange of information and practices among Member State authorities. The online application of offline rules relevant to the electoral context, including inter alia measures to ensure transparency in online political advertising, is listed as one of the ECNE's objectives.
AudioVisual Media Services Directive[511]	
Contact Committee	A **contact committee is established under the aegis of the Commission**. It shall be composed of representatives of the competent authorities of the Member States. The tasks of the contact committee shall be to facilitate effective implementation of the Audiovisual Media Services Directive through regular consultation on any practical problems arising from its application, to deliver opinions on the application of the Directive by the Member States, to be the forum for an exchange of views, to discuss the outcome of regular consultations which the Commission holds with representatives of broadcasting organisations, producers, consumers, manufacturers, service providers and trade unions and the creative community, to facilitate the exchange of information between the Member States and the Commission on the situation and the development of regulatory activities regarding audiovisual media services, taking account of the

[509] Chapter IV (Articles 15 to 25) of the Regulation.
[510] C(2019) 5949 final, and ECNE terms of reference https://ec.europa.eu/info/sites/default/files/terms_of_reference.pdf
[511] https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32010L0013 and revised with https://eur-lex.europa.eu/eli/dir/2018/1808/oj

	Union's audiovisual policy, as well as relevant developments in the technical field and to examine any development arising in the sector on which an exchange of views appears useful. [512]
Commission Decision on establishing the European Regulators Group for Audiovisual Media Services[513]	
ERGA – European Regulators Group for Audiovisual Media Services	The European Regulators Group for Audiovisual Media Services **(ERGA) is an advisory body to the Commission**. The group's task shall be to advise and assist the Commission, in its work to ensure a coordinated and consistent implementation in all Member States of the regulatory framework for audiovisual media services; to assist and advise the Commission, as to any matter related to audiovisual media services within the Commission's competence.
Unfair Commercial Practices Directive[514]	
-	**The directive does not establish any European level governance body**.
Misleading and comparative advertising directive[515]	
-	**The directive does not establish any European level governance body**. Member States shall ensure that adequate and effective means exist to combat misleading advertising and enforce compliance with the provisions on comparative advertising in the interests of traders and competitors.
Consumer Rights Directive[516]	
-	**The directive does not establish any European level governance body.**
Platform-to-Business Regulation[517]	
-	**The Regulationdoes not establish any European level governance body.** Member States are not obliged neither to create new enforcement bodies (they can entrust existing authorities for ensuring such an implementation) nor to provide for *ex officio* enforcement or to impose fines.

[512] Article 29 of the 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).
[513] https://digital-strategy.ec.europa.eu/en/library/commission-decision-establishing-european-regulators-group-audiovisual-media-services.
[514] https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1585324585932&uri=CELEX%3A02005L0029-20220528
[515] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0114
[516] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32011L0083
[517] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R1150

General Data Protection Regulation[518]	
Supervisory authority	**Each Member State shall provide for one or more independent public authorities to be responsible for monitoring the application of the Regulation**. Each supervisory authority shall, on its territory, monitor and enforce the application of the Regulation, handle complaints lodged by a data subject, investigate, to the extent appropriate, the subject matter of the complaint and inform the complainant of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation or coordination with another supervisory authority is necessary, cooperate with, including sharing information and provide mutual assistance to, other supervisory authorities with a view to ensuring the consistency of application and enforcement of the Regulation, conduct investigations on the application of this Regulation, among other tasks. Each supervisory shall have **investigative, corrective, authorisation and advisory powers**. **The lead supervisory authority** shall cooperate with the other supervisory authorities concerned in an endeavour to reach consensus; they shall exchange all relevant information with each other. The lead authority may request at any time other supervisory authorities concerned to provide mutual assistance and may conduct joint operations, in particular for carrying out investigations or for monitoring the implementation of a measure concerning a controller or processor established in another Member State.
European Data Protection Board	The **European Data Protection Board** is established as a body of the Union with legal personality. It is represented by its Chair, and composed of the head of one supervisory authority of each Member State and of the European Data Protection Supervisor. It shall ensure the consistent application of the Regulation, advise the Commission on any issue related to the protection of personal data, issue guidelines, recommendations, and best practices, encourage the drawing-up of codes of conduct and the establishment of data protection certification mechanisms and data protection seals and marks, promote the cooperation and the effective bilateral and multilateral exchange of information and best practices between the supervisory authorities.

[518] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0679

9.13. EU acquis on European Political Parties

European Political Parties (EUPPs) are regulated under the *Regulation No 1141/2014 on the statute and funding of European political parties and European political foundations.*[519] The regulation provides certain limits to the use of public funds by EUPPs, and financial reporting obligations guaranteeing that the funding and spending of EUPPs is transparent to the public. It permits EUPPs to campaign at European level, and requires EUPPs to obey relevant national rules when doing so.

Regulation 1141/2014 includes obligations relevant for online political advertising conducted by EUPPs. These include yearly transparency obligations in relation to donations and contributions, and in relation to the financing and expenditures for electoral campaigns. These take the form of financial statements, later made available to the general public by the European Parliament,[520] and where the EUPPs traditionally distinguish between expenditure on print, audiovisual and online ads. However, it is unknown how many of these are *political* ads (in the sense of conveying a political message – like issues ads do – as opposed to mere informational content such as when the elections will be hosted), though the proportion is reported to be growing.[521] Further, while expenditure linked to the campaigns is to be clearly identified as such by the EUPPs in their annual financial statements, this does not guarantee that the public can identify with enough granularity what the resources spent in the campaign are or to which demographics they are targeted, and interested actors and public authorities cannot hold EUPPs accountable in real-time for their expenditures in online political advertising during elections (the statements are provided more than a year after the money has been used).

The Regulation does not address online political advertising directly – only with respect to the rules regarding the application of funds. However, it restricts European political *foundations* to applying their funds to an exhaustive list of tasks, which does not include political ads – which means that in practice the foundations are prohibited from running political ads. In addition, the Regulation prohibits EUPPs and foundations from financing referendum campaigns.

Besides this, this regulation sets the conditions to qualify as a EUPP and foundation. Both must observe, in particular in their programme and in their activities, the values on which the Union is founded, as expressed in Article 2 TEU, namely respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights. The Regulation also provides for an Authority for EUPPs and European foundations, established for the purpose of registering, controlling and imposing sanctions on these entities. It further provides for an independent committee of independent eminent persons which, when requested by the Authority, shall give an opinion on any possible manifest and serious breach of the values on which the Union is founded, by a EUPP or a European political foundation. In particular, it shall assess whether a EUPP or a European political foundation has deliberately influenced or attempted to influence the outcome of

[519] Regulation (EU, EURATOM) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R1141-20190327

[520] https://www.europarl.europa.eu/groups/accounts_en.htm

[521] As reported in the Commission's 2019 European Parliamentary elections report, p13.

elections to the European Parliament by taking advantage of an infringement of the applicable rules on protection of personal data. Where, in accordance with the verification procedure, that is found to be the case, the Authority is to impose sanctions. This is particularly relevant for political advertising following the Cambridge Analytica case.

On applying for funding, EUPPs must provide evidence that their EU member parties have, as a rule, published on their websites, in a clearly visible and user-friendly manner, throughout the 12 months preceding the final date for submission of applications, the political programme and logo of the EUPP.

In terms of governance, the Regulation clarifies that EUPPs shall be governed either by the regulation itself, or, in matter not regulated by the regulation or matters only partly regulated by it, by the law of the Member States in which the EUPPs and foundations have their respective seats. However, the activities carried out in other Member States shall be governed by the relevant national laws of those Member States. (This shows how, in the absence of a common European legislation, EUPPs are subjected to different national laws regarding the transparency of political advertising.)

Table 8.5. Mapping obligations for EU Political Parties under Regulation 1141/2014 and as amended under Regulation 2019/493

Definitions (Article 2)
'European Political Party' 'European political foundation' means an entity which is formally affiliated with a EUPP, which is registered with the Authority, and which through its activities, within the aims and fundamental values pursued by the Union, underpins and complements the objectives of the EUPP by performing one or more of the following tasks: (a) observing, analysing and contributing to the debate on European public policy issues and on the process of European integration; (b) developing activities linked to European public policy issues, such as organising and supporting seminars, training, conferences and studies on such issues between relevant stakeholders, including youth organisations and other representatives of civil society; (c) developing cooperation in order to promote democracy, including in third countries; (d) serving as a framework for national political foundations, academics, and other relevant actors to work together at European level;
Prohibition of funding (Article 22)
The funding of European political foundations from the general budget of the European Union or from any other source shall not be used for any other purpose than for financing their tasks and to meet expenditure directly linked to the objectives set out in their statutes. The funding of EUPPs and European political foundations from the general budget of the European Union or from any other source shall not be used to finance referendum campaigns.
Accounts, reporting and audit obligations (Article 23)
Within six months following the end of the financial year, EUPPs and European political foundations shall submit to the Authority:
Their annual financial statements and accompanying notes, covering their revenue and expenditure, assets and liabilities at the beginning and at the end of the financial year, in accordance with the law applicable in the Member State in which they have their seat and their annual financial statements on

the basis of the international accounting standards.
An external audit report on the annual financial statements, covering both the reliability of those financial statements and the legality and regularity of their revenue and expenditure, carried out by an independent body or expert.
The list of donors and contributors and their corresponding donations or contributions.
Conditions for registration (Article 3)
In order to be registered, a EUPP or European Political Foundation must observe, among other requirements, the values on which the Union is founded, as expressed in Article 2 TEU, namely respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.
Sanctions (Article 27)
Removal of the EUPP or the European political foundation from the Register (losing legal status of EUPP)
Financial sanctions
Exclusion from Union funding for up to five years (or ten years in cases of repeated infringements)
Responsibility of natural persons (Article 27a)
Where the Authority imposes a financial sanction, it may establish that a natural person is also responsible for the infringement.
Authority for EUPPs and European political foundations (Articles 6 and 10**)**
An independent Authority is established for the purpose of registering, controlling and imposing sanctions on EUPPs and European political foundations in accordance with the Regulation. The Authority shall assess EUPPs' compliance and shall decide on their registration and de-registration.
Committee of independent eminent persons (Article 11)
When requested by the Authority, the committee shall give an opinion on any possible manifest and serious breach of the values on which the Union is founded, by a EUPP or a European political foundation. To that end, the committee may request any relevant document and evidence from the Authority, the European Parliament, the EUPP or European political foundation concerned, other political parties, political foundations or other stakeholders, and it may request to hear their representatives.
Verification procedure ('Article 10a): If the Authority is informed of a decision of a national supervisory authority under the GDPR finding that a natural or legal person has infringed applicable rules on the protection of personal data, and if it follows from that decision, or if there are otherwise reasonable grounds to believe, that the infringement is linked to political activities by a EUPP or a European political foundation in the context of elections to the European Parliament, the Authority shall refer this matter to the committee of independent eminent persons. The committee shall give an opinion as to whether the EUPP or European political foundation concerned has deliberately influenced or attempted to influence the outcome of elections to the European Parliament by taking advantage of that infringement. The Authority shall decide whether to impose financial sanctions.

Annex 9: Illustrative use cases

This Annex draws attention to the complexity and high costs falling upon economic actors and political parties wishing to engage in cross-border advertising services, in the present state of non-harmonised national obligations related to political advertising activities. A number of use cases are provided to illustrate issues that can arise, including: additional costs, tensions or legal uncertainty regarding the applicable rules for the provision of cross-border services; demanding compliance efforts (such as training personnel, complying with different information obligations in the various Member States, requiring legal advice, or even refraining from offering cross-border services); potential problems regarding the control and enforcement of national laws by the relevant authority, and circumvention issues.

The scenarios below envisage the provision of various advertising services from one Member State (MS A) to another (MS B), with one particular economic actor of the ad chain in focus (it may be a service provider, an ad intermediary, a social media platform, a political consultancy or communications agency, a website; it can be online or offline). Each use case is presented in the form of a table, where the relevant obligations applicable to both the political party and the economic actor are highlighted.

Some use cases (such as 1 & 2) are to be read together, as they contrast one cross-border scenario with its reverse, highlighting the difference in terms of applicable obligations, costs and constraints – and in particular, where applicable, the fact that a service is possible from MS A to MS B but not from MS B to MS A.

Scenarios

1) SI service provider of online political advertising providing its services to HR political party

From perspective of service provider in MS A	**From perspective of political party in MS B**
Under Slovenian legislation, the Slovenian service provider can provide its services to a Croatian political party outside elections period and during pre-election campaigns. To illustrate, during the 2019 EP elections, there was political advertising expenditures from Slovenia to Croatia, which amounted to €130,300.[522]	HR covers political ads by the broader concept of "election campaign". **Political actors are to report on their expenses on social platforms (indicating the name of the social network)**: *The report on costs (expenses) referred to in paragraph 4 of this Article shall include the costs of advertising the election campaign on social networks and the costs of media advertising, the latter of which shall be detailed in the report on media advertising of the election campaign referred to in Article 12 of this Ordinance.*[523]

[522] Source: underlying study, table 2 (Bilateral cross-border expenditure in the 2019 EP elections).

[523] Ordinance on the manner of keeping records, issuing certificates and entering reports on financing political activities, election campaigns and referendums in the information system for financing supervision (Official Gazette 71/19).

2) HR service provider of online political advertising providing its services to SI political party

From perspective of service provider in MS A	From perspective of political party in MS B
The Croatian service provider can provide its services to a Slovenian political party outside elections period and during pre-election campaigns, whereas in Croatia**, advertising is not permitted for political parties**, coalitions and independent representatives, **except** during election campaigns in accordance with a special law (art. 30 of the Electronic media act).	The principal piece of legislation governing political advertising is the Election and Referendum Campaign Act. There is a special act governing provisions on public radio and television during the campaign periods (Radiotelevizija Act). On financing, the Political Parties Act is also important. There is no legislation governing specifically online political advertising. Political advertising is defined by Article 25 of the Slovenian Advertising Codex adopted by the Slovenian Advertising Chamber: "Any advertising during elections, referendums or related political activities in accordance with the applicable regulations governing this area". **Paid political advertising outside elections period and during pre-election campaigns is allowed in Slovenia.** While the costs of the election campaign are legally limited as they may not exceed the maximum allowable expenditure, the costs outside the election campaign for spending on advertising is unlimited. **These rules (on costs) apply to all political advertising, with no distinction between "offline" and "online" political advertising.** All propaganda that could change the opinion of voters is forbidden during the "election silence". The posting of new posters during the election silence is forbidden. Since the 2016 Supreme Court judgment, the election silence applies only to organisers of election campaigns, political parties and candidates (case IV Ips 31/2016). These rules are also applicable and enforced online. There are no particular Slovenian rules applicable to online platforms and intermediaries such as social media: The same rules apply to online platforms as for offline media. [In Croatia, there are no specific regulations on online advertising during the pre/election period. The Electronic Media Act provides for general provisions on online publications, however they do not apply to social media.]

3) BE service provider of online political advertising providing its services to FR political party

Instrument	From perspective of service provider in MS A	From perspective of political party in MS B
French legislation	**The FR rules are quite strict** FR Electoral Code can be considered to define online political advertising in Article L48-1, which specifies that the prohibitions and restrictions rules on electoral propaganda are applicable to any **message having the character of electoral propaganda disseminated by any means of communication to the public by electronic means.** *It must be underlined that the ban on distributing publicity for propaganda*	FR rule Art. L-52-16 : No form of commercial advertising may be used for electoral purposes for the

	purposes prohibits the commercial referencing of a website in a search engine prior to an election, but not the creation of a website that is only accessible to voters who visit it intentionally. Article L. 163-1 of the Electoral Code imposes on online platform operators **transparency obligations** relating to the **promotion of information content linked to a debate of general interest**. As such, **online platforms and intermediaries whose number of connections on French territory exceeds 5 million unique visitors per month on average per year must provide** the users with fair, clear and transparent **information on the identity** of the private person or the company, which pays to the platform for the promotion of information content related to a debate of general interest (décret No 2019/297 du 10 avril 2019). Online platforms and intermediaries must also make public **the amount of the remuneration received** for the promotion of such content when the amount exceeds a specific threshold. This information must be made available to the public in a register, regularly updated during the campaigning period. It is perfectly legal for a political party, candidate, or campaign to have a website, a Facebook page, a Twitter account, or any similar internet presence, but it is illegal to pay for political advertising during the period that runs from the first day of the sixth month before an election, up to the end of the election. *For example, the first round of the last French presidential election took place on 23 April 2017, and the second round took place on 7 May 2017. From 1 October 2016, until the closing of the last polling station on 7 May 2017, the candidates and their campaigns were prohibited from buying ads on the internet. This includes not only banner ads, but also other advertising techniques such as paid referencing, sponsored links, or the purchase of key words on search engines.* Law against the dissemination of false information of 22 December 2018: **Online platforms are required to establish a way for users to flag false information likely to disturb public order or alter the sincerity of elections**, especially when it is in content promoted for a third party. This method of flagging false information must be "easily accessible and visible." Furthermore, online platforms are *encouraged* to take measures such as • improving the transparency of their algorithms, • promoting content from press agencies and radio and television services, • fighting against accounts that massively disseminate fake information, • informing users of the identity of the person(s) or organization(s) that bought paid content related to "a debate of national interest," • informing users of the nature, origin, and manner of broadcasting content, and • educating people about the media and information. Article 13: **Online platform operators must designate a legal representative in France to serve as a point of contact for the application of these provisions** Some provisions of this law aim to improve transparency for political	benefit of a candidate or a list of candidates without the express consent of the candidate, the person responsible for the list or their duly qualified representative.

	advertising on the internet. Specifically, the law amended the Electoral Code to provide that **online platforms** with at least five million unique visitors per month **must, during the three months preceding the first day of a month during which a national election is scheduled, and until the end of that election, provide users with "faithful, clear, and transparent information on the identity" of the person(s) or organisation(s) that bought paid content related to "a debate of national interest."** Additionally, during that same time-frame, **online platforms** are required to give their users **"faithful, clear and transparent information on the use of their personal data in the context of promoted information content related to a debate of national interest."** Furthermore, during the same time period, **online platforms** that are paid €100 or more per sponsored content must **make the payment amount public**. Failure to abide by these requirements is punishable by up to one year in jail and a fine of €75,000.	
GDPR	If personal data is processed, the GDPR applies, meaning certain obligations fall on the controller. In particular, depending on the kind of service offered by the Belgian service provider, and in particular depending on the extent to which either side defines the means and purposes of the processing, either the political party will be the data controller and the service provider its processor, or they will both be joint controllers. Of particular relevance here is the French DPA's guidance[524] on political parties' processing of personal data originating from social media. The DPA distinguishes between two categories of relevant social media users: the users who are in 'regular contact' with the political party (e.g. those who 'follow' an political actor's social media page, if the said page duly informs them about the data collected, the purpose, and how to object), and the users who have merely an 'occasional contact' with the party (e.g. they merely 'liked' one of its social media posts). The DPA's guidance indicates that **the consent of regular contacts (with due transparency on the aims, means, etc. of the processing, and due respect to other GDPR obligations) is enough for the political party to process their personal data for** - **sending them messages of political nature.** - **enriching and cross-matching the party's database about its supporters (those that are regular contacts) on social media.** - **profiling and targeting them.** As it intends to rely on the Belgian service provider to process its regular contacts' data as part of its electoral strategy, the French political party must have duly respected transparency requirements under GDPR article 13. In particular, prior to providing their consent, these 'regular contacts' must have been informed about the purposes of the processing and the recipients or categories of recipients of the personal data (the BE service provider). Depending on the role of the Belgian service provider (i.e. if it is a joint controller, not a data processor), it may have to **take appropriate actions to ensure these information obligations are fulfilled**.	The Belgian DPA's guidance[525] is relatively similar to the FR on this topic. As long as they are duly informed and are able to object anytime, the data subjects' consent is not required if there is an existing relation between them and the party. However, the guidance only mentions this for the purpose of "presenting the person with political propaganda within the framework of elections" (thus not for profiling, enriching databases, etc.)

[524] https://www.cnil.fr/fr/communication-politique-quelles-sont-les-regles-pour-lutilisation-des-donnees-issues-des-reseaux

[525] https://www.autoriteprotectiondonnees.be/publications/note-juridique-sur-les-elections.pdf

4) FR service provider of online political advertising providing its services to BE political party

Instrument	From perspective of service provider in MS A	From perspective of political party in MS B
Belgian legislation	**There are no particular rules concerning online platforms (social media) for political advertising. There is no definition of online political advertising.** The *Vlaamse Regulator voor de Media* recommends imposing transparency obligations such as found in the Code of practice to tackle the spread of online disinformation and false information.	Political parties are free to use online platforms (social media) for political advertising / self-promotion. Law of 4 July 1989. - *Loi relative à la limitation et au contrôle des dépenses électorales [engagées [pour l'élection de la Chambre des représentants], ainsi qu'au financement et à la comptabilité ouverte des partis politiques.* Art. 2: Paid political ads are allowed during pre-election campaigns. **No party is allowed to spend more than EUR 1 Mio for an election campaign**. According to VVA, **these rules are not specifically applicable/enforceable online**. Art. 4 §3 9° indeed states that « *The following are not considered as election propaganda expenses: expenses relating to the creation, adaptation and management of Internet applications*» Art. 4 provides for the definition of electoral propaganda expenses as being all expenses and all financial commitments relating to verbal, written, audio and visual messages, intended to favourably influence the result of a political party and its candidates and issued within four months preceding the elections. Yet, **there is no specific definition of online political advertising.**
GDPR	The Belgian DPA's guidance[526] indicates that political parties do not need the data subjects' consent to serve them "political propaganda within the framework of elections" when these are in regular contact with the party (e.g. members) – provided they duly informed about the purposes of the data processing and are able to object to it anytime. Despite being in the same spirit, **the French DPA's guidance[527] is less permissive, as it requires consent for targeting these regular contacts with political ads**. In their contractual arrangement (between controller and processor), the BE party and the FR service provider	

[526] https://www.autoriteprotectiondonnees.be/publications/note-juridique-sur-les-elections.pdf
[527] https://www.cnil.fr/fr/communication-politique-quelles-sont-les-regles-pour-lutilisation-des-donnees-issues-des-reseaux

	will have to be clear with each other: the BE party about what it wants the service provider to do, and the FR service provider about what it is legally allowed to do. In consequence: The BE political party is in practice incentivised (but not obliged) to rely on the services of a BE service provider instead of on the services of a FR service provider, because the FR one requires the political party to collect its regular contacts' consent – whereas the BE doesn't.	

5) Online social media platform established in France wishes to offer politically-targeted political ads[528] to ad agency in Spain, for circulation in Spain.

This use case lists the obligations that fall upon two economic actors under the GDPR, AVMSD and DSA.
As the GDPR is a Regulation, the same obligations apply in ES as in FR. The ES rules on the processing of sensitive personal data are more restrictive than the FR rules, however, and this impacts what kind of cross-border advertising services can be offered. This is specifically permitted by the GDPR . It is a limited example of where there could be some tensions in the legal framework applicable to market actors and one where we there is a possibility of the national rule being circumvented in a cross-border context.

Instrument	**From perspective of platform (publisher) in France**	**From perspective of ad agency (advertiser) in Spain**
GDPR	The GDPR rules on personal data processing apply. The creation and use of a social media account involves the disclosure of a number of attributes, which may include name, date of birth, gender, place of residence, or political interests, for instance. This personal data can be used by the platform to develop criteria, based on which specific ads will be addressed at the users. To target users with political ads, the platform must first comply with data processing principles (e.g. fairness, data minimisation, accountability) and have a valid legal basis (consent, as per the EDPB *Guidelines on the targeting of social media users*, p18, p32). Article 9 GDPR prohibits the processing of	The EDPB *Guidelines on the targeting of social media users* state (para 117) that "If a targeter engages a social media provider and requests that the social media provider targets users based on a special category of data, the targeter will be jointly responsible [i.e. a joint controller] with the social media provider for the processing of the special category data." The Spanish ad agency is therefore a joint controller in this case, and will have to respect the GDPR's rules and fulfil its relevant obligations (cf. column on the left). However, a Spanish enactment taken to adapt national laws to the GDPR, the Organic Law on Protection of Personal Data and Guarantee of Digital Rights, includes a provision which affects the conditions for giving consent as an

[528] Politically-targeted political ads are targeted based on sensitive data (GDPR article 9, 'special categories of data'). They are a sub-set of the broader category of political targeted ads, which could also be targeted based on non-sensitive data, e.g. one's age or location (*if* the latter is not used as a proxy for political opinions).

	special categories of personal data, including personal data revealing political opinions, unless one relies on one of the exemptions listed in the article. The EDPB *Guidelines on the targeting of social media users* indicate (p18, p32) that the only adequate exemption for processing special category of data for targeting purposes would be the data subject's explicit consent. The French social media provider must therefore have been very transparent toward the user about the processing of personal data and the serving of targeted ads on its platform. The consent it has queried from the social media users must have been explicitly about the processing of (well-defined and limited categories of) the users' personal sensitive personal data, for the (limited) purposes of profiling them and targeting them with political ads. (Blanket collection of data, for vaguely-defined or broad purposes is not allowed in view of the fairness, purpose limitation and data minimisation principles.) The EDPB *Statement 2/2019 on the use of personal data in the course of political campaigns* indicates that affecting a person's vote in an election through automated decision-making counts as a legal effect, and that "Profiling connected to targeted campaign messaging may in certain circumstances cause 'similarly significant effects'." In light of this, article 22 GDPR (automated decision-making) applies. Because of that, the platform must always facilitate the social media users the exercise of their right to withdraw consent and not to be subject to the processing any more. In view of the above, the platform must also have conducted a Data Protection Impact Assessment (article 35(3)(a) and (b)) beforehand. To fulfil the requirements of Article 15 GDPR (right of access) and to ensure full transparency in this context, the measures of the social media provider to facilitate the exercise of this right should include the implementation of a mechanism for data subjects to check their profile and how they have been profiled, including details of the information and sources used to develop the profile (EDPB *Guidelines*	appropriate legal basis for the processing of sensitive data (article 9). More specifically, the law states that, "For the purposes of Article 9(2)(a) of Regulation (EU) 2016/679, in order to avoid discriminatory situations, **the sole consent of the data subject shall not be sufficient to lift the prohibition on the processing of data the main purpose of which is to identify their ideology**, trade union membership, religion, sexual orientation, beliefs or racial or ethnic origin." **Political parties** may not use the **explicit consent** legal basis, nor the **public interest** legal basis previously entrenched in the national electoral law (LOREG Art. 58 bis, struck down by the Spanish Constitutional Court), but may **target electoral propaganda based on the processing of sensitive data during electoral periods if such data is explicitly made publicly available by the data subject**. The Spanish DPA further forbids microtargeting that attempts to divert [*desviar*] the will of voters, as well as profiling at individual level or on the basis of very specific personal characteristics.[529] It is is hence very difficult in practice **for Spain-based companies legally to sponsor political ads targeted based on people's political opinions**. However, following the e-Commerce directive, if a service complies with the law in MS A, it may circulate to MS B. **The France-based platform is therefore itself in theory not barred from processing the Spanish residents' sensitive personal data and targeting them, something that Spain-based companies cannot do except as processor** (neither to residents of Spain nor to residents of any other MS). The Spanish advertiser being a joint controller in this case, it must respect its obligations under the (Spanish) GDPR and therefore cannot circumvent the Spanish 'rule' on politically-targeted political ads by relying on a non-Spanish Platform. Further, as a joint controller, the Spanish advertiser must ensure that the French social media platform is aware of the relevant obligations the advertiser has. **The platform is therefore unable to provide the intended service to the advertiser in this case**

[529] Circular 1/2019, de 7 de marzo, de la Agencia Española de Protección de Datos, p4. https://www.boe.es/boe/dias/2019/03/11/pdfs/BOE-A-2019-3423.pdf

	on the targeting of social media users, para 100) as well as the logic involved in any automated decision-making system used by the controller. Data subjects shall further have access to information including on the source of personal data that was not collected from them, and on "the recipients or categories of recipients to whom the personal data have been or will be disclosed [if any], in particular recipients in third countries or international organisations." Data subjects also have a right to rectification and erasure of their data: the measures to facilitate the exercise of their rights should include a mechanism enabling them to access, rectify and erase directly the interest categories with which they have been assimilated by the social media platform. In the context of targeted advertising, the platform and the advertiser may be joint controllers according to the GDPR (Article 26). It needs to be assessed and, if this is the case, the responsibilities of each side must be adequately and clearly distributed (e.g. in practice, the French platform will be the one tasked with collecting the data subjects' consent). With joint controllership, the data subjects should be able to learn from the platform the identity of the joint controller they are not in contact with (the advertiser), the essence of the arrangement between the joint controllers, and how to exercise their rights, because they can exercise their rights in respect to and against each of them.	**– which would not be the case if the advertiser were not Spain-based, *even* if the ads were still for circulation in Spain**. Spanish platforms and targeters suffer a competitive disadvantage, since there is a **limitation on the provision of cross-border services** (politically-targeted political ads) by and to Spanish-based entities. **Non-Spanish entities can circumvent the national rule if they don't involve Spanish entities in the processing.** Further, this situation creates a **lack of legal clarity** for platforms desiring to offer/receive cross-border services to/from Spain. This case shows that attempts at regulating political targeting itself at the national level would be very ineffective in terms of protection and destructive in terms of market growth; if regulation is necessary, it should be done at EU level. **To summarise**, the existence of this difference regarding the processing of sensitive data in Spain has the following potential effect: 1. A limitation on the provision of certain kinds of cross-border targeted political ad services to and from Spain-based entities (intended as a safeguard for the protection of Spanish residents). 2. A lack of legal clarity regarding the provision of these cross-border services. 3. Extra compliance costs for Spain-based entities, as well as for the market players willing to engage with Spain-based entities (e.g. need for substantial legal advice to mitigate legal risk). 4. Risk of regulatory arbitrage: non-Spanish market players are able to circumvent the limitation that applies to Spain-based entities – if their personal data processing does not rely on these entities. 5. Unintended disadvantage for Spain-based market actors which, unlike actors from other Member States, are unable to offer cross-border politically-targeted political advertising services (anywhere in the EU).
AVMSD	If the ad is audiovisual material of a commercial nature, the platform must: - Mention the name, address, email address of the media service provider, as well as identify the competent supervisory authority.	

	- Label the ad (i.e. identify it as a product placement). - Make sure that the ad respects the limitations regarding hate speech and harmful messages.	
DSA	The platform has user-facing transparency obligations: • stating the information displayed is an advertisement. • the natural or legal person on whose behalf the advertisement is displayed. • meaningful information about the main parameters used to determine the recipient to whom the advertisement is displayed. It must also retain and display it in an ad repository, specifying: • the content of the advertisement. • the natural or legal person on whose behalf the advertisement is displayed. • the period during which the advertisement was displayed. • whether the advertisement was intended to be displayed specifically to one or more particular groups of recipients of the service and if so, the main parameters used for that purpose. • the total number of recipients of the service reached and, where applicable, aggregate numbers for the group or groups of recipients to whom the advertisement was targeted specifically.	

6) Ad agency in MS A is commissioned by a Maltese political party to run political ads, for circulation in MS A and in Malta.

Instrument/Obligations	From perspective of ad agency in MS A, circulating ads in MS A	From perspective of ad agency in MS A, circulating ads in Malta
National laws	MS A's laws apply, the ad agency can run the ads following the relevant national requirements	The Foreign Interference Act[530] forbids political ads by 'aliens,' i.e. non-Maltese citizens, even if they are EU citizens. Aliens are forbidden from performing, doing, holding, taking part in, aiding or abetting, or allowing any restricted activity in Malta. The ad agency is able to run the Maltese ads in MS A, but not in Malta.

7) FR service provider of **offline** political advertising (broadcasting) providing its services to BE political party

[530] https://europam.org/data/mechanisms/PF/PF%20Laws/Malta/Malta_Foreign%20Interference%20Act_1982.pdf

Instrument	From perspective of service provider in MS A	From perspective of political party in MS B
Belgium legislation	Art. 5 of the BE Law of 4 July 1989 provides that **during the 4 months preceding the date of the elections**, the political parties and the candidates, as well as third parties wishing to make propaganda for political parties or candidates, may **not distribute commercial advertisements on radio, television** and in cinema. At the same time the Law of 4 July 1989 explicitly allows the broadcasting on radio or television of programmes containing opinions or comments, if these programmes are carried out in the same way and according to the same rules as outside election periods, without or without remuneration. It also allows the broadcasting on radio or television of an election programme or of a series of election programmes, provided that representatives of the political parties may take part in these programmes. Finally, it is permitted to have radio or television broadcasting of election programmes, provided that their number and duration are determined according to the number of representatives of political parties in legislative assemblies	1) BE Loi of 4 July 1989. - *Loi relative à la limitation et au contrôle des dépenses électorales [engagées [pour l'élection de la Chambre des représentants]], ainsi qu'au financement et à la comptabilité ouverte des partis politiques*. Art. 2: **Paid political ads allowed during pre-election campaigns**. **Maximum spend**: EUR 1 Mio. Art. 4 provides for the definition of electoral propaganda expenses as being all expenses and all financial commitments relating to verbal, written, audio and visual messages, intended to favourably influence the result of a political party and its candidates and issued within four months preceding the elections. Yet, There is no specific definition of online political advertising. Art. 5: **during the 4 months preceding the date of the elections, the political parties and the candidates, as well as third parties wishing to make propaganda for political parties or candidates, may not to distribute commercial advertisements on radio, television and in cinema.** 2) BE Regulation – *Règlement relatif aux programmes de radio et de télévision en période électorale* The Regulation applies to all elections organised in Belgium, i.e. federal legislative elections, regional elections, European elections and municipal and provincial elections. They are addressed to all audiovisual media services publishers under the French Community of Belgium. They do not apply to the services disseminated on open platforms, published by or on behalf of candidates, lists, ideologies or parties and openly dedicated to the electoral communication thereof. They apply during the three months preceding the ballot, except in the case of early elections, where this period may be brought back to 40 days (federal legislative elections and regional elections) or 50 days (local elections) before the poll. Publishers are responsible for complying with this Regulation for all programs disseminated on the services they assume editorial responsibility. If an audiovisual media service publishers covers

		the election campaign on a social network account open to its name, or on behalf of one of its services, the Regulation applies to the production of the audiovisual contents distributed therein.
AVMSD	Article 3: Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of audiovisual media services from other Member States for reasons which fall within the fields coordinated by this Directive.	

8) BE service provider of **offline** political advertising (broadcast) providing its services to FR political party

Instrument	From perspective of service provider in MS A	From perspective of political party in MS B
French legislation	The service provider cannot propose its services to French political parties during the pre-election period but only during the 'campaigning period' (second Monday before polling day – ending the day before polling day at midnight = Art. L47A of Electoral Code). During the six months prior to an election (pre-election period) and until the date of the ballot when it is acquired, the use, for the purposes of electoral propaganda, of any process of commercial advertising in the press or in any means of audio-visual communication is prohibited. (Art. L52-1 of Electoral Code). **Promotional audio-visual programmes of a political nature are prohibited at all times**, including during pre-elections period (Article 14, para 2 and 3 of Law No 86-1067 of 30 September 1986 on freedom of communication). During the six weeks preceding polling day, audio-visual media, in particular, the **publishers of radio and television services** must, in their election coverage, **ensure that the candidates** and their supporters "**are presented fairly and given fair access to airtime**" (Resolution No 2011-1 of 4 January 2011 relating to the principle of political pluralism in radio and television services during the election period). News coverage unrelated to the election remains subject to these rules.	For French offline service providers: During the electoral campaigns, the broadcasts of the public audio-visual communication services shall be made available to political parties and groups (Article L167-1 of the Electoral Code). In particular, for the first ballot, a transmission time of seven minutes shall be made available to each party or political group. For broadcasts preceding the second ballot, a five-minute broadcast period is made available to the same parties and political groups. In addition, the expenses related to the official audio-visual campaign are the responsibility of the State.
AVMSD	Article 3: Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of	

	audiovisual media services from other Member States for reasons which fall within the fields coordinated by this Directive.	