Towards new rules on transparency and targeting of political advertising

OVERVIEW

Political advertising is central to informing and influencing how people vote, and may affect citizens' perceptions of the legitimacy of their political system, mainly when published in the run-up to elections. Therefore, rules governing political advertising are vital to guaranteeing citizens' fundamental rights and the integrity of democratic processes. However, traditional campaigning regulations can be ineffective or difficult to enforce online, where new techniques are utilised to target potential voters, with tailored political messages based on large amounts of personal data revealing their preferences, demographic attributes and personality traits.

To address the new challenges posed by political campaigns, the European Commission proposed a harmonised set of rules on the transparency and targeting of political advertising applicable to both online and offline political advertising. The Council adopted its mandate for negotiations in December 2022, and the Parliament its own mandate in February 2023. After lengthy deliberations, the co-legislators reached agreement in November 2023, and adopted the new regulation in early 2024. It entered into force on 9 April 2024, and most provisions will take effect on 10 October 2025. However, those ruling out discrimination by providers of political advertising services based on place of residence or establishment of the advertising European political party or sponsor thereof take effect immediately, i.e. in time for the 2024 European elections.

Proposal for a regulation of the European Parliament and of the Council on the transparency and targeting of political advertising

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<td>Maria-Manuel Leitão-Marques (S&amp;D, Portugal)</td>
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Author: Kamil Baraník
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Introduction

Electoral campaign rules, including those on political advertising, are crucial to guaranteeing that electoral processes are free and fair and that all candidates have equal opportunities to address potential voters. These rules also undisputedly impact candidates’ and voters’ fundamental rights. Candidates in elections present themselves and their programmes to the electorate through political advertisements, exercising their freedom of expression. Voters have the right to receive information from all candidates and, accordingly, to decide freely how to vote.

In many EU Member States, electoral campaign rules still focus on offline campaigns using traditional media. However, digital technologies and social media have revolutionised the field, making rules designed to address the offline sphere insufficient or difficult to enforce. The online environment allows political parties and other stakeholders to target potential voters far more effectively than the traditional tools of the offline world. It enables the collection of vast amounts of personal data, including data on online behaviour, and their use to identify relatively homogenous segments of citizens. It also makes it possible to send tailored online political messages, thereby greatly facilitating campaigning. Such an approach offers political actors broad reach and rapid deployment at low costs. On the other hand, the use of these novel techniques may have a severe impact on citizens’ right to privacy. They may be used to spread false information rapidly, fragment the political debate, and manipulate voters, affecting their capacity to make free and informed political choices. Even though it has been difficult to prove a direct link between these campaigning practices in different electoral processes and the election results, significant scandals have surrounded the massive utilisation of such methods (e.g. Cambridge Analytica).

In response to these developments and to deliver on commitments made in its European democracy action plan, the European Commission presented in November 2021 a new legislative package to reinforce democracy and ensure the integrity of elections. The package includes two proposals to amend two directives on electoral rights of mobile citizens (European elections and municipal elections), a proposal to recast the Regulation on the statute and funding of European political parties and foundations, and a proposal for a new regulation on transparency and targeting of political advertising, which is analysed in the present publication.

Existing situation

Political advertising during electoral periods was heavily regulated at the national level. Rules focused mainly on: (i) establishing a clear distinction between political advertising and editorial content; (ii) the allocation of free airtime during the electoral campaign to candidates, mainly on public audiovisual broadcasters; (iii) regulating access to paid political advertising to ensure that all candidates have equal opportunities to address the electorate; (iv) limiting the amounts candidates can spend on political advertising during the electoral campaign; and (v) ensuring transparency as regards political advertising.

The Commission's impact assessment (IA) accompanying the proposal (Annex 7) noted that although all Member States had rules on political advertising, only 17 had regulations that applied to the online environment. Only three had rules specific to online political advertising. The other 14 Member States also used the rules for offline political advertising in the online environment. Furthermore, national rules on transparency and targeting of political advertising varied. The main discrepancies included the dissimilar definitions of political advertisements, the requirements concerning clear identification of political adverts to distinguish them from other content (labelling), and the amount of information needed to be displayed with every political advert (e.g. sponsor, or the price of the advertisement). Differences also concerned regulation of targeting techniques. Some Member States banned political targeting regarding certain users or under certain conditions (e.g. Spain and Ireland). In contrast, others imposed several transparency obligations when targeting techniques were used (e.g. Finland, France and – soon – Ireland).
Towards new rules on transparency and targeting of political advertising

Although political advertising was regulated mainly nationally, EU institutions had launched initiatives to ensure greater transparency in online political advertising through non-regulatory or self-regulatory measures. In its 2018 communication on tackling online disinformation, the European Commission called for online platforms to step up their efforts on disinformation and transparency in political advertising. To that end, the Commission supported drafting the 2018 code of practice on disinformation, signed by major online platforms and advertisers (e.g. Facebook, Google, Twitter) and included 21 commitments in different areas. Regarding political advertising, signatories committed to making advertisements distinguishable from editorial content, enabling public disclosure of political advertisements, ‘which could include actual sponsor identity and amounts spent’, and not to discourage or prohibit good-faith research into political advertising on their platforms.

Ahead of the 2019 European elections, the 2018 Commission action plan against disinformation, and the electoral package from the same year, included measures to ensure a free and fair European electoral process, some of which concerned political advertising. Presented as part of the 2018 electoral package, the Commission’s recommendation of 2018 suggested that Member States should encourage and facilitate the transparency of paid online political advertising and communications by promoting the disclosure to citizens of the sponsors of political adverts, the amounts paid for them, and the targeting criteria used to disseminate the advertisements online. The recommendation also asked Member States to apply appropriate sanctions when personal data were used unlawfully to influence elections to the European Parliament.

The Commission’s assessment of the 2018 code of practice and report on the 2019 European elections pointed to shortcomings and loopholes in the available instruments. The signatories’ efforts to increase the transparency of political advertisements were found to be insufficient: the code’s application was inconsistent across platforms and Member States; it did not contain uniform definitions; relevant areas, such as political (micro-)targeting, were not covered; and online platforms had adopted diverging policies on political communications/advertisements, with some banning political advertising ahead of the 2019 European elections altogether. Moreover, as the code was voluntary, it created asymmetries between signatories and non-signatories. The code was strengthened in 2022 based on Commission guidance. However, when that strengthened version was presented, the Commission had already proposed the transparency and targeting of political advertising.

Parliament’s starting position

The European Parliament has repeatedly expressed concerns about foreign (and internal) malicious interference in national and European electoral processes that could distort the integrity of elections in the EU, manipulate citizens’ voting behaviour, and sow distrust in democratic institutions. In its 2018 resolution on the Cambridge Analytica scandal, Parliament affirmed the need to counter any attempt to manipulate the 2019 European elections. It argued that electoral laws should be adapted to the online environment, imposing limits on political communications during election periods and enhancing the transparency of paid online political advertisements and communications. Parliament stressed that citizens should easily recognise online paid political advertisements and communications, the party, foundation or organisation behind them, the sum paid for it, the criteria for selecting the advertisements’ target group, and that target group’s expected size. While Parliament has acknowledged the code of practice’s positive impact on disinformation, including increasing the transparency of political advertising, in its resolution taking stock of the 2019 European elections, it noted the code’s voluntary nature and limited impact. Parliament pledged to harmonise national campaign rules, considering that a uniform legal framework was more appropriate to regulate transnational online electoral campaigns.

Parliament set up two successive special committees on foreign interference in democratic processes in the EU (INGE and INGE 2). Both committees have pointed to the same issues: online political advertising is unregulated in some Member States, online political advertising lacks...
transparency, and the non-transparent nature of political targeting techniques potentially impacts citizens’ rights and the integrity of elections in the EU. The INGE committee’s final report stressed the need to prohibit adverts funded by actors external to the EU, guarantee complete transparency for political adverts funded by actors within the EU, and ban (micro-) targeting techniques for political advertising, including those based on sensitive personal data.

Preparation of the proposal

The Commission conducted a public consultation on political advertising between January and April 2021, in which it focused on the definition of political advertising; whether political advertisements should be labelled as such; the information that it would be helpful to disclose with each political advertisement, how to regulate the use of targeting and amplification techniques in this area; and whether legislative action was appropriate at the EU level. 137 responses were received. The public consultation – with meetings with stakeholders, work conducted in the Council and the Parliament, and an external study – fed into the Commission’s impact assessment (IA). The IA identified three main problems the proposal should address: obstacles to the cross-border provision of political advertising services, insufficient transparency of online political advertisements, and, resulting from this lack of transparency, challenges to the integrity of democratic processes. EPRS has published an initial appraisal of the Commission's IA.

The Commission's proposal

The Commission’s proposal abandoned the self-regulatory approach. It sought to harmonise the regulatory framework for sponsored political advertising.

First, Article 114 of the Treaty on the Functioning of the EU (TFEU) served as the legal basis due to the fragmentation of rules on political advertising, which could restrict the free movement of services in the internal market. Second, Article 16 TFEU empowered the co-legislators to adopt provisions prohibiting certain types of targeting and amplification of political ads.

The proposal sought (i) to establish common rules applicable to both online and offline political advertising, with specificities for the online environment; (ii) to apply only to sponsored political advertising; (iii) to apply not only to political advertising in the run-up to elections but also in between elections, outside the period most EU Member States' recognise as the period of the electoral campaign; and (iv) to leave the national rules imposing obligations on broadcasters partially untouched, focusing on transparency requirements of political advertising services and prohibiting some of the most invasive techniques (especially targeting).

The proposal complemented the Digital Services Act (DSA) by imposing specific transparency requirements on online political advertisements. Online advertisements falling outside the proposal's scope would thus be covered by the DSA, which imposes less stringent rules on providers of online advertising services. Moreover, the proposal supplements the rules on the processing of personal data in the context of political advertising laid down in the General Data Protection Regulation (EU) 2016/679 (GDPR) and the EU Data Protection Regulation (EU) 2018/1725, prohibiting the use of targeting and amplification techniques based on the use of sensitive personal data.

Scope of the proposal

The proposal introduced several obligations on providers of political advertising services, irrespective of the means used to publish or disseminate the advertisements.

1. **Political advertisements** were defined broadly as messages ‘by, for or on behalf of a political actor’, unless they are of a private or commercial nature or as messages that may influence the outcome of an election, a referendum, a legislative or regulatory process, or voting behaviour in general, even if they do not come from a political actor.

2. **Political actors**, defined in a similarly wide-ranging way, included European and national political parties and alliances (under Regulation No 1141/2014 on the statute
and funding of European political parties and foundations), candidates in any European or national election, candidates for leadership positions in a political party, elected officials at any level, members of government at any level, organisations established to achieve a particular aim in an election or referendum, and any other legal or natural person representing or acting on behalf of the former.

Political advertising services included preparing political advertisements and their placement, promotion, publication or dissemination.

Concerning the proposal's territorial scope, all advertisements prepared, published, or disseminated in the EU or directed to individuals in the Member States must meet the obligations, even if the advertisement is prepared by a provider that does not have its place of establishment in the EU.

Transparency requirements

The proposal aimed to fully harmonise the rules on transparency for online and offline political advertising. If adopted, the Member States could not enact divergent national rules. However, the proposal did not address many Member States' rules on political advertising during the run-up to elections. It did not cover national laws such as those imposing obligations on public broadcasters to allocate airtime to candidates during the electoral campaign, prohibiting or limiting political advertising in certain media or during specific periods, or restricting the amounts candidates can spend on political advertising during the electoral campaign. Harmonisation of the rules on transparency of political advertising would affect national rules defining the concept of political adverts, requiring the labelling of political adverts, distinguishing them from editorial content or other types of advertising (commercial, private, etc.), or requiring the disclosure of specific information with each political advert.

The proposal envisaged imposing the following obligations: (i) labelling political adverts and providing accompanying information; (ii) keeping records and transmitting information on political advertising services from their providers to political advertising publishers, competent national authorities, or other interested entities; (iii) periodic reporting by political advertising services; and (iv) providing for a mechanism enabling individuals to notify of possible violations of the future regulation.

Labelling of political advertising and transparency notice

Article 7 of the proposal required that political advertisement publishers would use efficient marking and labelling techniques to ensure that each political advertisement was identified as such in a 'clear, salient and unambiguous way'. Moreover, it must be accompanied by information on the identity of the sponsor and the entity ultimately controlling the sponsor, as well as a transparency notice.

The transparency notice should be easily retrievable in the advertisement. It should contain information on specific elements that would allow citizens to understand the context and aims of ads more effectively and identify the sponsor and the origin of the funds used to prepare and disseminate them.

Among the most notable information that would have to be included in the transparency notice were: (i) the sponsor's identity and contact details; (ii) the period of publication; (iii) aggregated amounts spent or benefits received for the preparation, placement, promotion, publication or dissemination of the advertisement and the electoral campaign to which would be linked; (iv) sources of the funds being used for the specific advertising campaign; and (v) the election or referendum to which the advertisement would be linked.

Furthermore, publishers considered very large online platforms would be required, under Article 39 DSA, to maintain and make available a repository of the advertisements disseminated through the
platform. This repository would have to include the information provided in article 7 of the proposal, and the transparency notice of every political ad would have to include a link to that repository.

**Periodic reporting, record-keeping and transmission of information**

The proposal envisaged imposing a series of reporting, record-keeping, and information transmission obligations on providers of political advertising services to ensure correct implementation and for monitoring and enforcement purposes. Article 6 required *providers of political advertisement services to retain for five years information* relating to: the political advertisement or campaign to which their services were connected; the service(s) provided; the amounts paid for them, or the value of other benefits received in exchange for their services; and the identity of the person(s) on whose behalf the service was provided. Relevant information should be transferred in a timely and accurate manner to publishers of political advertisements so they can comply with their transparency obligations regarding every advertisement they disseminate. Moreover, national authorities and other interested entities may request that information to monitor compliance with the proposed regulation.

Under the proposal, large enterprises providing political advertising services would be required to include information on the amounts received or the value of other benefits received in exchange for their advertising services in their annual financial statements. Again, national authorities may request that information to monitor compliance with the proposed regulation.

Although only the competent national authorities could impose administrative fines or financial penalties on providers of political advertising services disregarding their obligations, *individuals and 'interested entities'* have also been granted a role in ensuring the proposal's correct application. Individuals could notify providers of political advertising services, through a specific mechanism, that an advertisement did not comply with the stipulated obligations. The mechanism must be user-friendly and easily accessible, including the transparency notice that should be contained in every political ad.

'Interested entities' could act as *societal watchdogs* researching political campaigns while unveiling unlawful practices and their impact on democratic processes. Interested entities – i.e. vetted researchers, civil society organisations, political actors, electoral observers, and accredited journalists – could *request information from providers of political advertising services*. The providers must keep information about their services for five years. If providers use targeting or amplification techniques, interested entities could also require them to provide information about those techniques. Following an interested entity's request, providers must 'make best efforts' to give that information within one month.

*National authorities* competent to enforce the obligations imposed by the proposal would also be empowered to *request from providers of political advertising services the information* they are obliged to include in every advertisement, the information they are obliged to keep for five years, and the information contained in their annual financial statements on the political advertising services they have provided. In this case, providers must produce the information requested within ten working days; the request would have to be reasoned, indicating the objective for which the information is asked, why the request is necessary and proportionate, and what redress is available to the advertising service provider and the sponsor.

**Targeting and amplification techniques**

The proposal's second leading goal was harmonising the rules on targeting of political advertising and amplification techniques. *Political (micro-)targeting* is said to affect citizens' capacity to make sound and informed political choices, as it uses large amounts of data with citizens' personal characteristics to segment them into uniform groups and present them with tailored political messages that exploit their sensitivities, fragment the political debate, and jeopardise citizens' access to pluralistic and objective sources of information. The proposal believed that such practices
harm citizens' rights to protect their personal data and to receive objective information, thus negatively affecting democratic processes. In this logic, article 12(1) bans targeting and amplification techniques that involve the processing of sensitive personal data as listed in Article 9(1) GDPR (racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic and biometric data, and data concerning health or a person’s sex life or sexual orientation).

The proposal went a step further than Article 26(3) DSA: the latter forbids online platforms from presenting advertisements to recipients of services based on automated processing (profiling) of the sensitive data referred to in Article 9(1) GDPR, while the former would prohibit targeting based on any processing (automated or not) of those sensitive data. However, the proposal does not include a complete ban on targeting and amplification techniques for political purposes.

The proposal included two exceptions to the prohibition of targeting and amplification techniques that involved the processing of sensitive personal data: (i) when the individual has given explicit consent to the processing of such personal data, those techniques could still be used; (ii) when the processing of that personal data was carried out by a not-for-profit entity with a political, philosophical, religious, or trade union aim in the course of its legitimate activities, and only as regards the entity's members.

In its opinion on the proposal, the European Data Protection Supervisor (EDPS) fully supported the idea of imposing additional restrictions on the use of targeting and amplification techniques in political advertising on top of those already offered by the existing EU data protection legislation. However, the EDPS argued that article 12 insufficiently provided that additional protection. Moreover, according to the EDPS, the two exceptions to the prohibition on targeting and amplification techniques involving the processing of sensitive personal data could limit the prohibition’s practical effect – on the one hand, because of 'consent fatigue', which leads most citizens to agree to the processing of their personal data, without them taking the time to understand fully the risks involved, and on the other, because political parties are in practice the sponsors of most political advertisements, and thus included in the second exemption.

Apart from banning specific targeting and amplification techniques, article 12(3) also imposed transparency requirements on the entities (called 'controllers' in Article 4 GDPR) that determine the purpose and means of processing personal data for political targeting and amplification. The requirements sought to codify the EDPS guidelines on the targeting of social media users. They included: (i) the adoption of an internal policy describing clearly the use of targeting and amplification techniques and the obligation to retain it for five years; (ii) the obligation to keep records of the use of those techniques; and (iii) the obligation to provide, together with the advertisements, information that allows individuals to understand the logic involved and the main parameters of the technique used – including the specific groups of recipients targeted; the parameters used to define the recipients with the same level of detail as used for the targeting; the period of dissemination; the number of individuals that received the information; and the source of the personal data. So, when targeting or amplification techniques would be used, the transparency notice included in the corresponding political advertisement would have to comprise the data needed to understand the logic and main parameters of the technique used and a link to the service provider's internal policy on the use of targeting and amplification techniques.

As indicated above, the proposal relies on the competent national authorities to enforce the obligations imposed on providers of political advertising services. However, individuals and societal
watchdogs, as defined by article 11 of the proposal, may become valuable actors that would monitor the proposal's implementation: the former may notify service providers of practices that disregard the obligations imposed by the proposal. At the same time, the latter would have access to all relevant data to identify systemic cases of non-compliance with the obligations envisaged in the proposal.

Despite these opportunities projected for individuals and societal watchdogs, only national authorities would have supervisory and enforcement powers to: (i) request relevant information from service providers; (ii) issue warnings to service providers regarding their non-compliance with the new regulation; (iii) publish statements identifying the natural or legal person responsible for the infringement; and (iv) impose fines and financial penalties, under their national laws implementing the proposal's article 16.

**National laws would have to provide effective, proportionate, and dissuasive sanctions for cases of non-compliance.** Although Member States would enjoy a margin of discretion in deciding the type and level of sanctions, article 16 would not allow national authorities to impose criminal penalties. Moreover, the proposal would provide for some elements that need to be considered when deciding on the type and level of penalties, including the nature and duration of the infringement, the infringement's intentional or negligent character, or previous transgressions. Furthermore, these infringements would be deemed particularly serious during electoral periods and thus would require more severe penalties.

The proposal envisages a **distribution of tasks between different national authorities.** First, national authorities competent to monitor GDPR application would also monitor obligations concerning the use of targeting and amplification techniques provided in article 12. Second, monitoring the implementation of the rest of the responsibilities would have to be entrusted to a different national authority for providers of online intermediary services. Finally, another national authority would have to monitor the application of future regulation concerning providers other than online intermediary services and obligations other than those relating to targeting and amplification techniques.

**Advisory committees**

The [European Economic and Social Committee (EESC)](https://www.eesc.europa.eu) issued its opinion on the proposal on 23 February 2022, and the [European Committee of the Regions (CoR)](https://www.conseilregions.eu) on 27 April 2022. While sharing the proposal's general objective, both committees put forward amendments to tighten the obligations the proposal would impose on providers of political advertising services.

**National parliaments**

The deadline for submitting reasoned opinions on the grounds of subsidiarity was 1 March 2022. None of the 22 parliamentary chambers that examined the proposal issued a 'reasoned opinion' stating that the proposal does not comply with the principle of subsidiarity.

**Stakeholder views**

Stakeholders have generally reacted positively to the proposal while pointing to elements that could be improved. The [European Partnership for Democracy](https://www.partnershipfordemocracy.org), a not-for-profit organisation, welcomed the proposal as an initiative that could overcome the failures of the self-regulatory code of practice on disinformation. It pointed to the need to clarify the definition of adverts liable to influence a political process, in the understanding that the current definition may not capture disinformation and foreign interference campaigns in the EU's electoral processes. It also welcomed the enhanced transparency requirements imposed by the proposal but argued that further measures are necessary to provide meaningful transparency on full advertising campaigns. It called for a mandate for real-time, comprehensive political advertisement libraries containing all the information stipulated in article 7 and annexes I and II of the proposal. Finally, the partnership...
welcomed the ban on targeting and amplification techniques using sensitive personal data and suggested further prohibiting inferred data for all political advertising purposes.

The Centre for Democracy and Technology, another not-for-profit organisation promoting democracy and fundamental rights, questioned whether the increased transparency obligations imposed on political advertising providers would be enough for citizens to understand better why they receive certain advertisements, who is behind a specific political campaign, and whether societal watchdogs would be able to obtain the aggregated information they need to study electoral campaigns and their impact on voting behaviour. Similarly, the centre expressed concerns about the broad definition of ‘political advertisements’ and ‘political actors’, taking the view that civil society organisations may be included among the latter, thus subject to the same obligations as political parties. The centre argued that such a situation might hinder civic space in the EU and generate a chilling effect on organisations’ exercise of freedom of expression. Finally, the centre advocated further restrictions on political targeting and amplification techniques by imposing a total ban on political (micro-)targeting.

European Digital Rights (EDRi), another not-for-profit organisation defending fundamental rights in the online environment, emphasised the need to impose a total ban on (micro-)targeting for political purposes.

The Computer and Communications Industry Association (CCIA) hailed the proposal and its objective of building a robust and harmonised set of rules on transparency and targeting of political advertising. It also called on the co-legislators to clarify and narrow the definitions of ‘political advertisement’ and ‘political actors’, pointing out that the former could include any information liable to influence democratic processes, such as non-governmental organisations’ advertisements on a variety of issues of public concern, and that explicit reference should be made to the fact that advertising services should be remunerated or compensated to prevent capturing content posted by users without any payment. As regards the transparency obligations that would be imposed on online platforms, CCIA encouraged policymakers to assign responsibilities to all the actors involved in the process of developing and disseminating a political advertisement. CCIA affirmed that platforms are mere intermediaries with no editorial control over the advertisements they display. It also suggested that sponsors and political advertisers should be obliged to provide truthful information on their political campaigns and become liable if they fail to declare the political nature of their advertisements. Moreover, platforms should be able to rely on that information in good faith. Furthermore, CCIA called on the co-legislators to leave a sufficient margin of manoeuvre to platforms regarding the format of disclosure of transparency notices, suggested that requirements by national authorities to provide information relating to political advertising campaigns should be subject to judicial oversight, and emphasised that some of the transparency requirements included in the proposal may imply the disclosure of personal and sensitive data.

The European Regulators Group for Audiovisual Media Services (ERGA) fully shared the proposal’s general objectives. Welcoming the Commission’s plan to impose obligations on all political advertising service providers, not just online platforms, ERGA stressed the need for real-time, comprehensive and easily accessible advertisement libraries to facilitate access to aggregated data and more effective enforcement of the proposed regulation. It called for further harmonisation of the sanctions regime provided by the proposal to prevent differential approaches in Member States, as regards the severity of the sanctions to be imposed, jeopardising the proposal’s success. It also highlighted the need to impose further restrictions on political targeting and amplification techniques, such as prohibiting targeting based on pervasive tracking techniques.

Legislative process

The European Parliament and the Council adopted their positions on the Commission’s proposal under the ordinary legislative procedure. The Committee on the Internal Market and Consumer Protection (IMCO) was designated as the lead committee in the Parliament. Sandro Gozi (Renew
Europe, France), the rapporteur, presented his draft report on 16 June 2022. 686 amendments were tabled. After considering all the amendments, IMCO adopted its report on the proposal on 24 January 2023.

The Parliament approved IMCO’s report, with amendments, in plenary on 2 February 2023. The mandate sought to modify the scope of application of the future regulation (e.g. by excluding political views expressed under the editorial responsibility from the scope of political advertising, or by providing a non-exhaustive list of elements that would determine the political advert). It aimed to prevent the risk of foreign interference in the EU’s democratic processes by prohibiting political advertising services sponsored by a non-EU citizen or entity. It also strengthened the obligations of the sponsors of political advertisements, requiring them to identify political adverts and publish relevant information concerning the respective advertisements. The mandate also demanded the establishment of a European repository for online political advertisements managed by the Commission. This repository would be publicly accessible and include all online political advertisements and the information provided in the transparency notice. Next, the report aimed to strengthen the obligations relating to targeting techniques in political advertising. In contrast to the Commission’s proposal, the report distinguished between targeting and ad delivery techniques. Under strict requirements, such as explicit consent of an individual provided solely for online political advertising, non-sensitive data for online political advertising remained permitted. The minors could not be targeted unless they were one year below voting age.

In the Council, the General Affairs Council agreed on a mandate for negotiations (general approach) on 13 December 2022. It proposed several amendments to the Commission’s proposal. These include (i) to exclude the political opinions expressed under editorial responsibility, unless there was specific remuneration, and presentation of candidates in public spaces based on the equal treatment from the regulation’s scope; (ii) to introduce a non-exhaustive list of elements to determine whether a message may be considered a political advertisement; (iii) to impose new obligations on sponsors of political advertisements; (iv) to soften the obligations imposed on micro-, small and medium-sized undertakings providing political advertising services (e.g. the obligation to retain the information published with each political advertisement and transparency notices for five years); (v) to reinforce the obligations imposed on providers of political advertising services in the last month preceding an election or a referendum; (vi) to allow the use of targeting and amplification techniques involving the processing of sensitive personal data based on the explicit consent given separately and specifically for political advertising. Those techniques would be prohibited for minors unless they were one year or less under the voting age.

New Regulation

After several rounds of trilogue negotiations, on 6 November 2023, Parliament and Council reached a provisional agreement on the main political elements of the new regulation. The IMCO committee approved the provisional agreement on 24 January 2024. On 27 February 2024, during the February II plenary session, with 470 votes in favour to 50 against and 105 abstentions, the EP adopted its final first-reading position. On 11 March, the Council followed suit and adopted the provisional agreement. The regulation was signed on 13 March 2024 and published in the EU’s Official Journal. It entered into force on 9 April 2024.

The co-legislators designed the political deal to enhance the integrity of election campaigns and fight foreign interference. The new rules should help voters detect political advertisements, identify the entities behind them, and make better-informed choices. Additionally, they should provide a framework for political actors to advertise more easily across the EU (allowing political groupings to conduct transnational campaigns). The rules should support an open and fair political debate in Member States based on objective, transparent, and pluralistic information, and ensure that political advertising takes place with full respect for fundamental rights, including the right to privacy.
The regulation **harmonises rules for online and offline political advertising, targeting**, and ad-delivery techniques that involve processing personal data in the context of providing online political advertising. It bans foreign actors from sponsoring political ads before an election. The harmonisation prevents Member States from adopting stricter or looser rules related to the transparency of political advertising.

The regulation **defines political advertising** as the preparation, placement, promotion, publication, delivery or dissemination of messages by any means, by, for or on behalf of political actors, unless they were purely private or purely commercial. Political advertising also covers messages designed to influence voting behaviour or the outcome of an election, referendum, or legislative or regulatory process at the EU, national, regional or local level.

The new rules cover **online and offline political advertising** provided for remuneration and through in-house activities (within political parties). They will not apply to political views and other content under editorial responsibility or opinions expressed in a personal capacity. Additionally, these rules will not affect the content of political ads or rules on the conduct and financing of political campaigns.

The regulation defines **political actor** as European and national political parties and alliances, defined in Regulation No 1141/2014 on the statute and funding of European political parties and foundations. However, it also involves candidates in any European or national election, candidates for leadership positions in a political party, elected officials at any level, members of government at any level (even if they have not participated in elections), organisations established to achieve a particular aim in an election or referendum, or any other legal or natural person representing or acting on behalf of the former.

In line with requirements of Regulations (EU) 2016/679 and (EU) 2018/1725, the regulation sets strict limits on targeting and delivery techniques, improving **protection of personal data** in online political advertising, banning profiling (i.e. the use of special categories of data, including a user’s racial or ethnic origin and political opinion) and utilisation of data of minors. Additionally, it restricts non-EU-based entities from financing political advertisements in the EU three months before an election or referendum organised at the EU, national, regional or local level.

The regulation envisages that political advertising publishers will immediately ensure clear labelling of political advertising and further information in a **transparency note** when the advertisement is published or disseminated. This note will list a range of information, such as the statement that it is a political advertisement, the identity of the sponsor(s) (i.e. persons or entities that have financed the content in question), its/their place of establishment, the amount paid and the origin of the financing. Transparency notices shall be kept up-to-date during the entire period of publication of the political advertisement, presented in a format which is easily accessible and, at least when the political advertising is made available electronically, available in a machine-readable format. This information should be accessible in the language of the political advertisement. Transparency notices must be clearly visible and user-friendly, including using plain language. Political advertising publishers shall retain their transparency notices and any modifications to them for seven years after the last publication of the respective political advertisement.

The regulation introduces the **European public repository for online political advertisements**. This dedicated, Commission-managed database will publicly disclose all information on online political advertisements published in the EU or directed to EU citizens or EU residents. At the request of interested non-commercial entities (vetted researchers, members of a civil society organisation, political actors, electoral observers and journalists), the providers of political advertising services shall promptly and free of charge share requested information relevant to the regulation.

Natural or legal persons can report to the publishers of a political advertisement that a particular advertisement does not comply with the regulation. Political advertising publishers should examine
and address these notifications. In applying and enforcing the new rules, the regulation mostly counts on the national competent authorities designated by the Member States.

The regulation allows financial penalties of up to six per cent of the annual income or budget of the sponsor or of the provider of political advertising services as applicable and whichever is the highest, or six per cent of the annual worldwide turnover of the sponsor or the provider of political advertising services in the preceding financial year. When deciding on the type of sanction and its level, due regard shall be given in each case, among others, to the following: (a) the nature, gravity, recurrence and duration of the infringement; (b) the intentional or negligent character of the infringement; (c) any action taken to mitigate any damage; (d) any relevant previous infringements and any other aggravating or mitigating factor applicable to the circumstances of the case; (e) the degree of cooperation with the competent authority; and (f) the size and economic capacity of the entity subject to sanctions, where applicable.

The regulation entered into force on the twentieth day after its publication in the Official Journal of the European Union (i.e. on 9 April 2024). Most of the provisions will apply 18 months after it enters into force (i.e. on 10 October 2025). However, the measures on the non-discriminatory provisions of cross-border political advertising (i.e. the services cannot be restricted solely based on the place of residence of the sponsor of the political advertising, allowing for smoother cross-border advertising) apply as of the regulation’s entry into force. Therefore, these provisions will be applicable for the upcoming European Parliament’s 2024 elections.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS


OTHER SOURCES

Proposal for the regulation on the transparency and targeting of political advertising, Legislative Train Schedule, European Parliament.

ENDNOTE

1 This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under ‘European Parliament supporting analysis’.

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eprs@ep.europa.eu (contact)
www.eprs.ep.parl.union.eu (intranet)
www.europarl.europa.eu/thinktank (internet)
http://epthinktank.eu (blog)

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