



2021/0381(COD)

26.7.2022

DRAFT OPINION

of the Committee on Culture and Education

for the Committee on the Internal Market and Consumer Protection

on the proposal for a regulation of the European Parliament and of the Council
on transparency and targeting of political advertising
(COM(2021)0731 – C9-0433/2021 – 2021/0381(COD))

Rapporteur for opinion (*): Sabine Verheyen

(*) Associated committee – Rule 57 of the Rules of Procedure

PA_Legam

SHORT JUSTIFICATION

On 25 November 2021, the European Commission published its legislative proposal for a regulation on the transparency and targeting of political advertising, which aims to introduce a legal framework to ensure a high level of transparency of political advertising and related services.

Overall, the Rapporteur welcomes the proposal but would like to suggest a series of amendments in order to clarify certain provisions related to the dissemination of political advertising through offline media forms and in order to ensure a consistent approach between offline and online service providers of political advertising.

In addition, the Rapporteur highlights the interlinks and complementarities between the new proposal and the Audiovisual Media Services Directive (AVMSD) and the need to safeguard the freedom of expression and right to information.

Finally, regarding the governance aspects, the proposed regulation does not necessarily provide for the creation of any additional authorities or bodies at Member State level as these tasks could be entrusted to relevant competent national authorities, in particular, those already playing a role under the field of media regulation. However, the Rapporteur aims to clarify certain cooperation mechanisms between all the authorities involved in order to try to mitigate future enforcement challenges.

AMENDMENTS

The Committee on Culture and Education calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 17

Text proposed by the Commission

(17) The publication or dissemination by other actors of a message that is liable to influence the outcome of an election or referendum, legislative or regulatory process or voting behaviour should also constitute political advertising. In order to determine whether the publication or dissemination of a message is liable to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour, account should be taken of all relevant factors such

Amendment

(17) The publication or dissemination by other actors of a message that is liable **and designed** to influence the outcome of an election or referendum, legislative or regulatory process or voting behaviour should also constitute political advertising. In order to determine whether the publication or dissemination of a message is liable **and designed** to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour, account should be taken of all

as the content of the message, the language used to convey the message, the context in which the message is conveyed, the objective of the message and the means by which the message is published or disseminated. Messages on societal or controversial issues may, as the case may be, be liable to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour.

relevant factors such as ***the sponsor of the message***, the content of the message, the language used to convey the message, the context in which the message is conveyed, the objective of the message and the means by which the message is published or disseminated. Messages on societal or controversial issues may, as the case may be, be liable to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour.

Or. en

Amendment 2

Proposal for a regulation

Recital 19

Text proposed by the Commission

(19) Political views expressed in the programmes of audiovisual linear broadcasts or published in printed media without direct payment or equivalent remuneration should not be covered by this Regulation.

Amendment

(19) ***The media contribute to the well-functioning of democratic processes and play an essential role in the freedom of expression and right to information, particularly during election periods. They provide a space for public debate and contribute to public opinion-forming. This Regulation should therefore not affect the media's editorial freedom.*** Political views expressed ***under the editorial responsibility of a service provider*** in the programmes of audiovisual ***media including*** linear ***and non-linear*** broadcasts or published in printed media without direct payment or equivalent remuneration should not be covered by this Regulation.

Or. en

Amendment 3

Proposal for a regulation

Recital 26

Text proposed by the Commission

(26) In order to cover the broad range of relevant service providers connected to

Amendment

(26) In order to cover the broad range of relevant service providers connected to

political advertising services, providers of political advertising services should be understood as comprising providers involved in the preparation, placement, promotion, publication and dissemination of political advertising.

political advertising services, providers of political advertising services should be understood as comprising providers involved in the preparation, placement, promotion, publication and dissemination of political advertising. ***Providers that provide purely ancillary services in relation to political advertising services should not be considered to be political advertising service providers in the meaning of this Regulation.***

Or. en

Amendment 4

Proposal for a regulation Recital 39

Text proposed by the Commission

(39) This information should be provided in a transparency notice which should also include the identity of the sponsor, in order to support accountability in the political process. The place of establishment of the sponsor and whether the sponsor is a natural or legal person should be clearly indicated. Personal data concerning individuals involved in political advertising, unrelated to the sponsor or other involved political actor should not be provided in the transparency notice. The transparency notice should also contain information on the dissemination period, any linked election, the amount spent for and the value of other benefits received in part or full exchange for the specific advertisement as well for the entire advertising campaign, the source of the funds used and other information to ensure the fairness of the dissemination of the political advertisement. Information on the source of the funds used concerns for instance its public or private origin, the fact that it originates from inside or outside the European Union. Information concerning linked elections or referendums should include, when possible, a link to

Amendment

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information from official sources regarding the organisation and modalities for participation or for promoting participation in those elections or referendums. The transparency notice should further include information on how to flag political advertisements in accordance with the procedure established in this Regulation. This requirement should be without prejudice to provisions on notification according to Article 14, 15 and 19 of Regulation (EU) 2021/XXX [Digital Services Act].

information from official sources regarding the organisation and modalities for participation or for promoting participation in those elections or referendums. The transparency notice should further include information on how to flag political advertisements in accordance with the procedure established in this Regulation. This requirement should be without prejudice to provisions on notification according to Article 14, 15 and 19 of Regulation (EU) 2021/XXX [Digital Services Act]. ***Providers of political advertising services should ensure that the information provided is complete and correct.***

Or. en

Amendment 5

Proposal for a regulation Recital 40

Text proposed by the Commission

(40) ***The*** information to be included in the transparency notice should be provided in the advertisement itself or be easily retrievable on the basis of an indication provided in the advertisement. The ***requirement*** that the information about the transparency notice is to be inter alia clearly visible ***should entail that it features*** prominently in or with the advertisement. The requirement that information published in the transparency notice is to be easily accessible, machine readable where technically possible, and user friendly should entail that it addresses the needs of people with disabilities. Annex I of Directive 2019/882 (European Accessibility Act) contains accessibility requirements for information, including digital information that should be used to render political information accessible for persons with disabilities.

Amendment

(40) ***The*** information to be included in the transparency notice should be provided in the advertisement itself or be easily retrievable on the basis of an indication provided in the advertisement. The ***presentation of the information can vary depending on the means used, taking into account the character of offline advertising. The advertising publisher should ensure*** that the information about the transparency notice is to be inter alia clearly visible ***and should feature*** prominently in or with the advertisement. The requirement that information published in the transparency notice is to be easily accessible, machine readable where technically possible, and user friendly should entail that it addresses the needs of people with disabilities. Annex I of Directive (***EU***) 2019/882 (European Accessibility Act) contains accessibility requirements for information, including digital information that should be used to

render political information accessible for persons with disabilities.

Or. en

Amendment 6

Proposal for a regulation

Recital 41

Text proposed by the Commission

(41) Transparency notices should be designed to raise user awareness and help the clear identification of the political advertisement as such. They should be designed to remain in place or remain accessible in the event a political advertisement is further disseminated for instance posted on another platform or forwarded between individuals. The information included in the transparency notice should be published when the publication of the political advertisements start and be retained for a period of one year after the last publication. The retained information should also include information about political advertising which was terminated or which was taken down by the publisher.

Amendment

(41) Transparency notices should be designed to raise user awareness and help the clear identification of the political advertisement as such. They should be designed to remain in place or remain accessible in the event a political advertisement is further disseminated for instance posted on another platform or forwarded between individuals. The information included in the transparency notice should be published when the publication of the political advertisements start and be retained for a period of one year after the last publication. The retained information should also include information about political advertising which was terminated or which was taken down by the publisher. ***Providers of political advertising services which are not very large online platforms can decide the format in which that information is retained.***

Or. en

Amendment 7

Proposal for a regulation

Recital 57

Text proposed by the Commission

(57) As regards the supervision of online intermediary services under this Regulation, Member States should designate competent authorities and ensure that such supervision is coherent with the

Amendment

(57) As regards the supervision of online intermediary services under this Regulation, Member States should designate competent authorities and ensure that such supervision is coherent with the

competent authorities designated pursuant to Article 38 of Regulation (EU) [Digital Services Act]. Digital Services Coordinators, pursuant to Regulation (EU) Digital Services Act, in each Member State should in any event be responsible for ensuring coordination at national level in respect to those matters and engage, where necessary, cross-border cooperation with other Digital Services Coordinators following the mechanisms laid down in Regulation (EU) [Digital Services Act]. In the framework of application of this Regulation, **this mechanism** should be limited to the national cooperation across Digital Services Coordinators **[and should not include the escalation to the Union level as provided by the Regulation (EU) [Digital Services Act].**

competent authorities designated pursuant to Article 38 of Regulation (EU) [Digital Services Act] **and with the competent authorities for the monitoring of the application of Directive 2010/13/EU as amended by Directive (EU) 2018/1808.** Depending the scope of the issue, Digital Services Coordinators, pursuant to Regulation (EU) Digital Services Act **or the national authorities responsible for the application of Directive 2010/13/EU as amended by Directive (EU) 2018/1808,** in each Member State should in any event be responsible for ensuring coordination at national level in respect to those matters and engage, where necessary, cross-border cooperation with other Digital Services Coordinators following the mechanisms laid down in Regulation (EU) [Digital Services Act], **or with the mechanism laid down in Article 29 of Directive 2010/13/EU as amended by Directive (EU) 2018/1808.** In the framework of application of this Regulation, **these mechanisms** should be limited to the national cooperation across Digital Services Coordinators **or national authorities monitoring the application of Directive 2010/13/EU as amended by Directive (EU) 2018/1808.**

Or. en

Amendment 8

Proposal for a regulation Recital 58

Text proposed by the Commission

(58) For the oversight of those aspects of this Regulation that do not fall within the competence of the supervisory authorities under Regulation (EU) 2016/679, Regulation (EU) 2018/725 Member States should designate competent authorities. To support the upholding of fundamental rights and freedoms, the rule of law, democratic principles and public

Amendment

(58) For the oversight of those aspects of this Regulation that do not fall within the competence of the supervisory authorities under Regulation (EU) 2016/679, Regulation (EU) 2018/725, **and Directive 2010/13/EU as amended by Directive (EU) 2018/1808,** Member States should designate competent authorities. To support the upholding of fundamental

confidence in the oversight of political advertising it is necessary that such authorities are structurally independent from external intervention or political pressure and are appropriately empowered effectively monitor and take the measures necessary to ensure compliance with this Regulation, in particular the obligations laid down in Article 7. Member States *may* designate, *in particular*, the national regulatory authorities or bodies under Article 30 of Directive 2010/13/EU of the European Parliament and of the Council¹³.

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

rights and freedoms, the rule of law, democratic principles and public confidence in the oversight of political advertising it is necessary that such authorities are structurally independent from external intervention or political pressure and are appropriately empowered effectively monitor and take the measures necessary to ensure compliance with this Regulation, in particular the obligations laid down in Article 7. Member States *should* designate the national regulatory authorities or bodies under Article 30 of Directive 2010/13/EU *as amended by Directive (EU) 2018/1808* of the European Parliament and of the Council¹³.

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

Or. en

Amendment 9

Proposal for a regulation Recital 59

Text proposed by the Commission

(59) Where rules already exist under Union law regarding the provision of information to competent authorities and cooperation with and between those authorities such as Article 9 of Regulation (EU) 2021/xxx [Digital Services Act], or those contained in Regulation (EU) 2016/679, those rules should apply *mutatis mutandis* to the relevant provisions of this Regulation.

Amendment

(59) Where rules already exist under Union law regarding the provision of information to competent authorities and cooperation with and between those authorities such as Article 9 of Regulation (EU) 2021/xxx [Digital Services Act], or those contained in Regulation (EU) 2016/679, *or those set out in Directive 2010/13/EU as amended by Directive (EU) 2018/1808*, those rules should apply *mutatis mutandis* to the relevant provisions

of this Regulation.

Or. en

Amendment 10

Proposal for a regulation Recital 63

Text proposed by the Commission

(63) Member States authorities should ensure that infringements of the obligations laid down in this Regulation are sanctioned by administrative fines or financial penalties. When doing so, they should take into account the nature, gravity, recurrence and duration of the infringement in view of the public interest at stake, the scope and kind of activities carried out, as well as the economic capacity of the infringer. In that context, the crucial role played by the obligations laid down in Article 7 for the effective pursuit of the objectives of the present Regulation should be taken into account. Furthermore, they should take into account whether the service provider concerned systematically or recurrently fails to comply with its obligations stemming from this Regulation, including by delaying the provision of information to interested entities, as well as, where relevant, whether the provider of political advertising services is active in several Member States. Financial penalties and administrative fines shall in each individual case be effective, proportionate and dissuasive, with due regard to the provision of sufficient and accessible procedural safeguards, and in particular to ensure that the political debate remains open and accessible.

Amendment

(63) Member States authorities should ensure that infringements of the obligations laid down in this Regulation are sanctioned by administrative fines or financial penalties. When doing so, they should take into account the nature, gravity, recurrence and duration of the infringement in view of the public interest at stake, the scope and kind of activities carried out, as well as the **size and** economic capacity of the infringer. In that context, the crucial role played by the obligations laid down in Article 7 for the effective pursuit of the objectives of the present Regulation should be taken into account. Furthermore, they should take into account whether the service provider concerned systematically or recurrently fails to comply with its obligations stemming from this Regulation, including by delaying the provision of information to interested entities, as well as, where relevant, whether the provider of political advertising services is active in several Member States. Financial penalties and administrative fines shall in each individual case be effective, proportionate and dissuasive, with due regard to the provision of sufficient and accessible procedural safeguards, and in particular to ensure that the political debate remains open and accessible.

Or. en

Amendment 11

Proposal for a regulation

Article 1 – paragraph 4 – point f

Text proposed by the Commission

(f) Directive **(EU) 2010/13**;

Amendment

(f) Directive **2010/13/EU as amended by Directive (EU) 2018/1808**;

Or. en

Amendment 12

Proposal for a regulation

Article 2 – paragraph 1 – point 2 – point a

Text proposed by the Commission

(a) by, for or on behalf of a political actor, unless it is of a purely private or a purely commercial nature; or

Amendment

(a) by, for or on behalf of a political actor, **in exchange of remuneration**, unless it is of a purely private or a purely commercial nature; or

Or. en

Amendment 13

Proposal for a regulation

Article 2 – paragraph 1 – point 2 – point b

Text proposed by the Commission

(b) which is liable to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour.

Amendment

(b) which is liable **and designed** to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour.

Or. en

Amendment 14

Proposal for a regulation

Article 2 – paragraph 1 – point 2 a (new)

Text proposed by the Commission

Amendment

2a. It shall not include political views expressed under the editorial

responsibility of a service provider, in the programmes of audiovisual media, including linear or non-linear broadcasts, or published in printed media.

Or. en

Amendment 15

Proposal for a regulation

Article 7 – paragraph 2 – point a

Text proposed by the Commission

(a) the identity of the sponsor and contact details;

Amendment

(a) the identity of the sponsor *of the political advertisement and the entity ultimately controlling the sponsor, the place of establishment* and contact details;

Or. en

Amendment 16

Proposal for a regulation

Article 7 – paragraph 2 – point c

Text proposed by the Commission

(c) based among others on information received in line with Article 6(3), information on the aggregated amounts spent or other benefits received in part or full exchange for the preparation, placement, promotion, publication and dissemination of the relevant advertisement, and of the political advertising campaign *where relevant*, and their sources;

Amendment

(c) based among others on information received in line with Article 6(3), information on the aggregated amounts spent or other benefits received in part or full exchange for the preparation, placement, promotion, publication and dissemination of the relevant advertisement, and of the political advertising campaign and their sources;

Or. en

Amendment 17

Proposal for a regulation

Article 7 – paragraph 3

Text proposed by the Commission

3. Political advertising publishers

Amendment

3. Political advertising publishers

shall ***make reasonable efforts to*** ensure that the information referred to in paragraph 1 and 2 is complete, and where they find this is not the case, they shall not make available the political advertisement.

shall ensure that the information referred to in paragraph 1 and 2 is complete ***and correct***, and where they find this is not the case, they shall ***withdraw or*** not make available the political advertisement.

Or. en

Amendment 18

Proposal for a regulation Article 7 – paragraph 4

Text proposed by the Commission

4. Transparency notices shall be kept up to date and presented in a format which is easily accessible and, where technically possible, machine readable, clearly visible ***and*** user friendly, including through the use of plain language. The information shall be published by the political advertising publisher with the political advertisement from its first publication until one year after its last publication.

Amendment

4. Transparency notices shall be kept up to date and presented in a format which is easily accessible and, where technically possible, machine readable, clearly visible, user friendly, including through the use of plain language, ***and where applicable, accessible for people with disabilities***. The information shall be published by the political advertising publisher with the political advertisement from its first publication until one year after its last publication.

Or. en

Amendment 19

Proposal for a regulation Article 7 – paragraph 8

Text proposed by the Commission

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

Amendment

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

advertisement and its aims to be understood.

Or. en

Amendment 20

Proposal for a regulation

Article 9 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Notwithstanding these obligations, special consideration shall be given to offline political advertising services, printed media and small media enterprises.

Or. en

Amendment 21

Proposal for a regulation

Article 15 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The national regulatory authorities or bodies referred in Article 30 of Directive 2010/13/EU as amended by Directive (EU) 2018/1808 shall have the competence to monitor the application of this Regulation with regard to provisions of Directive 2010/13/EU as amended by Directive (EU) 2018/1808 and shall be responsible for ensuring coordination on those provisions at national and Union level.

Or. en

Amendment 22

Proposal for a regulation

Article 15 – paragraph 3

Text proposed by the Commission

Amendment

3. Each Member State shall designate

3. Each Member State shall designate

one or more competent authorities to be responsible for the application and enforcement of the aspects of this Regulation not referred to in paragraphs 1 and 2. Each competent authority designated under this paragraph shall structurally enjoy full independence both from the sector and from any external intervention or political pressure. It shall in full independence effectively monitor and take the measures necessary and proportionate to ensure compliance with this Regulation.

one or more competent authorities to be responsible for the application and enforcement of the aspects of this Regulation not referred to in paragraphs 1, **1a** and 2. Each competent authority designated under this paragraph shall structurally enjoy full independence both from the sector and from any external intervention or political pressure. It shall in full independence effectively monitor and take the measures necessary and proportionate to ensure compliance with this Regulation.

Or. en

Amendment 23

Proposal for a regulation Article 15 – paragraph 6

Text proposed by the Commission

6. Member States shall ensure cooperation among competent authorities in particular in the framework of national elections networks, to facilitate the swift and secured exchange of information on issues connected to the exercise of their supervisory and enforcements tasks pursuant to this Regulation, including by jointly identifying infringements, sharing findings and expertise, and liaising on the application and enforcement of relevant rules.

Amendment

6. Member States shall ensure cooperation among competent authorities in particular in the framework of national elections networks **and in the European Regulators Group for Audiovisual Media Services**, to facilitate the swift and secured exchange of information on issues connected to the exercise of their supervisory and enforcements tasks pursuant to this Regulation, including by jointly identifying infringements, sharing findings and expertise, and liaising on the application and enforcement of relevant rules.

Or. en

Amendment 24

Proposal for a regulation Article 15 – paragraph 7

Text proposed by the Commission

7. Each Member State shall designate **one** competent **authority** as a contact point

Amendment

7. Each Member State shall designate competent **authorities** as a contact point at

at Union level for the purposes of this Regulation.

Union level for the purposes of this Regulation, ***and guarantee a comprehensive cooperation between their national authorities and the Commission.***

Or. en

Amendment 25

Proposal for a regulation

Article 16 – paragraph 3 – point e a (new)

Text proposed by the Commission

Amendment

(ea) the size and economic capacity of the political advertising service provider.

Or. en

Amendment 26

Proposal for a regulation

Article 16 – paragraph 4

Text proposed by the Commission

Amendment

4. Infringements of Article 7 shall be considered to be particularly serious where they concern political advertising published or disseminated during an electoral period ***and*** directed to citizens in the Member State in which the relevant election is being organised.

4. Infringements of Article 7 shall be considered to be particularly serious where they concern political advertising published or disseminated during an electoral period ***or*** directed to citizens in the Member State in which the relevant election is being organised.

Or. en