

Political agreement on the Regulation on the transparency and targeting of political advertising

10 January 2024

On 6 November, the European Parliament, Council of EU and European Commission reached a **political agreement on the Regulation on the transparency and targeting of political advertising**. The [proposal](#) was presented by the European Commission as part of the European Democracy Action Plan to complement the Digital Services Act on the specific issue of transparency of political advertising online. The Regulation aims to address various concerns posed by the emergence of online political advertising such as a lack of transparency on individual ads and campaigns alike, the abuse of personal data and potential exploitation of these gaps by political actors.

As the European Partnership for Democracy (EPD), we welcome the achievement of a political agreement and closure of a file which has the potential to bring more transparency and protection of personal data in the online political ads ecosystem. At the same time we are **concerned to see that many shortcomings that we had [highlighted](#) throughout the legislative process are still present in this [final text](#)**. While the Regulation was meant as a stepping stone to ensure fair and transparent online campaigning, such ambitions have however been weakened because of vague definitions, incomplete protection of personal data and weak enforcement.

For such reasons, this paper will go through the **main elements in the final text on political advertising**, highlighting what are the positive elements, shortcomings and putting forward recommendations for improvement.

In a nutshell

Positive elements ✓	Shortcomings ✗	Recommendations ↓
Finalisation of the text will bring more legal certainty	Broad definition	Guidelines on narrow interpretation of definition
Inclusion of remuneration in the definition	Identification of political ads services done by sponsors themselves	Make sure online platforms play a role in verifying sponsors' declarations
Inclusion of ad repositories and reasonable deadline	Deadline for ad repositories still too long (2 years)	Anticipating implementing acts as much as possible
Link with GDPR in Article 18 on protection of personal data and inclusion of inferred and observed data in Recitals	Observed and inferred data still out of scope	Interpret broadly to include inferred and observed data
	Excessively fragmented enforcement	Strengthen coordination across different authorities

Main elements

Definition of political advertising (Article 3.2)

We welcome the attempt to put forward a common definition of political advertising, as well as the fact that the final text **includes a criteria based on remuneration**. On the other hand the specific wording of Article 3.2 (definition of political advertising) mentions that the activities would “normally” be provided for remuneration, while We also regret that wording on “in house activities” has been included, as it complicates the definitions further while targeting situations that would already be covered by the mention of remuneration.


Despite the clarifications contained in the Recitals, these elements risk creating a broad definition encompassing not only activities or campaigns run by Civil Society Organisations (CSOs), but also general political expression. Such a broad definition leads to a lack of clarity that could hamper the effectiveness of the new rules as the margin of maneuver in defining what represents political advertising could lead to abuses.

➔ **We strongly encourage using a narrow interpretation based on remuneration, possibly as part of guidelines for authorities in charge of enforcement.**

Identification of political advertising services (Article 7 and 8)

The final text still places the **obligations to identify advertising as political on sponsors**. We have already **highlighted** that this is concerning as, lacking other obligations on publishers or online platforms, they would be able to circumvent the transparency obligations set out by simply not indicating that the ads they are running are political. This renders the entire legislation ineffective, as only sponsors playing by the rules are effectively subjected to the obligations under the Regulation.

We do welcome on the other hand the clarifications contained in Article 15, where enhanced mechanisms are mandated for Very Large Online Platforms and online platforms to respectively “examine” and “make best efforts to examine” the self-declaration by sponsors.



→ **Make sure that complementary mechanisms involving online platforms are put in place to cross-check the accuracy and authenticity of the declaration of the sponsors.**

Transparency requirements (Article 13)

As [flagged](#) in the past, we welcome the inclusion in the text of ad repositories as this is crucial to ensure transparency not only on individual ads, but also on broader campaigns. We also welcome the fact that such **repositories will have to be put in place after 24 months** after the entry into force of the legislation. While this is in line with the review of the Regulation, it still seems like an excessively long delay for an element pivotal to the effectiveness of the Regulation.

→ **We would suggest anticipating as much as possible the publication of the implementing acts on the ads repositories.**

Targeting and amplification (Article 18)

As far as the data provisions are concerned, we welcome the reference to Article 9 of the General Data Protection Regulation, banning sensitive data to be used for targeting. We also welcome the mention of inferred and observed data in the recitals. At the same time, such a ban is still incomplete as it **does not formally include inferred and observed data**, for which we had [advocated](#) for in the past to close all gaps in the use of personal data for targeting and amplification in online political advertising.

→ **We would encourage enforcement authorities and courts to use a broad interpretation including inferred and observed data - this could be included in the European Data Protection Board guidelines foreseen in Article 22**

Enforcement and sanctions (Article 22 and Article 25)

The enforcement of the Regulation **will be split between five different authorities** including Data Protection Authorities, Digital Services Coordinators, Media Regulations, Electoral Commissions and any other authorities that Member States will decide to designate. This could lead to fragmented enforcement as well as slow down implementation and complicate coordination further among the different authorities. We welcome on the other hand the provision of clear guidelines to Member States on the establishment of sanctions.

→ **We urge policymakers to strengthen coordination between all competent authorities who will be tasked with supervisory responsibilities, in order to avoid inefficient and disparate enforcement.**

Link with the Digital Services Act

As already [highlighted](#) in the past, complementary due diligence obligations on online platforms will be crucial for the effective implementation of the Regulation. In particular, the **due diligence obligations contained in the Digital Services Act in Article 34 and 35** for very large online platforms (VLOPs) and very large online search engines (VLOSEs) will have to be implemented correctly, in particular when it comes to identifying and mitigate risks for electoral processes and civic discourse.

For this reason we welcome the reference to the Digital Services Act included in Recital 47, where VLOPs are encouraged to identify, analyse and assess systemic risks posed by political advertising services and put in place mitigation measures.

→ **Regulators will need to ensure that providers of VLOPs assess the risk of under-identifying undeclared political ads and take into account input from civil society and experts.**

Conclusions

In conclusion, the final text has been significantly improved throughout the legislative process with clearer definitions, the addition of provisions on ads repositories and coordinated mechanisms to link it with existing legislation such as the DSA and the GDPR. Yet, it still contains several shortcomings which could be

addressed during the implementation, for example by including clarifications in the guidelines to be issued on the identification of political ads and on enforcement. This exercise is of the utmost importance to ensure that the new rules will not be counterproductive, actually hampering political expression instead of promoting it in a transparent and effective way. effective and they

