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

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On 25 November 2021, the European Commission published its much-anticipated proposal for a regulation on the transparency and targeting of political advertising. The proposed regulation is part of the Commission's European Democracy Action Plan, which was published in late 2020, where the Commission recognised the need for new legislation to bring more transparency to political advertising across the EU (see IRIS 2021-2/4). The Commission stated that the regulation is planned to enter into force and be fully implemented by member states by April 2023, a year before the 2024 elections to the European Parliament.

At the outset, the main purpose of the regulation is to lay down harmonised transparency obligations for providers of political advertising, and crucially, to introduce harmonised rules on the use of targeting and amplification techniques for political advertising which involve use of personal data. This is so-called political microtargeting, where personal data is collected about individuals based on their online activity and behavioral profiling, and used for the targeting of tailored political advertising. In this regard, the regulation is comprised of five main chapters, with Chapter I setting out important definitions; Chapter II containing transparency obligations for political advertising services; Chapter III setting out rules related to targeting and amplification of political advertising; while Chapter IV and V contain provisions on supervision, enforcement and application.

First, and most notably, Article 2 sets out a wide definition of political advertising, defined as a message (a) by, for, or on behalf of a "political actor", unless it is of a purely private or a purely commercial nature; or (b) which is "liable to influence" the outcome of an election or referendum, a legislative or regulatory process, or voting behaviour. Importantly, political actor is also defined in Article 2 to include a wide range of actors, including political parties, candidates, and political campaign organisations. Of note, the regulation applies to political advertising "services", which are services "provided for remuneration".

Crucially, Chapter II then sets out important rules on transparency obligations for political advertising. These include, first, under Article 6, providers of political advertising will have a "record-keeping" obligation, being required to retain records on all political advertising services they provide, including the financial

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amounts involved for these services, and the identity of sponsors, which must be retained for five years. Notably, certain national authorities will have the power to request access (under Article 10) to this information, while other bodies, including "accredited" journalists (under Article 11), will also be able to request access. Crucially, under Article 7, all political advertising must contain (a) a statement that it is a political advertisement; (b) the identity of the sponsor of the advertisement; and (c) a "transparency notice" to enable the "wider context of the political advertisement and its aims to be understood". This transparency notice may be included as a link, and must include additional information, such as financial information on the aggregate amount spent on the advertisement and the political advertising campaign it is part of. Importantly, under Article 9, advertising publishers must put in place mechanisms to allow individuals to notify that a particular advertisement does not comply with the regulation.

Of particular note are the rules contained in Chapter III, which set out specific requirements related to targeting and amplification of political advertising. Crucially, under Article 12, when using targeting or amplification techniques for political advertising involving personal data, controllers must provide additional information with the political advertisement to allow the individual concerned to "understand the logic involved" and the "main parameters of the technique used", and the use of "third-party data and additional analytical techniques".

Finally, in relation to supervision, Chapter IV sets out that national data protection authorities will be responsible for supervising the rules on targeting under Article 12, while member states will be required to designate competent national authorities to monitor compliance with the other obligations in the regulation, which can be Digital Services Coordinators under the proposal Digital Services Act (see IRIS 2021-2/13). Notably, member states are required to lay down the rules on the sanctions to be imposed for violation of the regulation.

The proposal will now be considered by the European Parliament and the Council, and once adopted, the new regulation will be directly applicable in all member states.

Proposal for a regulation of the European Parliament and of the Council on the transparency and targeting of political advertising, COM(2021) 731 final, 25 November 2021

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

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