Regulation on political advertising negotiated

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On 2 February 2023, amendments were adopted by the European Parliament on the proposal for a Regulation of the European Parliament and of the Council on the transparency and targeting of political advertising (RPA). The proposal by the European Commission, first published in 2021, was adopted and the Council of the European Union agreed upon its general approach for negotiations with the European Parliament in December 2022. The text adopted by the European Parliament contains almost 300 amendments to the original text. When adopted, the RPA will become the first piece of EU legislation to directly address political advertising, which has so far been left to member states.

“Political advertising” is defined in several parts of the RPA and can be summarised as “the preparation, placement, promotion, publication, delivery or dissemination, by any means, of 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 voting behaviour or a legislative or regulatory process”; or

c) which is liable to influence the public opinion on societal or controversial issues at Union, national, regional, local or at a political party level; or

d) which contains any political views and opinions which are additionally promoted, published or disseminated by service providers.

Thus, the RPA refers to speech with *potential* influence on any possible societal issue at any possible level, which is one way or another economically supported, including in commercial advertising (if it has such a potential – see Recital 17b). In addition, even without the possibility of such influence, any non-private and non-commercial message of a political actor (an elected official) falls into the category.

“National competent authorities responsible for the auditing or supervision of political actors” shall look – separately and jointly with others – into all these issues and substantiate relevant regulatory actions. This is challenging, as these bodies will have to draw lines in the grey area of personal posts by influencers, as

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well as commercial and political posts with under-disclosed endorsements, risking inconsistent national judicial interpretations.

The main subjects of the RPA are:

- *Providers of political advertising services* (a controversial term as it both *includes*, in Recital 4, and *excludes*, in Article 2 – paragraph 1 – point 5, online intermediary services; and

- *Political advertising publishers* (organisations that make advertisments available through any medium).

Although political advertising is still not considered a product, the RPA aligns with the concept of (monetised) political speech as a service. The draft focuses mostly on online dissemination of political advertising, but shall also be applied to traditional television (Recital 14a).

In addition to transparency rules, providers of political advertising services "should be encouraged to establish, implement and publish tailored policies and measures to prevent the placement of political advertising together with disinformation, including by participation in wider disinformation demonetisation initiatives such as the EU Code of Practice on Disinformation" (Recital 4a). Thus, the RPA says directly that placement of political advertising that contains untrue information should be prevented and countered.

The key new obligations for providers and/or publishers of advertising services concern:

a) the publication of the declaration of political advertising services;

b) retention of information (for at least five years);

c) publication of detailed transparency notices;

d) responding to requests from national authorities (sometimes within 48 hours);

e) responding "promptly" (or within a month) to requests from interested entities;

f) a ban on the use of targeting and amplification techniques, unless elaborate consent and transparency requirements are implemented.

The future of online political advertising can only be envisaged if users are aware they are encountering it, and agree in advance to be affected by it.

Amendments adopted by the European Parliament on 2 February 2023 on the proposal for a regulation of the European Parliament and of the Council on the transparency and targeting of political advertising

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https://www.europarl.europa.eu/doceo/document/TA-9-2023-0027_EN.html

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