European Parliament adopts proposed regulation on the transparency and targeting of political advertising

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On 27 February 2024, the European Parliament adopted, by 470 in favour to 50 against (and 105 abstentions), the proposal for a regulation on the transparency and targeting of political advertising. This much-anticipated proposed regulation was first published by the European Commission in November 2021, and had been planned to enter into force by April 2023, a year before the 2024 elections to the European Parliament, to be held on 6-9 June 2024 (see IRIS 2022-1/12). However, the legislative procedure moved slower than planned, and in February 2023, amendments were adopted by the parliament on the proposed regulation (see IRIS 2023-4/28). Now, in February 2024, the parliament, sitting in plenary session, has adopted the proposed regulation. Following this adoption, the Council also needs to formally adopt the text, before it is then published in the Official Journal of the European Union.

The purpose of the regulation is to lay down harmonised transparency rules for the provision of political advertising, and crucially, rules on the use of targeting techniques and ad-delivery techniques that involve the processing of personal data. The parliament's adopted text runs to 178 pages, and the regulation is divided into five main chapters: Chapter I sets out important definitions; Chapter II contains transparency and due diligence obligations for political advertising services; Chapter III sets out rules related to targeting and ad delivery of online political advertising; and the final chapters relate to supervision, enforcement and application. Crucially, the parliament's adopted text contains some notable amendments to the Commission's original proposal, which include the following.

First, a notable provision on editorial content (Article 1(2)) has been added, which provides that "political opinions" and other "editorial content", that are subject to "editorial responsibility" shall not be considered political advertising "unless specific payment or other remuneration" is provided for by third parties.

Second, there are now a number of explicit exceptions to the definition of political advertising, including that political advertising does not include "presenting candidates in specified public spaces or in the media which is explicitly provided for by law and allocated free of charge, while ensuring equal treatment of candidates".

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Third, and crucially, a new Article 5 on “Provision of political advertising services in the Union” has been added. It provides under Article 5(2) that in the last three months preceding an election or referendum organised at EU level or in a member state, political advertising services pertaining to that election or referendum “shall only be provided” to a sponsor, or service provider acting on behalf of a sponsor, who declares him or herself to be: (a) a citizen of the EU; or (b) a third country national permanently residing in the Union and having a right to vote in that election or referendum; or (c) a legal person established in the Union which is not ultimately owned or controlled by a “third country national”. The parliament’s press release stated that this provision is designed to “limit foreign interference in European democratic processes" by prohibiting "sponsoring ads from outside the EU ... in the three-month period before an election or referendum”.

Fourth, Article 13 now requires the Commission to establish a “European repository for online political advertisements” which is a “public repository for all online political advertisements published in the Union” and will include a functionality “enabling public access” to online political advertisements.

Fifth, under Article 18, targeting techniques or ad-delivery techniques that involve the processing of personal data for online political advertising shall be permitted “only” when certain conditions are fulfilled, including that the data subject has provided “explicit consent” to the processing of personal data “separately for the purpose of political advertising”, and when those techniques do not involve using special categories of personal data (e.g, ethnicity, religion, sexual orientation). Finally, the regulation will enter into force on the 20th day following its publication in the EU Official Journal. However, it will only apply “18 months from the date of entry into force”. Notably, Article 5(1) shall apply as from the date of its entry into force (which provides that political advertising service providers “shall not restrict the provision of their services to a ‘European political party’, or a political group in the European Parliament, solely on the basis of its place of establishment”).

Press Release, European Parliament legislative resolution of 27 February 2024 on the proposal for a regulation of the European Parliament and of the Council on the transparency and targeting of political advertising, European Parliament, 27 February 2024

https://www.europarl.europa.eu/news/en/press-room/20240223IPR18071/parliament-adopts-new-transparency-rules-for-political-advertising

European Parliament, European Parliament legislative resolution of 27 February 2024 on the proposal for a regulation of the European Parliament and of the Council on the transparency and targeting of political advertising, 27 February 2024

https://www.europarl.europa.eu/doceo/document/TA-9-2024-0090_EN.pdf

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European Parliament legislative resolution of 27 February 2024 on the proposal for a regulation of the European Parliament and of the Council on the transparency and targeting of political advertising (COM(2021)0731 – C9-0433/2021 – 2021/0381(COD))

https://www.europarl.europa.eu/doceo/document/TA-9-2024-0090_EN.pdf

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