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Protecting election integrity and promoting democratic participation

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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

Protecting election integrity and promoting democratic participation

1. Introduction

In a healthy and thriving democracy, citizens can freely express their views and inform themselves from transparent and pluralistic sources. They participate in the public debate and elections, and thus can effectively determine their future. These hard-won rights form the bedrock of any democracy and lie at the heart of the European Union. Democracy needs to be nurtured and protected. Both the democratic system and the rights of individual voters face threats. These can range from opaque interference (domestic and foreign) and disinformation to practical obstacles that prevent, for example, EU citizens residing in different EU country than of their origin, from voting.

In the past, political candidates did their campaigning mainly through door-to-door canvassing, meetings, as well as through the distribution of leaflets or by giving TV and radio interviews. Clear rules ensured accountability and transparency in political advertising at national level. For example, the rules on radio airtime or on responsibility for printed material, and the main players, notably the political parties, could be clearly identified. In addition, the political debate and the actors were essentially national in nature.

The digital transition has changed this landscape. It has offered not only unprecedented means to reach out to people, including those residing abroad, but also to tailor messages to their personal interests and to advocate for ideas beyond traditional boundaries. The digital tools have also blurred the line between genuine information and political campaigning and opened the door for new intrusive and opaque targeting and amplification techniques that influence voters in a covert manner. These developments reduce individual's exposure to a plurality of views, fragment the democratic debate and increase the risk of manipulation. A range of new actors from online platforms, social media to data processing companies now play an important role in political campaigning. These developments have given rise to a series of problems, from citizens' data being misused to online platforms incapable of or unwilling to enforcing policies on tackling disinformation. Those offering services in this challenging environment face barriers, including legal uncertainty. Taking into account current predictions for a growing market for online political advertising, the problems identified will only worsen over time if the situation remains unaddressed.

The European Union together with its Member States have the responsibility to protect and defend electoral and political rights of their citizens and bolster the principles of democratic debate, by providing a clear and predictable legal environment for these activities. They should address the fragmented and outdated regulation of the democratic debate. This is especially important since a lot of the activity and many of the challenges faced are increasingly of a cross-border nature.

At the same time, the European Union is not only concerned with protecting democracy within its borders but also abroad, through its external action. As pressure is mounting on democracy globally, the proposed package of measures is in synergy with the strong efforts led by the European Union externally. It can contribute to the European Union's actions to protect, inspire and support democracies around the world, which are facing common challenges and have a common interest in working together to address them.

Already in 2018, the Commission adopted an elections package¹, including a series of provisions laying out measures to address the processing of personal data in elections, to spread best practices on preventing disinformation and cyberattacks, and to promote online transparency and accountability in the European electoral process, as well as to enhance cooperation². Rules for European political parties and foundations were also updated.

Since then, the experience of the elections to the European Parliament of 2019, and national elections in the Member States, have shown that the manner in which political actors connect to their electorate has undergone further significant changes. The political debate migrated even further online and onto social media. Internet platforms play a crucial role in the way citizens form, express and discuss their opinions.³ The adjustments required by the COVID-19 pandemic have also strengthened these trends with the increased use of online services. These changes bring new opportunities for the democratic debate to thrive, but also new threats to the democratic system⁴ and the internal market, also of a hybrid nature.

While the measures proposed in 2018 are still pertinent, further reforms are needed. Some of those measures were only recommendations and have not been consistently implemented⁵. Evidence shows that the existing rules can be circumvented.

During the elections to the European Parliament of 2019, European political parties encountered difficulties when trying to campaign across borders and the European Parliament has called for reform⁶. The swift move of the political debate to the online environment also stimulated the growth of the market for online political advertising, on which European political actors in Europe spent EUR 23 million in relation to the elections to the European Parliament of 2019⁷. EU citizens have also faced obstacles in exercising their right to vote in other Member States in both elections to the European Parliament and municipal elections.

With the digital transition under way, citizens, including the young generations, must be able to distinguish fact from fiction, and be able to participate in open debates, free from disinformation, unlawful interference, intimidation and manipulation. It must be clear for citizens that they are receiving political content and from whom. There should be meaningful

¹ Communication on Securing free and fair European elections A Contribution from the European Commission to the Leaders' meeting in Salzburg on 19-20 September 2018, COM(2018)637

² As a result, the European Cooperation Network on Elections was set up as a forum where Member State administrations responsible for elections can share experiences on how to ensure the elections are free of interference in their countries.

³ For instance, recent statistics on news sources in European countries in 2020 show that TV and online sources (including social media) were the most popular news sources in all countries investigated <https://www.statista.com/statistics/422687/news-sources-in-european-countries/>

⁴ For instance, during the COVID-19 pandemic, a huge wave of disinformation spread online – see Communication on tackling COVID-19 disinformation.

⁵ See the Report issued by the Commission on 19 June 2020 on the 2019 elections to the European Parliament COM(2020) 252 final.

⁶ European Parliament resolution of 11 November 2021 on the application of Regulation on the statute and funding of European political parties and European political foundations (2021/2018(INI)) https://www.europarl.europa.eu/doceo/document/TA-9-2021-0454_EN.pdf

⁷ Figures vary according to sources. Ad Transparency Report (May 17, 2019). <https://adtransparency.mozilla.org/eu/2019-05-17/eu/>

transparency to allow for public scrutiny and accountability of relevant actors and reflect the inclusiveness and diversity of our societies.

These challenges call for a new effort to strengthen the trust in our democratic systems. Protecting free and fair elections is a political priority of this Commission. The European Democracy Action Plan ('EDAP') set out steps the Commission plans to take to strengthen democracy⁸, building on experience from the 2019 European Parliament elections and drawing on the work of the European Cooperation Network on Elections ('EU Network on elections')⁹, as well as on the EU Citizenship Report 2020¹⁰.

The present package includes a proposal for a Regulation on transparency of political advertising, two proposals recasting the Directives on the electoral rights, a proposal to recast the Regulation on the statute and funding of the European political parties and European political foundations, and announces a joint mechanism for electoral resilience.

2. Transparency and targeting of political advertising

Political advertising is a specific type of advertising. It consists of messages promoted by, for or on behalf of political actors or messages liable to influence the outcome of an election or referendum, a legislative or regulatory process, or voting behaviour.¹¹ One of the most essential principles of democracy is that such advertising should be transparent, i.e. citizens should know who is standing behind a political advertisement and why it was addressed to them. Such transparent political advertising makes it easier to identify possible interference or manipulation of the political process.

Transparency of political advertising has traditionally been regulated at Member State level to ensure fair and free democratic processes and to prevent interference. National regulation imposes obligations on providers of political advertising services, to ensure, inter alia, accountability and the overall organisation of a fair and open political process. These national rules pursue a legitimate public interest which the EU fully shares. However, national transparency rules that apply to service providers vary across the Member States as well as across the various media and focus mainly on traditional media. The legal fragmentation and

⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social committee and the Committee of the Regions on the European Democracy Action Plan, COM(2020) 790 final.

⁹ The ECNE brings together representatives of Member State authorities with competence in electoral matters, and allows for concrete and practical exchanges on a range of topics relevant to ensuring free and fair elections, including data protection, cyber-security, transparency and awareness raising. For more information, see: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/eu-citizenship/electoral-rights/european-cooperation-network-elections_en

¹⁰ Report from the Commission to the European Parliament, the Council, the European Economic and Social committee and the Committee of the Regions, EU Citizenship Report 2020 Empowering citizens and protecting their rights (COM(2020) 730 final).

¹¹ Messages from official sources regarding the organisation of and terms for participating in the elections or promoting participation in the elections are not considered political advertising.

the difficulties in cross-border enforcement of national transparency rules are likely to increase in the future.

Traditional rules are often not adapted to developments in technology and electoral campaigning, and can in some cases be circumvented due to the borderless nature of the online environment, as well as due to regulatory gaps. The increased use of digital advertising in political campaigning and the cross-border dimension of key political challenges – from climate change and migration to the handling of the COVID-19 pandemic – has made the associated problems even more acute. It is clear that the size and complexity of the political advertising market, estimated in the EU to be worth over EUR 100 million in 2019, is increasing both within and outside the EU. Heterogeneous regulation across Member States and across the different forms of media (for example, different rules for TV and radio,) affects companies operating in a cross-border context or offering advertising campaigns using multiple media, which must comply with multiple and often unclear transparency requirements that result in legal uncertainty and associated compliance costs.

New EU legislation is needed to ensure transparency and accountability, and that relevant fundamental rights and data protection principles, such as purpose limitation and data minimisation, are upheld effectively.

Firstly, the proposed rules will reconcile the legitimate need to ensure transparency of political advertising services which are provided against remuneration, in order to protect and develop the EU internal market in compliance with fundamental rights, proportionality and subsidiarity. Their objective will be to address concerns relating to the concealment and misrepresentation of key information, such as the origin, intent, sources and funding of political messages as well as the disclosure of the political nature of the message, which are necessary for making informed political decisions.¹² The new rules would ensure that citizens will be able to clearly identify political advertisement. They will see the name of the sponsor prominently displayed and they will also be able to retrieve from a transparency notice the amounts spent on the political advertisement, the sources of the funds used and a link between the advertisement and the relevant elections or referenda.¹³ The Regulation also captures the dynamic process of digital political advertising as, in the production chain of an advertisement, one or multiple service providers can manage these processes.

Secondly, the proposed Regulation will address the risks emerging from the use of certain targeting, amplification and optimisation techniques, to preserve the democratic process, while ensuring a high level of data protection. Furthermore, the Regulation will ensure avoiding that the harmonised market for political advertising is fragmented anew by possible forthcoming rules. In the European Democracy Action Plan, the Commission presented its

¹² Report from the Commission to the European Parliament, the Council, the European Economic and Social committee and the Committee of the Regions, EU Citizenship Report 2020 Empowering citizens and protecting their rights (COM(2020) 730 final).

¹³ The measures proposed support Member States, as parties to the UN Convention on the Rights of Persons with Disabilities to deliver on their obligation to guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others.

first assessment of the challenges in relation to political advertising and issues linked to new techniques used to target advertising based on users' personal data. Such targeting, amplification and optimisation techniques used in political advertising enable political advertisements to be tailored to an individual's or a group's specific profiles, often without their knowledge by relying for example, on behavioural profiling based on data. Regardless of whether the data was properly obtained or not, those techniques can be misused to exploit citizens' vulnerabilities.

Moreover, EU citizens have a right to receive objective, open and pluralistic information, which in turn is one of the prerequisites for a thriving democracy. That may be affected by the use of targeting, amplification and optimisation techniques, since those techniques can be used to direct people towards certain content and render more difficult or less interesting for them to receive or look for messages that, in a democracy, they have a right to hear and comment on. That goes against the principles of open democratic debates, in which one is confronted with a plurality of ideas (the 'public square'). It also limits the ability of political actors to respond to messages, including to accusations, as part of that debate.

Therefore, the proposed Regulation will not allow using such targeting and amplification techniques if they are not subject to meaningful transparency requirements. It will also restrict and regulate the use of certain kinds of sensitive personal data, including where processing involves grouping people according to protected categories of interests, such as religion or sexual orientation or according to assumed interests. It will further empower individuals to determine whether and how they are targeted by political advertising and to decide whether they want it or not. Furthermore, individuals will be able to obtain meaningful information on the reason why and the type of a targeting technique used, who was targeted and for which purpose (for example because they reside in a certain place and local elections are coming), the sources of the data used, as well as the size of the target audience. Furthermore, it will be possible to access a description of the steps taken to comply with the proposal's requirements on targeting.

The proposed Regulation builds on and complements relevant EU law, including the General Data Protection Regulation ('GDPR') and the proposed Digital Services Act ('DSA'), which, once adopted, will lay out comprehensive transparency, accountability and systems design rules for advertising on online platforms, also as regards political advertising. The update of the self-regulatory Code of Practice on Disinformation, based on the recently published Commission guidance¹⁴, will also complement the proposed Regulation.

As European political parties sponsor communication campaigns across borders, a high standard of transparency should also apply to this campaigning, to promote accountability. Specific transparency requirements will therefore also be established for European political parties making use of political advertising by amending (through the other initiative described

¹⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Guidance on Strengthening the Code of Practice on Disinformation (COM(2021) 262 final).

in Section 4 below) the Regulation on the statute and funding of European political parties and European political foundations.

A dedicated repository for political advertising used by European political parties will be established to provide citizens with information about such advertisements, the money spent on them, as well as the target demographic of a given advertisement. European political parties will also ensure that their political advertising practices and policies are made transparent directly on their websites. The proposed Regulation on the statute and funding of the European political parties and European political foundations will also frame the use of targeting techniques for European political parties.

Given that establishing rules on national political parties is a national competence, Member States are invited to ensure that the transparency standards applicable to European political parties also apply to national political parties and that they follow high transparency requirements when making use of political advertising, in line with the rules applicable to European political parties. Mirroring the EU transparency requirements would greatly help address the problems identified.

Thanks to specific and targeted provisions proposed in the initiatives in the present package, political advertising service providers in the internal market will be able to exercise their activity in an adequate, harmonized, clearer and more predictable legal environment. At the same time, EU citizens will be able to receive transparent political information, so that they will be better placed to understand the stakes and nuances of political discourse. When adopted, the proposed Regulation on the transparency and targeting of political advertising will contribute to the development of the internal market for services and allow EU citizens to benefit from a high standard of transparency for political advertising in compliance with the Union values.

The Commission will evaluate the application of the new requirements on transparency of political advertising after the 2024 elections to the European Parliament.

3. Electoral rights of mobile EU citizens

There are 13.5 million of EU citizens residing in a different Member state¹⁵ than the one of their origin – mobile EU citizens. Those citizens have the right to vote and stand as candidates in elections to the European Parliament and municipal elections in their Member State of residence. Yet, their turnout is frequently lower than that of citizens who are nationals of the host Member State¹⁶.

¹⁵ According to Eurostat data, on 1 January 2020 there were 13.5 million EU citizens who enjoy their right to reside in another EU country. See Migration and migrant population statistics.

¹⁶ See the Report issued by the Commission on 19 June 2020 on the 2019 elections to the European Parliament COM(2020) 252 final and report issued by the Commission on 25 January 2018 on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections COM(2018) 044 final.

This is partly due to complicated registration processes in their Member State of residence. Mobile EU citizens do not always receive clear information on the elections in question, or they may receive the information in a language they do not master. There are also instances where EU citizens who register for elections to the European Parliament or municipal elections in one Member State risk being de-registered from the voting lists in their Member State of origin. All this makes it more difficult for mobile EU citizens to exercise their voting rights and thus undermines their democratic rights.

Further, there are cases where EU citizens could vote twice for the same European Parliament election, once in their Member State of residence and another time in their Member State of origin ('multiple voting'), which is illegal¹⁷.

In order to address these concerns, the Commission is proposing to update the relevant existing legal framework¹⁸. As part of the legislative measures, the Commission is proposing that specific information be provided to mobile EU citizens on their electoral rights, including on the prohibition of multiple voting and its consequences. This should entail the provision of information and the use of means of communication adapted to specific groups of voters, such as young voters. In order to further reduce the possibility of multiple voting in the same election, the Commission proposes to define a common data set to be collected and exchanged between Member State administrations. At the same time, the Commission suggests prohibiting deregistration of mobile EU citizens from other elections in their Member State of origin solely on the basis of this exchange.

The Commission also proposes to introduce standardised templates available in all EU languages for registration as a voter or as a candidate, so that mobile EU citizens can easily register in their Member State of residence. Member States will be asked to provide EU mobile citizens with information in clear and plain language, in at least the official language or languages of the host Member State and in another official language of the Union that is broadly understood by the largest possible number of European Union citizens residing on its territory. These proposed legislative measures will improve the collection of data for municipal elections and elections to the European Parliament.

The Commission will also establish a contact point on electoral rights¹⁹ at Commission level to further connect and reinforce the European Direct Contact Centre²⁰ and Your Europe

¹⁷ Prior to the last elections to the European Parliament, Member States exchanged data on around 1.3 million voters and 114 parliamentary candidates. This exchange resulted in the identification of over 213 000 multiple registrations of citizens.

¹⁸ While the competences to organise elections in their respective territories (including for municipal elections) belongs to the Member States, the legal framework for the exercise of electoral rights by mobile EU citizens involves the interaction of EU and national rules. This is addressed in Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals and Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals, hereby called 'election directives'

¹⁹ The 2020 Citizenship Report refers to the possibility of creating a dedicated 'shared resource' to support EU citizens in exercising their electoral rights. The contact point in question will be established as part of this commitment.

Advice²¹. This will also help EU citizens and local authorities in finding solutions to relevant issues during the period when EU citizens can register for elections to the European Parliament by ensuring easier access to information, better quality service and faster replies to mobile EU citizens' inquiries.

The current legal provisions allow Member States to reserve candidacy to some positions in municipal elections, such as the office of elected head, deputy or member of the governing college of the executive of a basic local government unit to their own nationals only. Several Member States have used this provision, thus restricting the possibilities for mobile EU citizens to participate in the political life of the place where they live. The amended rules will require Member States to report regularly on the application of such measures, to allow assessing the necessity of maintaining them. The Commission will further promote the exchange of best practices on the matter in the framework of the EU Network on Elections to encourage Member States to consider whether equal access to such functions for municipal elections could be granted.

In addition, targeted funding will be provided within the Citizens, Equality, Rights and Values programme to promote innovative democratic initiatives in support of the democratic participation of mobile EU citizens, particularly in the context of the May 2024 elections to the European Parliament.

4. Clearer rules on the funding of European political parties and foundations

In accordance with Article 10(4) of the TEU, European political parties contribute to forming European political awareness and to expressing the will of citizens of the Union. European political foundations, underpin and complement the objectives of the European political party they are affiliated with by, among other things, contributing to the debate and developing activities on European public policy issues, and by fostering cooperation to promote democracy.

The Regulation on the statute and funding of European political parties and European political foundations is a recent piece of legislation, only applied at the 2019 elections to the European Parliament. However, the European Parliament's own initiative report on the application of Regulation 1141/2014²² identified a number of loopholes in the current regulatory framework that prevent European political parties and foundations from fulfilling their mission to help to create a European political space. The Commission's evaluation report²³ arrived to similar findings. Furthermore, since its entry into force, the Regulation has been modified twice and several references and provisions have become obsolete.

²⁰ https://europa.eu/european-union/contact_en

²¹ https://europa.eu/youreurope/advice/index_en.htm

²² European Parliament resolution of 11 November 2021 on the application of Regulation (on the statute and funding of European political parties and European political foundations, (2021/2018(INI)), available at https://www.europarl.europa.eu/doceo/document/TA-9-2021-0454_EN.html.

²³ Evaluation report pursuant to Article 38 of Regulation 1141/2014 on the statute and funding of the European political parties and European political foundations, COM (2021) 717 final.

The Commission is therefore putting forward a proposal to recast that Regulation. The substantial changes proposed seek to introduce robust transparency rules – on political advertisement and on financing sources, in particular in relation to donations – and a stronger reference to Article 2 TEU values. The Commission’s proposal will also clarify that nothing should prevent European political parties from campaigning cross-border within the EU, which is central to their role and will facilitate interactions with their national member parties. It will foster a more balanced representation in political parties, contributing to the overall policy objective of increased inclusiveness and diversity in the democratic debate. Finally, it will increase the financial viability of European political parties by limiting the co-financing requirement, in particular during the year of elections to the European Parliament and cut excessive administrative burden.

5. Cooperation on electoral resilience

Cooperation among Member States to ensure resilient electoral processes and mutual support to address threats is essential. As announced in the EDAP and in the EU Citizenship report 2020, the Commission continues to use the EU Network on Elections to deliver on a number of its commitments, including:

- continuously facilitating and improving the ability of all EU citizens to exercise their voting rights including by supporting the exchange of best practices and mutual assistance to ensure free and fair elections and establishing a joint electoral resilience mechanism;
- establishing common references on good practices for specific phases of the electoral cycle;
- establishing common references on data collection on the participation of mobile EU citizens in municipal elections and elections to the European Parliament;
- supporting the cooperation between EU networks and international organisations to build capacity and exchange best practices in countering electoral threats and promote high international standards in the use of new technologies.

Building on this cooperation, the Commission will offer to the Member States a ‘joint mechanism for electoral resilience’ as of 2022. It will be organised and coordinated through the EU Network on Elections in close cooperation with the Network and Information Systems (NIS) Cooperation Group and the EU’s Rapid Alert System. The mechanism’s primary operational focus will be to support deployment of joint expert teams and expert exchanges with the aim of building resilient electoral processes, in particular in the area of online forensics, disinformation and cybersecurity of elections. Further types of actions could be gradually envisaged such as common training sessions and the common development of IT systems.

The exchanges can take place across the EU and will involve experts from one Member State providing support on a location in another Member State. The participation of experts from the private sector, international organisations, civil society, academia or third countries could also be considered, as necessary.

While the formation, tasks and deployment of expert exchanges would be triggered at the request of the Member States, the Commission will proactively support the Member States through structured planning activities within the EU Network on Elections. The aim will be to identify upcoming elections and planned procedural changes, consider potential requirements and opportunities for cooperation and pooling of resources, and identify potential resources for the inclusion within the mechanism framework.

A work stream focusing on the cyber security of election technology under the auspices of the Cooperation Group established by the NIS Directive²⁴ will continue its work in close consideration with the EU Network on Elections in order to share experiences and provide guidance, as well as an overview of tools, techniques and protocols to detect, prevent, and mitigate cybersecurity threats to election processes.

The second half of 2023, the Commission will also organize an elections high-level event bringing together various authorities related to elections to address the challenges addressed in the present package.

The Commission will also assess whether a legislative proposal for the protection of electoral infrastructure as critical infrastructure could be considered.

6. Conclusions

The delivery of the measures proposed in this package will provide the European Union with a stronger legislative framework to take up the challenges facing our democracies and elections, in full respect of our common principles and values. It will enable voters to exercise their democratic rights better, including to pluralistic and transparent information source, European parties to engage in more effective and accountable interaction with the public, and Member States and the European Union as a whole to uphold a democratic electoral process, free from interference and manipulation.

The more integrated internal market for political advertising services must be reconciled with the full enjoyment of citizens' democratic rights. Indeed, the establishment of a well-functioning internal market goes hand in hand with the pursuit of the values which are common to the Union and its Member States. Developing the EU's internal market for political advertising services and defending the Union's values constitute two sides of the same coin. The success of this not only depends on legislation, but also on its implementation, which will enable citizens to truly benefit to the fullest extent from the aim and spirit of the proposed measures. This goes for all the elements of this package.

²⁴ Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union
OJ L 194, 19.7.2016, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32016L1148>

The Commission looks forward to the further engagement of the European Parliament and the Council as well as the wide circle of national actors, public and private, beyond government authorities, in order to ensure that the set of measures presented in this Communication is adopted and implemented in time for the elections to the European Parliament in 2024.
