



Council of the
European Union

082188/EU XXVII. GP
Eingelangt am 30/11/21

Brussels, 30 November 2021
(OR. en)

Interinstitutional File:
2021/0381(COD)

14374/21
ADD 3

AG 108
INST 421
PE 113
DATAPROTECT 271
CODEC 1553
FREMP 275
CONSOM 274
TELECOM 441
AUDIO 112
MI 899
DISINFO 41
COMPET 872

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	25 November 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2021) 356 final
Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the document Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the transparency and targeting of political advertising

Delegations will find attached document SWD(2021) 356 final.

Encl.: SWD(2021) 356 final



EUROPEAN
COMMISSION

Brussels, 25.11.2021
SWD(2021) 356 final

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the transparency and targeting of political advertising

{COM(2021) 731 final} - {SEC(2021) 575 final} - {SWD(2021) 355 final}

Executive Summary Sheet
Impact assessment on the initiative on the transparency of political advertising
A. Need for action
What is the problem and why is it a problem at EU level?
<p>Political advertising conveys political messages to voters through a variety of media, from print to television to social media. It is used in political campaigns and more generally to shape public opinion and to contribute to debates on topics of societal importance. It is specifically regulated to ensure free and fair elections. An important element of existing rules is that they seek to ensure political advertising is used transparently, so that citizens can recognise advertisements and those who place them can be held to account. There is a legitimate public interest in protecting this, such as fairness, equal opportunities and transparency in the electoral process and the fundamental right to be informed in an objective, transparent and pluralistic way. National rules thus place obligations on political actors and on the companies providing political advertising services. These rules traditionally focused on ‘offline’ media (newspapers, broadcasters, etc.), but online advertising has become increasingly common as it can be disseminated with more flexibility and be targeted to very specific audiences. Online advertising has brought new challenges, in particular related to issues of transparency, accountability and manipulative targeting.</p> <p>All Member States have legislation relevant to political advertising, resulting in a fragmented patchwork of national rules in terms of substance, scope, implementation and enforcement, which create obligations for service providers, and which apply differently between Member States and depending on the medium through which the advertising is disseminated. This particularly concerns relevant definitions and transparency requirements, which affect the content of advertisements. As some Member States intend to introduce new legislation to cover the new online media, this fragmentation is expected to increase. This complex legal context generates costs and challenges, which also create barriers to political advertising as a cross-border service in the internal market, with a direct impact on the functioning of the internal market.</p> <p>Personal data is used to target political messages to citizens by directing advertisements to groups and tailoring the content. The processing of personal data for such purposes, particularly data considered sensitive under the GDPR, and targeting to groups small enough to enable the non-transparent provision of tailored political messages, have specific and pronounced negative effects on citizens’ protected rights. Some Member States have also attempted or are considering intervention with respect to targeting, but such measures have proved problematic.</p> <p>These issues also affect democratic processes and campaigning at EU level, including by European political parties (EUPPs). The EU legal framework for EUPPs does not regulate the use of political advertising, and fragmentation and uncertainty can hinder EUPPs’ ability to conduct EU-wide campaigns.</p> <p>This impact assessment analyses core problems with political ads and their causes, from 3 perspectives:</p> <ol style="list-style-type: none"> 1. Economic actors who wish to run multi-medium and/or multi-Member State campaigns face significant obstacles and additional costs, due to the differences in transparency regulation between Member States and between online and offline contexts. Some political and economic actors exploit this situation to circumvent rules. This situation also drives a large share of political ads online. 2. This situation erodes the ability of national rules on political ads to protect democratic processes and fundamental rights. The targeting of online political ads, and other manipulative techniques, creates additional problems. 3. There is insufficient transparency around political ads sponsored by EUPPs which are campaigning across the EU on EU issues.
What should be achieved?

The general objectives are to: (1) facilitate the provision of political advertising and related services in the internal market while supporting fair democratic processes based on high and harmonised transparency standards and lawful use of targeting techniques; (2) provide for high transparency standards for political parties in the EU supporting free and fair elections.

Specific objectives are to: (a) reduce legal fragmentation, remove obstacles and reduce costs for cross-border services, (b) define high transparency requirements for political ads (including issues ads), (c) address specific data protection risks emerging from the use of some targeting and amplification techniques, (d) ensure effective oversight of the envisaged obligations and strengthen regulatory outcomes, (e) promote stronger transparency and free and fair elections through compliance with rules by political parties in the EU. Reaching these objectives will also increase resilience against foreign information manipulation and interference.

What is the value added of action at the EU level (subsidiarity)?

This issue is best addressed at EU level as individual Member States can neither tackle the market fragmentation nor address the cross-border nature of the issues identified. Several Member States have passed or are considering legislation on the transparency and targeting of political advertising. Fragmentation will thus increase, which jeopardises the right to freedom of establishment and to provide services across the EU, while also not achieving the regulations' intended aims. EU-wide standards for political ads and related services would bring legal certainty, remove compliance costs of delivering services cross-border and reduce non-compliance risks. This would mitigate incentives for economic actors to partition the internal market and incentivise them to provide compliant cross-border political ads services, and to develop new ones. In contrast, the effects of purely national legislation are limited to a single Member State. They risk being circumvented or not being understood by service providers from other Member States. They would not address the EU-wide problems identified above and could even increase them. Furthermore, the cross-border nature of activities, in particular in the online environment, creates significant challenges regarding transparency and regarding targeting, which purely national regulation in this domain would not be able to address. Data protection is harmonised at EU level and additional measures should be provided at EU level. Also, only the EU could provide EU-wide measures for EUPP political advertising: this would ensure national legislation does not impede their EU campaigns.

B. Solutions

What are the various options to achieve the objectives? Is there a preferred option or not? If not, why?

Options related to economic actors in the *internal market* include:

1.1 **Limited binding measures** to align certain definitions and provide for information retention, and soft measures and standards to promote transparency in the use of political ads online and offline and support further interventions, including self-regulation. Soft measures also cover the use of targeting techniques.

1.2. **Binding measures** to harmonise transparency requirements for political ads accompanied by soft measures and standards. The binding measures also address the use of targeting techniques in political ads.

Options addressed to *political parties* include:

2.1. **Limited binding measures** to adapt the existing framework on EUPPs to introduce an obligation for parties to support transparent use of political ads; and

2.2 **Extending the existing framework** to introduce complementary obligations on EUPPs to provide meaningful transparency for the use of political ads. Appropriately empowering the Authority for EUPPs to report on compliance.

For both 2.1 and 2.2, soft measures would apply to national political parties, with recommendations to be addressed to Member States to introduce equivalent standards for all political actors.

What are different stakeholders' views? Who supports which option?

- There is a general demand for a uniform definition of what constitutes political advertising.

<ul style="list-style-type: none"> • Broad support for EU action, in particular for transparency measures to ensure (i) enough information about political ads is provided – to allow campaigns to be followed across platforms and media – and (ii) information is retained and made accessible to the public. • Support for either a ban on targeted political ads, or allowing them only after explicit opt-in by users. • Regulation offline (extensively regulated) and online ads (limited or no regulation) needs rebalancing. • Member States also broadly support more effective oversight possibilities (off- and on-line) to address opaque political ads practices.
C. Impacts of the preferred option
What are the benefits of the preferred option (if any, otherwise of main ones)?
<p>The preferred option is expected to have an positive effect over the baseline by:</p> <ul style="list-style-type: none"> • increasing legal certainty and removing costs associated with regulatory fragmentation. • bringing added transparency to targeting, with positive impacts on fundamental rights. • providing a clear basis for oversight, and thus enabling national authorities to request the information needed to oversee political ads, and to cooperate in investigation and enforcement. • increasing transparency in the democratic processes, as well as protection against manipulation through targeting techniques. • active supervision of political campaigning around EU elections would also require active and timely disclosures by EUPPs and reinforce the role and resources of the Authority to ensure oversight.
What are the costs of the preferred option (if any, otherwise of main ones)?
<p>Economic actors – compliance costs to implement obligations on transparency and oversight (both one-off adaptation costs and ongoing compliance costs). But overall costs should service providers should be lower than in the baseline, as reduced fragmentation yields efficiency gains.</p> <p>National authorities and the Authority for EUPPs – one-off costs for training and capacity to adapt and make best use of the new opportunities for more effective regulation. Cost for procurement of EUPP repository. Offset by efficiency gains, better information access and better coordination at EU level.</p> <p>EUPPs – certain costs for disclosures on common ad repository platform offset against increased legal certainty and lower pan-EU campaigns costs.</p>
What are the impacts on SMEs and competitiveness?
<p>The new requirements will help SMEs scale up their political advertising services across borders in the internal market. Adapting their information systems to comply with the passive obligation to retain information on political ads would entail minor one-off costs. These costs would be offset by savings from more consistent rules across the EU.</p>
Will there be significant impacts on national budgets and administrations?
<p>One-off costs for training administrative staff and recurrent costs for monitoring compliance with transparency and targeting obligations. Should be offset by efficiency savings from harmonised obligations and the streamlined and strengthened oversight process. Current enforcement is low, however.</p>
Will there be other significant impacts?
<p>The increased accountability of political actors would encourage a culture of open and honest campaigning and should help rebuild public trust in the use of political advertising, and more generally in the public political debate and the integrity of the electoral process.</p>
Proportionality?
<p>The measures proposed are proportionate to the objectives defined (see box for subsidiarity above).</p>

D. Follow up
When will the policy be reviewed?
Within 5 years of entering into force of the envisaged Regulation.