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AG 3
INST 4
PE 1
FREMP 7
DATAPROTECT 4
DISINFO 1
CONSOM 10
MI 25
COMPET 16
TELECOM 8
AUDIO 4
POLGEN 6

NOTE

From: Presidency

To: Delegations

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ST 14374/21 + ADD1
ST 14376/21 + ADD1
ST 14379/21 + ADD1
ST 14386/21
ST 14386/21 + ADD1
ST 14388/21

Subject: 'Democracy and integrity of elections' package
- Presidency steering note

Delegations will find attached a steering note drawn up by the Presidency for the policy debate to be held at the meeting of the **General Affairs Council** on 25 January 2022.

GAC of 25 January 2022 - 'democracy and integrity of elections' package**Steering note**

On 3 December 2020, in its European democracy action plan (EDAP)¹, the Commission announced its intention to take - legislative and non-legislative - measures to reinforce democracy in the Union. At the General Affairs Council of February 2021, Member States welcomed the plan, considering it a timely contribution to the shared objective of strengthening the resilience of democracies across the EU in the face of recent challenges and increasing risks of and attempts at interference, in particular in the context of COVID-19 and with the next elections to the European Parliament in mind.

On 25 November 2021, the Commission published the 'Democracy and Integrity of the European Elections' package, comprising four legislative proposals: a proposal for a Regulation on the transparency and targeting of political advertising², a proposal for a Regulation (recast) on the statute and funding of European political parties and European political foundations³, and two proposals for a Directive (recasts) on the rights of citizens residing in a Member State of which they are not nationals in European elections and municipal elections⁴.

The aim of the proposed measures is to provide a strengthened legislative framework to address the challenges facing our democracies, including our electoral processes, and to preserve the integrity of the democratic debate, in full respect for our common values and principles. This involves enabling voters to exercise their democratic rights more effectively, especially in terms of access to pluralistic and transparent sources of information; enabling European parties to interact more effectively and responsibly with citizens; and allowing Member States and the EU as a whole to protect electoral processes from interference and manipulation. These objectives were already at the heart of the Council conclusions of February 2019 entitled 'Ensuring free and fair European elections'⁵, are in the spirit of the debate held on the EDAP at the General Affairs Council in February 2021, and remain relevant for the next elections to the European Parliament in 2024. Initial discussions at the technical level on the package show that a majority of Member States are in favour of moving forward quickly to adopt these measures before the next European elections.

¹ 13678/20

² 14374/21 + ADD1

³ 14386/21+ADD1

⁴ 14376/21 + ADD1, 14379/21 + ADD1

⁵ 6573/1/19 REV 1

In its conclusions of 15 December 2020⁶, the Council considered that the way forward in addressing disinformation at national and EU level could involve a range of approaches, including the possibility of having a regulatory or co-regulatory framework and the means necessary for independent auditing, both by regulators and civil society, notably in terms of data access. On this basis, the Council invites the Commission to develop and eventually implement further transparency requirements for online platforms. The aim of such requirements would be to foster a well-functioning digital public sphere, greater accountability and improved transparency in addressing disinformation. These measures should be based on the primacy of fundamental rights, especially the freedom of expression, as well as democratic public discourse.

Furthermore, the report on the 2019 European Parliament elections highlighted the need to strengthen certain rules in order to prevent any external interference in our electoral processes, in particular by increasing the transparency of European political parties' funding sources so as to combat indirect foreign funding. The Commission has proposed several measures to increase the transparency of funding sources, in the context of the revision of Regulation 1141/2014 on the statute and funding of political parties. However, the Commission has proposed amending the Regulation to allow European political parties and foundations to collect contributions from members located in countries belonging to the Council of Europe, which is not currently permitted. To reduce the risk of foreign interference and ensure proportionality, the Commission proposes capping such contributions at 10 % of total contributions (which, in turn, are capped at 40 % of the party's or foundation's annual budget). This cap, together with the obligation for European political parties to ensure that their member parties outside the EU espouse values equivalent to those laid down in Article 2 TEU, and with a due diligence mechanism for donations, should provide additional safeguards as regards foreign funding. The opening up of European political parties and their funding sources to all member countries of the Council of Europe gave rise to questions from the majority of Member States during the first round of technical discussions.

The 2019 European Parliament elections also highlighted the growing role of political advertising and new targeting and amplification techniques, in particular in the digital domain. In a context of unevenly enforced and fragmented regulation, this growing development led the Commission to observe that the internal market was not currently equipped to provide political advertising to a high standard of transparency to ensure a fair and open democratic process in all Member States. It has therefore put forward a proposal for a Regulation aimed at remedying the situation. A high level of transparency requirements and a regulatory framework for targeting and amplification techniques based on personal data will help not only to make the actors responsible for such advertising accountable, but also to safeguard the right of citizens to be informed in an objective, transparent and pluralistic way. The proposal, which is limited to addressing the issues of transparency and the use of targeting techniques, will not affect other aspects of political advertising regulated at national level. In particular, the legality of the content of political advertising, the periods during which advertisements are permitted and the nature of participants in the democratic process will remain matters solely for the Member States.

⁶Council conclusions on strengthening resilience and countering hybrid threats, including disinformation in the context of the COVID-19 pandemic (14064/20)

In light of the above, Ministers are invited to respond to the following questions:

- 1) Considering the scale of the challenges facing European democracy, including with regard to the proven risk of foreign interference, to what extent should funding of European political parties and foundations be made more transparent, be better regulated and/or be restricted as regards sources outside Europe?
- 2) Do deepening the European area and democratic debate, and increasing the turnout for European elections, require more visibility and activity by European political parties in Member States' public spheres, as well as strengthened arrangements for exercising the right to vote for EU citizens residing in a Member State of which they are not nationals?
- 3) The widescale use of political advertising in Europe and rapid advances in the often opaque techniques used to disseminate such advertisements are having a profound impact on our democratic systems. Fragmented national approaches affect the integrity of the internal market and give rise to issues of efficiency. Faced with these challenges, what are the key elements that can guarantee the integrity of electoral processes and the internal market, in particular as regards the transparency of political advertising and the targeting and amplification techniques used?
