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DRAFT COMPROMISE AMENDMENTS 1 - 12 (Recitals)

Draft report

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Transparency and targeting of political advertising

Proposal for a regulation

(COM(2021)0731 – C90433/2021 – 2021/0381(COD))Rapporteurs for the opinions (*):

Sabine Verheyen, Committee on Culture and Education

Anna Júlia Donáth, Committee on Civil Liberties, Justice and Home Affairs

(*) Associated committee(s) – Rule 57 of the Rules of Procedure

Obtenu par CONTEXTE

Compromise Amendment 1

Compromise amendment replacing Amendments: 1 - 2, 4 - 5, 7, 9, 15; 49 - 55; 140 - 141, 142 - 149, 158 - 159, 161 - 164, 168 - 173, 186 - 190; 266 - 296; 299, 305, 311, 312, 352; CULT 2; CULT 3; CULT 6 - CULT 7; CULT 17; CULT 18; JURI 1 - JURI 8; JURI 12 - 16; JURI 18; JURI 21; JURI 42 - JURI 52; JURI 67; JURI 69; LIBE 1; LIBE 6; LIBE 33; LIBE 34 - LIBE 42; AFCO 1; AFCO 3 - AFCO 5; AFCO 7; AFCO 13; AFCO 27 - AFCO 30;

[Subject matter and scope]

Title; Article 1; Recitals 1 - 4, 6 - 10, 13 - 14, 19, 70;

Proposed by: Rapporteur

- (1) The supply of and demand for political advertising are growing and increasingly cross-border in nature. A large, diversified and increasing number of services are associated with that activity, such as political consultancies, advertising agencies, “ad-tech” platforms, public relations firms, influencers and various data analytics and brokerage operators. Political advertising can take many forms including paid content, sponsored search results, paid targeted messages, promotion in rankings, promotion of something or someone integrated into content such as product placement, influencers and other endorsements. Related activities can involve for instance the dissemination of political advertising upon request of a sponsor or the publication of content against payment *or other forms of remuneration, including benefits in kind.* (142 S&D, 143 Greens)
- (2) Political advertising can be disseminated or published through various means and media across borders *both online and offline. It is rapidly increasing as* it can be disseminated or published via traditional offline media such as newspapers, television and radio, and also increasingly via online platforms, websites, mobile applications, computer games and other digital interfaces. The latter are not only particularly prone to be offered cross-border, but also raise novel and difficult regulatory and enforcement challenges. ~~The use of online political advertising is strongly increasing, and certain linear offline forms of political advertising, such as radio and television, are also offered online as on-demand services.~~ Political advertising campaigns tend to be organised to make use of a range of media and forms. (144 Greens, 145 S&D)
- (3) Given that it is normally provided against remuneration, advertising, including political advertising, constitutes a service activity under Article 57 of the Treaty on the Functioning of the European Union (‘TFEU’). In Declaration No 22, regarding persons with a disability, annexed to the Treaty of Amsterdam, the Conference of the Representatives of the Governments of the Member States agreed that, in drawing up measures under Article 114 of the TFEU, the institutions of the Union are to take account of the needs of persons with disabilities.

- (4) The need to ensure transparency is a legitimate public goal, in conformity with the values shared by the EU and its Member States pursuant to Article 2 of the Treaty on European Union ('TEU'). It is not always easy for citizens to recognise political advertisements and exercise their democratic rights in an informed manner. ***Furthermore, the increasingly sophisticated and intense interference by malign foreign actors in our democratic electoral processes through the spread of disinformation should be tackled.*** A high level of transparency is necessary, among others, to support an open and fair political debate and free and fair elections or referendums and to combat disinformation and unlawful interference including from abroad. Political advertising can be a vector of disinformation in particular where the advertising does not disclose its political nature, where it ***comes from sponsors outside of the Union and or where it is targeted or amplified.*** ***A high level of transparency is necessary inter alia to support an open and fair political debate, political campaigns and free and fair elections or referendums and to combat disinformation and unlawful interference, including from third countries.*** Transparency of political advertising contributes to enabling voters ***and individuals in general*** to better understand when they are being presented with a political advertisement on whose behalf that advertisement is being made, ***as well as how and why*** and how they are being targeted by an advertising service provider, so that voters are better placed to make informed choices. (1 RE, 147 Greens)
- (4a) ***Defamatory advertising and libellous campaigns that deliberately fabricate and spread false information about political actors with the aim of worsening their public image are unacceptable in any democratic system as they undermine the electoral process and hinder political discussion based on facts, ideas and programmes. Member States should undertake all necessary steps to bring an immediate halt to such practices and to investigate them through the appropriate mechanisms and procedures, especially during electoral periods.*** (2 RE)
- (4 b) ***Providers of advertising services which are intermediary service providers within the meaning of Regulation (EU) 2022/2065 (Digital Services Act) involved in the presentation of political advertising on their interface or the interface of another service provider should 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 Code of practice on disinformation.*** (148 RE)
- (6) Political advertising is currently regulated heterogeneously in the Member States, which in many cases tends to focus on traditional media forms. Specific restrictions exist including on cross-border provisions of political advertising services, ***which directly affect the capacity to conduct cross-border and pan-European political campaigns.*** Some Member States prohibit EU service providers established in other Member States from providing services of a political nature or with a political purpose during electoral periods. At the same time, gaps and loopholes in national legislation are likely to exist in ***the national legislation of*** some Member States, ***as well as in Union legislation,*** resulting in political advertising sometimes being disseminated without regard to relevant national rules and thus risking undermining the objective of transparency regulation for political advertising. (CULT 2, AFCO 3)

- (7) To provide enhanced transparency of political advertising including to address citizens' concerns, some Member States have already explored or are considering additional measures to address the transparency of political advertising and to support a fair political debate and free and fair elections or referendums. These national measures are in particular considered for advertising published and disseminated online and may include further prohibitions. These measures vary from soft to binding measures and imply different elements of transparency.
- (8) This situation leads to the fragmentation of the internal market, decreases legal certainty for providers of political advertising services preparing, placing, *promoting*, publishing, *delivering* or disseminating political advertisements, creates barriers to the free movement of related services, distorts competition in the internal market, including between offline and online service providers *as a consequence of the disparity in the level of obligations and compliance between those different types of service providers*, and requires complex compliance efforts and additional costs for relevant service providers. (4 RE, 162 S&D)
- (9) In this context, providers of political advertising services are likely to be discouraged from providing their political advertising services in cross-border situations. This is particularly true for microenterprises and SMEs, which often do not have the resources to absorb or pass on the high compliance costs connected to the preparation, placement, *promotion*, publication or dissemination of political advertising in more than one Member State. This limits the availability of services and negatively impacts the possibility for service providers to innovate and offer multi-medium and multi-national campaigns within the internal market. (164 S&D)
- (10) A consistent and high level of transparency of political advertising throughout the Union should therefore be ensured when political advertising services are provided, while divergences hampering the free circulation of related services within the internal market should be prevented, by laying down ~~uniform~~ *harmonised rules on provision of political advertising services, and on transparency and due diligence obligations for sponsors and providers of political advertising services* guaranteeing the uniform protection of rights of persons and supervision throughout the internal market based on Article 114 of the TFEU. (5 RE, AFCO 5)
- (13) This Regulation should *neither* ~~not~~ affect the ~~substantive~~ content of political advertising nor *Union or Member States* rules regulating the *content display of political advertising, presentation of political advertisements, electoral periods and the conduct of political campaigning* including *advertising bans* ~~so-called silence periods preceding elections or referendums~~. *Furthermore, this Regulation should not affect the fundamental right to freedom of opinion and freedom of speech.* (7 RE, 168 S&D, CULT 3)
- (13 a) *The specific needs of micro, small and medium-size enterprises should be taken into account in the application and enforcement of this Regulation, in line with the principle of proportionality. The notion of micro, small and medium-sized enterprises should be understood within the meaning of Directive 2013/34/EU.* (169 RE)

- (14) The Regulation should provide for harmonised transparency *and due diligence requirements* requirement applicable to economic actors providing political advertising and related services (i.e. activities that are normally provided for remuneration); those services consist in particular of the preparation, placement, promotion, publication, *delivery* and dissemination of political advertising. The rules of this Regulation that provide for a high level of transparency of political advertising services are based on Article 114 of the TFEU. This Regulation should also address the use of targeting, *ad delivery* and amplification techniques in the context of the publication, dissemination or promotion of political advertising that involve the processing of personal data. The rules of this Regulation that address the use of targeting and amplification are based on Article 16 of the TFEU. Political advertising directed to individuals in a Member State should include advertising entirely prepared, placed, *promoted*, published *delivered or disseminated* by service providers established outside the Union but disseminated to individuals in the Union. To determine whether a political advertisement is directed to individuals in a Member State, account should be taken of factors linking it to that Member State, including language, context, objective of the advertisement and its means of dissemination. (9 RE, 170 S&D, 171 Greens, AFCCO 7)
- (14 a) *The specificities of the medium of publication or dissemination of the political advertisement should be taken into account in the application and enforcement of this Regulation.* (173 RE)
- (19) *The media contribute to the well-functioning of democratic processes and play an essential role in the freedom of expression and right to information, particularly during election periods. They provide a space for public debate and contribute to public opinion-forming. This Regulation should not affect the editorial freedom of the media. Political views and opinions or other editorial content expressed or disseminated for journalistic purposes or under the editorial responsibility of a media service provider in the programmes of audiovisual linear broadcasts or published in printed media should not be considered political advertising and without direct payment or equivalent remuneration should not be covered by this Regulation, if no payment is provided specifically for the expression of the views or opinions. Such political views and opinions which are additionally promoted, published or disseminated by service provider should in any case be considered to be political advertising. Journalistic practices established either in national law or by media and press councils in accordance with Union law, including the Charter of Fundamental Rights, should apply. Any form of surreptitious advertising should be prohibited.* (15 RE, 186 RE, 187 Left, 189 EPP, 190 Greens, CULT 6, JURI 21, LIBE 6, AFCCO 13)
- (70) This Regulation is without prejudice to the rules laid down in particular by Directive 2000/31/EC, including the liability rules for intermediary service providers in Articles 12 to 15 of that Directive as modified by Regulation (EU) 2022/2065 (*Digital Services Act*) 2021/xxx [~~the Digital Services Act~~], Regulation (EU) 2022/1925 (*Digital Markets Act*) 2021/xxx [~~the Digital Markets Act~~], Directive 2002/58/EC and Regulation (EU) XXX [~~ePrivacy Regulation~~], as well as Directive (EU) 2010/13/EU, Directive 2000/31/EC, ~~Directive 2002/58/EC~~, Directive 2005/29/EC, Directive

2011/83/EU, Directive 2006/114/EC, Directive 2006/123/EC and Regulation (EU) 2019/1150. ***This Regulation should complement the Union data protection acquis, in particular Regulations (EU) 2016/679 and (EU) 2018/1725 and Directive 2002/58/EC and provide for specific data protection rules thereto. This Regulation does not provide for a legal ground that satisfies the requirements of Article 6 of Regulation (EU) 2016/679 or Article 5 of Regulation (EU) 2018/1725 for the processing of personal data for the purpose of political advertising. (LIBE 33)***

Obtenu par CONTEXTE

Compromise Amendment 2

Compromise amendment replacing Amendments: 3, 10, 14, 16 - 21; 56 - 68; 150 - 157, 174 - 178, 185, 191 - 201; 297 - 352; CULT 1; CULT 4; CULT 8; CULT 18 - CULT 20; JURI 9 - JURI 11; JURI 19; JURI 20; JURI 22 - JURI 26; JURI 53 - JURI 67; LIBE 2; LIBE 7 - LIBE 8; LIBE 43 - LIBE 57; AFCO 2; AFCO 8 - AFCO 9; AFCO 12; AFCO 14; AFCO 31 - AFCO 32;

[Definitions]

Article 2; Recitals 5, 15 -16, 18, 20 - 27;

- (5) In the context of political advertising, targeting, *ad delivery and amplification* techniques are frequently used. Targeting ~~or amplification~~ techniques should be understood as techniques that are used either to address a tailored political advertisement only to a specific person or group of persons. ~~or~~ *Ad delivery and amplification techniques should be understood as fully or partially automated techniques that are used to suggest or prioritise a political advertisement and to determine its dissemination or delivery to a specific person or group of persons within the targeted group, generally defined by sponsors or providers of political advertising services acting on behalf of sponsors. Ad delivery and amplification techniques are used to increase the circulation, the reach or the visibility of a political advertisement. Such techniques are used by political advertising publishers and especially by very large online platforms within the meaning of Regulation (EU) 2022/2065 (Digital Services Act), to deliver political advertisements to an audience based on provided, observed and inferred data about persons and the content of advertisements. Delivering advertisements using such techniques involves the use of opaque algorithms and can differ from what the sponsors and providers of advertising services, acting on behalf of sponsors, intended, making some users less likely than others to see particular political advertisements.* Given the power and the potential for the misuse of personal data of targeting, including through microtargeting and other advanced techniques, such techniques may present particular threats to legitimate public interests, such as fairness, *freedom of expression, protection of Union citizens who live outside the Union*, equal opportunities and transparency in the electoral process and the fundamental *rights* ~~right~~ to be informed in an objective, transparent and pluralistic way, *to data protection, private life and to non-discrimination. Therefore, targeting, ad delivery and amplification techniques which are incompatible with fundamental rights should be prohibited. However, such techniques also have benefits to democracy, political participation and the right to be informed.* (3 RE, 150 Greens, 151 S&D, 153 EPP, 155 S&D, CULT 1, JURI 9, AFCO 2) {Recital 5 to be updated}
- (15) There is no existing definition of political advertising or political advertisement at Union level. A common definition is needed to establish the scope of application of the harmonised transparency obligations and rules on targeting and amplification. This

definition should cover the many forms that political advertising can take and any means and mode of publication or dissemination within the Union, regardless of whether the source is located within the Union or in a third country.

- (16) The definition of political advertising should include advertising *prepared, placed, promoted*, published, *delivered* or disseminated directly or indirectly by or *prepared, placed, promoted*, published, *delivered* or disseminated *by any means* directly or indirectly for or on behalf of a political actor. Since advertisements by, for or on behalf of a political actor cannot be detached from their activity in their role as political actor, they can be presumed to be liable to influence the political debate, *or the outcome of an election or referendum*, except for messages of purely private or purely commercial nature. *In order to determine that a message is of a purely private or purely commercial nature, account should be taken of all relevant factors, such as its content, the language used to convey it, the context in which it is conveyed, its objective and the means by which it is promoted, published or disseminated. Messages concerning a political actor's family status or business activities can be purely private or purely commercial. However, messages which are liable to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour cannot be purely private or purely commercial.* (10 RE, 176 S&D, 177 Greens, CULT 4, JURI 19, LIBE 2, AFCO 9)
- (18) Practical information from official sources *strictly limited to regarding the announcement of elections or referendums* ~~the organisation and~~ *or of the* modalities for participation in the elections or referendums should not constitute political advertising. (14 RE)
- (20) For the purpose of this Regulation, election should be understood as the elections to the European Parliament as well as all elections or referendums organised at national, regional and local level in the Member States and elections to establish political party leadership. It should not include other forms of elections such as privately organised ballots.
- (21) It is necessary to define political advertisement as an instance of political advertising. Advertisements include the means by which the advertising message is communicated, including in print, by broadcast media *on web pages showing results from search engine queries* or via an online platforms service. (16 RE)
- (22) Political actors within the meaning of this Regulation should refer to concepts defined under Union law, as well as under national law in line with international legal instruments such as those of the Council of Europe. The concept of political parties should include their affiliated and subsidiary entities established, with or without legal personality, in order to support them or pursue their objectives, for instance by engaging with a specific group of voters or for a specific electoral purpose.
- (23) The concept of political actors should also include unelected officials, elected officials, candidates and members of Government at European, national, regional or local level. Other political organisations should also be included in that definition.
- (24) An advertising campaign should refer to the preparation, *placement, promotion*, publication, *delivery* and dissemination of a series of linked advertisements in the course of a contract for political advertising, on the basis of common preparation,

sponsorship and funding. It should include the preparation, placement, promotion, publication, *delivery* and dissemination of an advertisement or versions of an advertisement on different media and at different times within the same electoral cycle *or legislative process*. (197 S&D, 198 Greens)

- (25) The definition of political advertising should not affect national definitions of political party, political aims or *political* campaign periods at national level. (199 Greens)
- (26) In order to cover the broad range of relevant service providers connected to political advertising services, providers of political advertising services should be understood as comprising providers involved in the preparation *such as the design and planning of an advertisement or campaign, or in the* placement, promotion, publication *delivery* and dissemination of political advertising. *For example, providers of political advertising services may initiate political advertising services on behalf of sponsors. Political advertising publishers should be understood as providers of political advertising services. The provision of targeting and amplification techniques in the context of political advertising should be understood to be a political advertising service.* (17 RE, 200 Greens)
- (26a) *Providers of purely ancillary services in relation to political advertising, which are provided in addition to and which merely complement the preparation, placement, promotion, publication and dissemination of political advertising, should not be understood as providers of political advertising services within the meaning of this Regulation. Ancillary services are services that typically depend on and complement a political advertising service. Such services include transportation, financing and investment, purchasing, sales, catering, marketing, computer services, cleaning and maintenance.* (18 RE)
- (26b) *A sponsor should be understood as the person on whose behalf political advertising is prepared, placed, promoted, published or disseminated, for instance an individual candidate in an election or a political party.* (19 RE)
- (26c) *Political advertising publishers should be understood as providers of political advertising services, usually at the end of the chain of service providers, promoting, publishing and disseminating political advertising by broadcasting, making it available through an interface or otherwise bringing it to the public.* (20 RE)
- (27) The notion of political advertising services should not include messages that are shared by individuals in their purely personal capacity. Individuals should not be considered as acting in their personal capacity if they are publishing messages the dissemination or publication of which *involves remuneration or benefits in kind from third parties* ~~is paid for by another~~. (21 RE, 201 S&D)

Compromise Amendment 3

Compromise amendment replacing Amendments: 6, 8; 69 - 70; 160, 165 - 167; 353 - 360, 379; JURI 17; JURI 71; LIBE 59 - LIBE 60; AFCO 6;

[Level of harmonisation]

Articles 3, 3a; Recitals 11 - 12;

Proposed by: Rapporteur

- (11) Member States should not maintain or introduce, in their national laws, provisions diverging from those laid down in this Regulation, in particular more or less stringent provisions to ensure a different level of transparency in political advertising. Full harmonisation of the transparency *and due diligence* requirements linked to political advertisement increases legal certainty and reduces the fragmentation of the obligations that service providers meet in the context of political advertising. (6 RE, AFCO 6)
- (12) Full harmonisation of the transparency requirements should be without prejudice to the freedom of providers of political advertising services to provide on a voluntary basis further information on political advertising, as part of the freedom of expression protected under Article 11 of the Charter of Fundamental Rights.
- (14a) *This Regulation should recall the importance of the principle of non-discrimination in the cross-border provision of political advertising services in the Union. Providers of political advertising services should not discriminate against sponsors legally established in the Union, including in the case of cross-border services to European political parties, as it would harm the possibility for the conduction of cross-border political campaigns, essential to foster a European public sphere. However, refusal to provide services in a Member State where providers of political advertising services do not conduct business does not constitute discrimination as such service providers should not be compelled to conduct business in a Member State in which they are not economically active. (160 S&D)*
- (14b) *A solid body of evidence shows that foreign actors have been actively interfering in the democratic functioning of the Union and its Member States, particularly during election and referendum periods. Considering that foreign interferences constitute a serious violation of values and principles on which the Union is funded and moreover, foreign interferences, information manipulation and disinformation are an abuse of the fundamental freedoms of expression and information as laid down in Article 11 of the Charter and threaten these freedoms, as well as undermining democratic processes in the EU and its Member States, such as the holding of free and fair elections, it is necessary to take appropriate measures to combat disinformation and prevent such interferences by means of advertisements sponsored by actors coming from outside the Union. To support the enforcement of national rules concerning external interference in elections, it is necessary to ensure*

that political advertising sponsored, prepared, placed, promoted, published, delivered or disseminated in the Union, or directed to individuals in one or more Member States, regardless of the place of establishment of service providers, can be supplied only to sponsors who are citizens of the Union, and to service providers acting on behalf of such sponsors, in addition to natural or legal persons residing or established in the Union. For the purposes of determining the place of establishment of a sponsor, the place of establishment of entities ultimately controlling the sponsor should be taken into account. (8 RE)

Obtenu par CONTEXTE

Compromise Amendment 4

Compromise amendment replacing Amendments: 11 - 13, 22 - 29; 71 - 81; 179 - 184, 202 - 212, 217 - 218; 361 - 379; CULT 5; JURI 27 - JURI 28; JURI 68; JURI 70 - JURI 75; LIBE 3 - LIBE 5; LIBE 9; LIBE 58; LIBE 61 - LIBE 66; AFCO 10 - AFCO 11; AFCO 15 - AFCO 16; AFCO 33 - AFCO 36;

[Transparency]

[Identification of political advertising services]

Articles 4, 5, 5a; Recitals 17, 28 - 32, 35 - 37;

Proposed by: Rapporteur

- (17) The *promotion*, publication, *delivery* or dissemination by other actors of a message that is liable to influence, the outcome of an election or referendum, legislative or regulatory process or voting behaviour *or the public opinion on societal issues at Union, national, regional, local or at a political party level* should also constitute political advertising. *A legislative or regulatory process should include decision making having binding effects of general application at the local, regional, national or European level.* In order to determine whether the publication, *promotion* or dissemination of a message is liable to influence, the outcome of an election or referendum, a legislative or regulatory process or voting behaviour, account should be taken of all *factors* relevant factors *at the time the message was promoted, published, delivered or disseminated*, such as *the identity of the sponsor of the message, the form and* the content of the message, the language used to convey the message, the context in which the message is conveyed, the objective of the message and the means by which the message is *promoted*, published, *delivered* or disseminated, *the audience targeted and the objective of the message*. Messages on societal or controversial issues may, as the case may be, be liable to influence, the outcome of an election or referendum, a legislative or regulatory process or voting behaviour. (11 RE, 180 S&D, 181 Left, 182 Greens, CULT 5, LIBE 3, AFCO 10)
- (17 a) *Communication of a political party with its members is an inherent part of the membership in a political party and should not constitute political advertising.* (184 S&D)
- (17b) *Commercial advertising and marketing practices can legitimately affect consumers' perceptions of products and services or their buying behaviour, including through brand differentiation based on company actions in the field of corporate social responsibility, delivering social impact, or any other types of purpose-driven engagement. Commercial advertising in some cases may be liable to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour, and where this is not the case, this Regulation should not apply to such advertising.* (12 RE, AFCO 11)

- (17c) *For the effective implementation of the requirements of this Regulation, and in particular to support the sponsors of advertising and service providers acting on behalf of the sponsors in declaring political advertising, and to support providers of political advertising services in facilitating and appropriately administrating such declarations, it is necessary for the Commission to draw up common guidance. (13 RE)*
- (28) Once *the sponsor declares* an advertisement is indicated as being connected to political advertising *to be political*, this should be clearly *and without delay* indicated to other service providers involved in the political advertising services. In addition, once *advertising* an advertisement has been identified as political advertisement, its further dissemination should still comply with transparency *and due diligence* requirements. For instance, when *political advertising* sponsored content is shared organically, the advertising should still be labelled as political advertising. (22 RE, 203 Greens)
- (28a) *To guarantee the effectiveness of the transparency and due diligence requirements, sponsors and providers of advertising services acting on behalf of sponsors should transmit in good faith relevant information in a timely, clear, complete and accurate manner to enable the other providers of services in the chain to comply with the Regulation. When the political advertising publisher is the only provider of political advertising services, the sponsor should communicate such information to the political advertising publisher. (23 RE, JURI 27)*
- (28b) *Where providers of political advertising services become aware of a manifest error, inaccuracy or incompleteness in the declaration that advertising is or is not political, or in the information communicated, providers of political advertising services should require the sponsors to ensure that such manifest error, inaccuracy or incompleteness is corrected. (24 RE)*
- (28c) *A declaration or information should be considered manifestly erroneous if it is apparent from the advertising, the sponsor, or the context in which the relevant service is provided, without further verifications or fact-finding exercises. (25 RE)*
- (28d) *Reasonable efforts should include diligent and objective measures, such as contacting the sponsor or the service providers concerned to complete or correct the information. Account should be taken of the nature and importance of the erroneous or missing information in relation to the requirements laid down by this Regulation. Reasonable efforts should also be reflected in the contractual arrangements among service providers and with the sponsor, where relevant. The provider of political advertising services should not be required to engage in excessive or costly fact-finding exercises or complex contact with the sponsor or the providers of political advertising services concerned. (26 RE)*
- (29) The rules on transparency *and due diligence* laid down in this Regulation should only apply to political advertising services, i.e. political advertising that is normally provided against remuneration, which may include a benefit in kind. The transparency requirements should not apply to content uploaded by a user of an online intermediary service, such as an online platform, and disseminated by the online intermediary service without consideration for the placement, publication, *delivery* or dissemination

- for the specific message, unless the user has been remunerated, *or received benefit in kind*, by a third party for the political advertisement. (28 RE, 204 Left, 205 Greens, AFCO 15)
- (30) The transparency requirements should also not apply to the sharing of information through electronic *interpersonal* communication services such as electronic message services or telephone calls, as long as no political advertising service is involved. (206 Greens)
- (31) Freedom of expression as protected by Article 11 of the Charter of Fundamental Rights covers an individual's right to hold political opinions, receive and impart political information and share political ideas. Every limitation to it has to comply with Article 52 of the Charter of Fundamental Rights and that freedom can be subject to modulations and restrictions where they are *necessary and* justified by the pursuit of a legitimate public interest and comply with the general principles of EU law, such as proportionality and legal certainty. That is inter alia the case where the political ideas are communicated through advertising service providers. *Freedom of expression is one of the cornerstones of a lively democratic debate.* (JURI 28, LIBE 9)
- (31 a) *Given the importance of political advertising, it is essential that this Regulation ensures a regulatory framework which ensures full, equal and unrestricted access to political advertising and its required transparency information for all recipients of services, including persons with disabilities. Therefore, it is important that accessibility requirements for providers of political advertising services are consistent with existing Union law, such as the European Accessibility Act and the Web Accessibility Directive and that Union law is further developed, so that no one is left behind as result of digital innovation.* (209 EPP)
- (32) As regards online intermediaries, Regulation (EU) ~~2022/2065~~ 2021/XX [(Digital Services Act)] applies to political advertisements published or disseminated by online intermediaries through horizontal rules applicable to all types of online advertising, including commercial and political advertisements. Based on the definition of political advertising established in this Regulation, it is appropriate to provide additional granularity of the transparency requirements laid out for advertising publishers falling under the scope of Regulation (EU) ~~2022/2065~~ 2021/XX [(Digital Services Act)], notably very large *online* platforms. This concerns in particular information related to the funding of political advertisements. The requirements of this Regulation leave unaffected the provisions of the Digital Services Act, *but should inform the* including as regards risk assessment and mitigation obligations for very large online platforms as regards their advertising systems *including the targeting and ad delivery techniques of political advertising employed. To assist Member States and service providers, the Commission should provide guidelines on the interaction between and complementary nature of different Union legal acts and this Regulation and on the interpretation of any similar requirements therein.* (29 RE, 211 Greens)
- (35) Where an artificial commercial or contractual construction risks circumventing the effectiveness of the transparency obligations laid down in the Regulation, those obligations should apply to the entity or entities that in substance provide the advertising service.

- (36) Steps could also include *advertising publishers* providing an efficient mechanism for individuals to indicate that a political advertisement is political, and taking effective action in response to such indications. **(217 Greens)**
- (37) While providing for specific requirements, none of the obligations laid down in this Regulation should be understood as imposing a general monitoring obligation on intermediary service providers for political content *organically* shared by natural or legal persons, nor should they be understood as imposing a general obligation on intermediary service providers to take proactive measures in relation to illegal content or activities which those providers transmit or store. **(218 S&D)**

Compromise Amendment 5

Compromise amendment replacing Amendments: 30 - 31; 82 - 90; 213 - 216; 380 - 396; JURI 29 - JURI 30; JURI 76 - JURI 80; LIBE 67 - LIBE 70; AFCO 17; AFCO 37 - AFCO 39;

[Record-keeping and information transmission]

Article 6; Recitals 33 - 34;

- (33) The preparation, placement, promotion, publication, *delivery* and dissemination of political advertising can involve a complex chain of service providers. This is the case in particular where the selection of advertising content, the selection of targeting *and ad delivery* criteria, the provision of data used for the targeting *and delivery* of an advertisement, the provisions of targeting *and ad delivery* techniques, the delivery of an advertisement and its dissemination may be controlled by different service providers. For instance, automated services can support matching the profile of the user of an interface with the advertising content provided, using personal data collected directly from the user of the service and from the users' online conduct, as well as inferred data. (30 RE)
- (34) In view of the importance of guaranteeing in particular the effectiveness of the transparency *and due diligence* requirements including to ease their oversight, *sponsors and where relevant providers of political advertising services acting on behalf of sponsors should ensure the accuracy of information that they provide.* Providers of political advertising services should ensure that *should ensure that* the relevant information they collect in the provision of their services, including the indication that an advertisement is political, *is complete, and it* is provided to the political advertising publisher which *disseminates* brings the political advertisement to the public. In order to support the efficient implementation of this requirement, and the timely and accurate provision of this information, providers of political advertising services should *transmit this information at the same time with the provision of the relevant service, and* consider and support automating the transmission of information among providers of political advertising services *by adapting their online interfaces to facilitate compliance. When providers of political advertising services become aware that information which they have transmitted has been updated, they should ensure that this updated information is communicated to the relevant political advertising publisher.* (31 RE, 215 S&D, 216 Greens, JURI 30, AFCO 17)

Compromise Amendment 6

Compromise amendment replacing Amendments: 32 - 37; 91 - 104; 219 - 236; 243; 397 - 474; 668 - 681; CULT 9 - CULT 11; CULT 21 - CULT 36; CULT 45 - CULT 46; JURI 31 - JURI 34; JURI 81 - JURI 95; JURI 117 - JURI 121; LIBE 10 - LIBE 11; LIBE 71 - LIBE 100; LIBE 172 - LIBE 176; AFCO 18 - AFCO 20; AFCO 40 - AFCO 47;

[Transparency requirements for each political advertisement]

Article 7; Annex I; Recitals 38 - 43;

Proposed by: Rapporteur

- (38) Transparency of political advertising should enable *individuals* ~~citizens~~ to understand that they are confronted with a political advertisement. Political advertising publishers should ensure the publication in ~~connection to~~ each political advertisement of a clear statement ~~to the effect that it is a political advertisement, and of the identity of its sponsor~~ *and of the political campaign it is part of*. Where appropriate, the name of the sponsor ~~should~~ *could* include a political logo. Political advertising publishers should *ensure that advertisements that are political should be correctly labelled as such and to* make use of labelling which is effective, taking into account developments in relevant scientific research and best practice on the provision of transparency through the labelling of advertising. *In light of technological and other developments in relevant scientific research, the Commission should adopt a delegated act establishing harmonised and efficient labelling techniques for political advertisement*. They should also ensure the publication in connection to each political advertisement of information to enable the wider context of the political advertisement and its aims to be understood, which can either be included in the advertisement itself, or be provided by the publisher on its website, accessible through a link or equivalent clear and user-friendly direction included in the advertisement. (32 RE, 219 Greens, 220 S&D)
- (39) This information should be provided in a transparency notice which should also include the identity of *the sponsor and where applicable, the entity ultimately controlling* the sponsor, in order to support accountability in the political process. The place of establishment of the sponsor and whether the sponsor is a natural or legal person should be clearly indicated. Personal data concerning individuals involved in political advertising, unrelated to the sponsor or other involved political actor should not be provided in the transparency notice. The transparency notice should also contain information on the dissemination period, any linked election, the amount spent for and the value of other benefits received in part or full exchange for the specific advertisement as well for the entire advertising campaign, the source of the funds used and other information to ensure the fairness of the dissemination of the political advertisement. Information on the source of the funds used concerns for instance its public or private origin, the fact that it originates from inside or outside the European Union. Information concerning linked elections or referendums should include, when

possible, a link to information from official sources regarding the organisation and modalities for participation or for promoting participation in those elections or referendums. The transparency notice should *be available immediately once the advertising is published or disseminated, and the information it contains should be kept up to date*. *The transparency notice should* further include information on how to flag political advertisements in accordance with the procedure established in this Regulation. This requirement should be without prejudice to provisions on notification according to Article *16 and 17* ~~14, 15 and 19~~ of Regulation (EU) ~~2022/2065~~ ~~2021/XXX~~ [(Digital Services Act)]. (33 RE, 223 Greens, 224 Left, 225 S&D, CULT 9, JURI 32)

- (40) *Political advertising publishers should ensure that each political advertisement contains a clear indication of where the transparency notice could be easily retrieved. The presentation of the information may vary depending on the means used. In order to easily retrieve the information in the transparency notice, use could be made for instance of a link to a dedicated webpage, onscreen or via audio means, a Quick Response code (QR code), or equivalent user-friendly technical measures.* ~~The information to be included in the transparency notice should be provided in the advertisement itself or be easily retrievable on the basis of an indication provided in the advertisement.~~ The requirement that the information about the transparency notice is to be inter alia clearly visible should entail that it features prominently in ~~or with~~ the advertisement. The requirement that information published in the transparency notice is to be easily accessible, machine readable where technically possible, and user friendly should entail that it addresses the needs of people with disabilities. Annex I of Directive (EU) 2019/882 (European Accessibility Act) contains accessibility requirements for information, including digital information that should be used to render political information accessible for persons with disabilities. (34 RE, 227 RE, CULT 10, AFCO 19)
- (41) Transparency notices should be designed to raise user awareness and help the clear identification of the political advertisement as such. They should be designed to remain in place or remain accessible in the event a political advertisement is further disseminated for instance posted on another platform or forwarded between individuals. The information included in the transparency notice should be published when the publication of the political advertisements start and be retained for a period of *ten years* ~~one year~~ after the last publication. The retained information should also include information about political advertising which was terminated or which was taken down by the publisher. (229 Greens)
- (42) Since political advertising publishers make political advertisements available to the public, they should publish or disseminate that information to the public together with the publication or dissemination of the political advertisement. *Where political advertising publishers become aware that a political advertisement does not fulfil the transparency requirements under this Regulation, they should make best efforts to fulfil the requirements under this Regulation. When the information cannot be completed or corrected without undue delay, political advertising publishers should not make available or should discontinue the publication or dissemination to the public of the political advertisements not fulfilling the transparency requirements*

under this Regulation. In such situation, political advertising publishers should inform the provider of services concerned and, where relevant the sponsor, of the reasonable steps taken to fulfil the requirements under this Regulation. Political advertising publishers should not make available to the public those political advertisements not fulfilling the transparency requirements under this Regulation. In addition, political advertising publishers which are very large online platforms within the meaning of Regulation (EU) 2021/XXX [Digital Services Act] should make the information contained in the transparency notice available through the repositories of advertisements published pursuant to Article 30 Regulation [Digital Services Act]. This will facilitate the work of interested actors including researchers in their specific role to support free and fair elections or referendums and fair electoral campaigns including by scrutinising the sponsors of political advertisement and analysing the political advertisement landscape. (35 RE, 230 S&D, JURI 34)

- (42a) When complying with these obligations, providers of political advertising services should act with due regard to fundamental rights, and other rights and legitimate interests. Providers of political advertising services should in particular pay due regard to freedom of expression and access to information, including media freedom and pluralism. (36 RE)*
- (42b) This Regulation should facilitate the work of interested actors, including researchers, in their specific role to support free and fair elections or referendums and fair electoral campaigns, including by scrutinising the sponsors of political advertisement and analysing the political advertisement landscape. Therefore, political advertising publishers which are Very Large Online Platforms (VLOPs) within the meaning of Regulation (EU) 2022/2065 (Digital Services Act) and Very Large Online Search Engines (VLOSEs) as defined in Regulation (EU) 2022/2065 (Digital Services Act) should make the information contained in the transparency notice available and update it, in real time, through the repositories of advertisements published pursuant to Regulation (EU) 2022/2065 (Digital Services Act). (37 RE, 234 S&D, CULT 11)*
- (42c) The Commission should establish a European repository for online political advertisements to support political advertising publishers that are not VLOPs within the meaning of Regulation (EU) 2022/2065 (Digital Services Act) and VLOSEs as defined in Regulation (EU) 2022/2065 (Digital Services Act) to comply with the provisions of this Regulation. Political advertising publishers which are not VLOPs within the meaning of Regulation (EU) 2022/2065 (Digital Services Act) and VLOSEs as defined in Regulation (EU) 2022/2065 (Digital Services Act) should ensure that the information contained in the transparency notice is made available in the European repository for online political advertisements without undue delay, and no later than 24 hours. Information made available on the interface of political advertising publishers should be provided in a machine readable format according to common data structure and standards and accessible using a common application programming interface, developed by the Commission in consultation with relevant stakeholders. (37 RE, 232 S&D, 233 Left, 243 Greens, CULT 11, LIBE 11, AFCCO 20)*

- (43) Where the provider of the political advertising service which hosts or otherwise stores and provides the content of a political advertisement is separate from the provider of the political advertising service which controls the website or other interface which eventually displays the political advertisement, these should be considered together as advertising publishers, with respective responsibility in respect of the specific service they provide, to ensure that labelling is provided and that the transparency notice and relevant information is available. Their contractual arrangements should reflect the way they organise compliance with this Regulation.

Obtenu par CONTEXTE

Compromise Amendment 7

Compromise amendment replacing Amendments: 38 - 42; 105 - 112; 237 - 240; 475 - 516; CULT 37; JURI 35 - JURI 36; JURI 96 - JURI 104; LIBE 101 - LIBE 108; AFCO 21; AFCO 23; AFCO 48 - AFCO 49;

**[Periodic reporting on political advertising services]
[Indicating possibly unlawful political advertisements]**

Articles 8 - 9; Recitals 44 - 45;

Proposed by: Rapporteur

- (44) Information about the amounts spent on and the value of other benefits received in part or full exchange for political advertising services can usefully contribute to the political debate. It is necessary to ensure that an appropriate overview of political advertising activity can be obtained from the annual reports prepared by relevant political advertising publishers. To support oversight and accountability, such reporting should include information about expenditure on the targeting *or delivery* of political advertising in the relevant period, aggregated to campaign or candidate. To avoid disproportionate burdens, those transparency reporting obligations should not apply to enterprises qualifying under Article 3, *paragraphs 1 to 3*, of Directive 2013/34/EU. (38 RE, 238 Greens, 239 ID, JURI 35)
- (45) Political advertising publishers providing political advertising services should put in place mechanisms to enable individuals to report to them that a particular political advertisement which they have published does not comply with this Regulation. The mechanisms to report such advertisement should be easy to access and use, and should be adapted to the form of advertising distributed by the advertising publisher. As far as possible, these mechanisms should be accessible from the advertisement itself, for instance on the advertising publisher's website. Political advertising publishers should be able to rely on existing mechanisms where appropriate. Where political advertising publishers are online hosting services providers within the meaning of the Digital Services Act, with regards to the political advertisements hosted at the request of the recipients of their services, the provisions of Article 16 44 of the Digital Services Act continue to apply for notifications concerning non-compliance of such advertisements with this Regulation. *Where political advertising publishers are online hosting services providers within the meaning of Regulation (EU) 2022/2065 (Digital Services Act), with regard to the political advertisements hosted at the request of the recipients of their services, political advertising publishers should be able to rely on the notice mechanism pursuant to Regulation (EU) 2022/2065 (Digital Services Act) for notifications concerning non-compliance of such advertisements with this Regulation.* (39 RE)
- (45a) *Where a particular advertisement does not comply with this Regulation, mechanisms provided by the publisher should enable individuals to flag the advertisement concerned. Where those mechanisms are not available, individuals*

should be able to report such political advertisement directly to the competent authorities in accordance with this Regulation. (AFCO 23)

(45b) The political advertising publishers should make reasonable efforts to address in a timely, diligent and objective manner the notifications received pursuant to this Regulation, by contacting the relevant service providers and, as relevant, the sponsor. The political advertising publisher should inform the author of the notification and the service providers concerned of the follow up given to the notification and provides information on redress possibilities, including under Directive (EU) 2020/1828 of the European Parliament and of the Council^a, in respect of the advertisement to which the notification relates. Where a notification contains sufficient information to enable a diligent provider of political advertising services to identify, without a detailed examination and complex contact process, that it is clear that information is missing or incomplete, the political advertising publisher should act without undue delay. (40 RE, JURI 36, AFCO 21)

^a *Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1)*

(45c) In order to ensure the effectiveness of the transparency and due diligence requirements during an election or a referendum, political advertising publishers should address, within the last month preceding the election or the referendum, any notification that they receive about an advertisement linked to this vote without undue delay and no later than 48 hours, by contacting the services providers concerned and, where relevant, the sponsor. Political advertising publishers that are micro and small enterprises should process any such notification without undue delay. (41 RE)

(45d) Any action taken by a political advertising publisher should strictly target the correction, completion or removal of specific items of information not in compliance with this Regulation. In doing so, it should have due regard for freedom of expression and information, and other fundamental rights. (42 RE)

Compromise Amendment 8

Compromise amendment replacing Amendments: 45; 113 - 114; 115 - 119; 241 - 244; 259; 517 - 526; 527 - 550; CULT 14; LIBE 12; LIBE 109 - LIBE 119; AFCO 50 - AFCO 51;

[Transmission of information to competent authorities]

[Transmission of information to other interested entities]

Articles 10 - 11; Recitals 46, 59, 61;

Proposed by: Rapporteur

- (46) In order to allow specific entities to play their role in democracies, it is appropriate to lay down rules on the transmission of information published with the political advertisement or contained in the transparency notice to interested actors such as vetted researchers, journalists, civil society organisations and accredited election observers, in order to support the performance of their respective roles in the democratic process. Providers of political advertising services should not be required to respond to requests which are manifestly unfounded or *unclear*, excessive or *concern information not within control of the service provider*. Further, the relevant service provider should be allowed to charge a reasonable fee in case of repetitive and costly requests, taking into account the administrative costs of providing the information.
- (59) Where rules already exist under Union law regarding the provision of information to competent authorities and cooperation with and between those authorities such as Article 9 of Regulation (EU) ~~2022/2065~~ 2021/xxx [(Digital Services Act)], or those contained in Regulation (EU) 2016/679, those rules should apply mutatis mutandis to the relevant provisions of this Regulation.
- (61) With a view to facilitating the effective application of the obligations set out in the regulation, it is necessary to empower national authorities to request from the services providers the relevant information on the transparency of political advertisement. Information to be transmitted to competent authorities could concern an advertising campaign, be aggregated by years or concern specific advertisements. In order to ensure that the requests for such information can be complied with in an effective and efficient manner, and at the same time that the providers of political advertising services are not subject to any disproportionate burdens, it is necessary to set certain conditions that those requests should meet. In the interest of the timely oversight of an election process in particular, providers of political advertising services should quickly respond to requests from competent authorities, and always within 10 working days upon receipt of the measure. *In the last month preceding an election or a referendum, an infringement of this Regulation should be deemed to negatively and severely affect citizens' rights and therefore providers of political advertising services should provide the requested information without undue delay and, in case they are not micro or small enterprises, no later than 48 hours*. In the interest of legal certainty and in compliance with the rights of defence, requests to provide information from a competent authority should contain an adequate statement of

reasons and information about available redress. Providers of political advertising services should designate contact points for the interaction with the competent authorities. Such contact points could be electronic. (45 RE)

Obtenu par CONTEXTE

Compromise Amendment 9

Compromise amendment replacing Amendments: 120 - 126; 245 - 253; 551 - 570; 571; 682 - 686; LIBE 13 - LIBE 31; LIBE 120 - LIBE 139; LIBE 177 - LIBE 181; AFCO 22; AFCO 52;

[Specific requirements related to targeting and amplification]

[Transmission of information concerning targeting or amplification to other interested entities]

Articles -12, 12, 13; Annex II; Recitals 47 - 54;

- (47) Personal data collected directly from individuals, or indirectly such as *observed or* inferred data, when *grouping individuals* according to their assumed interests or derived through their online activity, behavioural profiling and other analysis techniques, is increasingly used to target political messages to groups or individual voters or individuals, and to amplify their impact. On the basis of the processing of personal data, in particular data considered sensitive under Regulation (EU) 2016/679 of the European Parliament and of the Council¹ and Regulation (EU) 2018/1725 of the European Parliament and of the Council², different groups of voters or individuals can be segmented and their characteristics or vulnerabilities exploited for instance by disseminating the advertisements at specific moments and in specific places designed to take advantage of the instances where they would be sensitive to a certain kind of information/message. That has specific and detrimental effects on citizens' fundamental rights and freedoms with regard to the processing of their personal data and their freedom to *be treated fairly and equally, not to be manipulated, to* receive objective information, to form their opinion, to make political decisions and exercise their voting rights. This *furthermore* negatively impacts the democratic process *as it enables a fragmentation of the public debate about important societal issues, predatory voter analysis, selective outreach and, ultimately, the manipulation of the electorate. It also increases the risk of the spreading of disinformation, and has been used for foreign electoral interference especially by non-democratic foreign entities. Misleading or obscure advertising for political purposes is a risk because it influences the core mechanisms that enable the functioning of our democratic society. All this takes place despite already existing conditions for the processing of personal data, including for targeting and ad delivery, provided for in Regulations*

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

² Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

*(EU) 2016/679 and (EU) 2018/1725. Additional restrictions and conditions compared to Regulation (EU) 2016/679 and Regulation (EU) 2018/1725 should be provided. The conditions set out in this Regulation on the use of targeting and *ad delivery* amplification techniques involving the processing of personal data in the context of political advertising should be based on Article 16 TFEU. (LIBE 13)*

- (47a) The existing avenues under Regulation (EU) 2016/679 for lawfully tailoring and addressing advertising to individuals are subject to systemic abuse, especially with regard to collecting the free and informed consent of individuals, which cannot be solved under the current regulatory framework. (LIBE 14)*
- (47b) Dark patterns on online interfaces of online platforms are practices that materially distort or impair, either on purpose or in effect, the ability of users of the service to make autonomous and informed choices or decisions concerning the personal data they provide for the purpose of political advertising. Providers of online platforms should therefore be prohibited from nudging users of the service and from distorting or impairing the autonomy, decision-making, or choice of the users. (LIBE 15)*
- (47c) This should also include repeatedly requesting a user of the service to make a choice where such a choice has already been made, making the procedure of cancelling a service significantly more cumbersome than signing up to it, or making certain choices more difficult or time-consuming than others or by default settings that are very difficult to change, and so unreasonably bias the decision making of the user of the service, in a way that distorts and impairs their autonomy, decision-making and choice. However, rules preventing dark patterns should not be understood as preventing providers to interact directly with users of the service and to offer new or additional services to them. The systematic use of dark patterns, unclear consent agreements, misleading information, and insufficient time to read terms and conditions are common practices to make it difficult for users of the service to have clear information and control in the context of the surveillance-based online advertising industry. (LIBE 16)*
- (47d) In order to protect individuals with regards to the way and purposes for which their personal data is processed, and in particular in contexts relevant for influencing their democratic choices and their involvement in the public debate, as well as to protect democracy and the integrity of elections, it is necessary to complement Regulations (EU) 2016/679 and (EU) 2018/1725 by adding further restrictions, which should take the form of strict limitations on the processing of personal data for targeting and ad delivery of online political advertising, based on Article 16 of the TFEU. (LIBE 17)*
- (47e) Targeting and ad delivery techniques based on certain conditions and on strictly limited amount of provided personal data that are not special categories of personal data within the meaning of Article 9 of Regulation (EU) 2016/679 or of Article 10 of Regulation (EU) 2018/1725 can be useful in disseminating political advertising and information and in reaching out and informing citizens. (LIBE 18)*
- (47f) Targeting and ad delivery techniques that involve the processing of personal data should only be allowed based on personal data which are explicitly provided by the data subject to the advertising publisher for the specific and sole purpose of*

receiving targeted political advertisement. Providers should not request consent where the data subject exercises his or her right to object by automated means using technical specifications, in line with Article 21(5) of Regulation (EU) 2016/679. In the event that the data subjects refuses to consent, or has withdrawn consent, he or she should be given other fair and reasonable options to access information society services. Refusing consent should not be more difficult or time consuming to the data subject than its giving. The processing of observed or inferred personal data, in line with the European Data Protection Board Guidelines 8/2020 on the targeting of social media users, should not be allowed. Without such restriction imposed on targeting and ad delivery techniques, the targeting and ad delivery of political advertising based on personal data would be likely to result in a high risk to the rights and freedoms of natural persons. (LIBE 19)

- (47g) Provided personal data should only include categories of personal data explicitly and actively provided by the data subject for the specific and sole purpose of being targeted with political advertisement by the data controller to whom it has been provided. Data subjects should not be targeted with political advertisements by data controllers to whom they have not provided their personal data. When providing the data to the publisher, it should be entered into the publisher's interface or settings. The processing of any data concerning the data subjects which would otherwise be processed in the course of the normal use of the service, such as metadata, traffic and location data or the content of communications, whether personal or public, should therefore be excluded. (LIBE 20)*
- (47h) Some well-resourced political candidates or parties might circumvent the restrictions on targeting techniques with in-house services that conduct large-scale political marketing. Therefore, when sponsors process personal data for direct targeted political marketing, such as sending targeted electronic mail or text messages, at a large-scale and on a systematic basis, the restrictions on targeting techniques should apply, regardless of whether a service is involved or not. This does not affect the fact that the restrictions on targeting and ad delivery techniques should not apply to merely direct communication, including personalized electronic mails or text messages that are not targeted direct marketing at a large scale, and organic content published by using online intermediary services without consideration for the placement, publication or dissemination for the specific message. (LIBE 21)*
- (47i) In order to protect elections and referendums and prevent any undue interference, manipulation and disinformation, it is necessary to add further restrictions regarding targeting and ad delivery in the period immediately preceding the election or referendum. In the 60 days preceding any election or referendum, targeting and ad delivery techniques in the context of political advertising that involve provided personal data should be strictly limited to using location and the languages spoken by the data subject. The fact that a person is a first time voter could also be used as it is important to reach out to such persons and provide them with information regarding the election or referendum. The location of the data subject used to deliver targeted political advertisement should be understood being at the level of the constituency which is applicable in the relevant election or referendum.*

However, in the Member States which have only one national level constituency for European Parliament elections, the location of the data subject could be understood being at regional or equivalent level in accordance with national law, for political advertising related to those elections. (LIBE 22)

- (47j) The prohibition and restrictions regarding the processing of personal data for political advertising should not prevent sponsors, political advertising publishers or providers of advertising services, including online platforms, from displaying online political advertising based on contextual information, including keywords. This limitation is proportionate in light of the fact that sponsors have access to other avenues for their political advertising, notably through contextual targeting online and through alternative media offline. This limitation complies with the right to impart information and ideas of general interest which the public is entitled to receive because this right may be circumscribed in some circumstances, if the circumscription is carried out reasonably, carefully and in good faith, and if it is proportionate and justified by relevant and sufficient reasons, in particular, for the protection of the rights of others. (LIBE 23)*
- (47k) When selecting targeting parameters, sponsors delineate a potential audience for their political advertising. However, depending on the budget they dedicate to their advertising campaign, their political advertisement will not necessarily reach such entire potential audience. The publisher will have to select whom, from that potential audience, will actually receive the political advertisement. In order to prevent the creation of echo chambers and filter bubbles and to prevent demographic skews along race or gender, resulting in forms of discrimination, online platforms should not be allowed to selectively deliver political advertisement within the targeted potential audiences based on further processing of personal data. The actual recipients of the political advertisement should therefore only be randomly selected by the publisher, without any further processing of personal data. (LIBE 24)*
- (47l) The extensive transparency obligations provided for in this Regulation will also be helping to make it impossible to proclaim, unnoticed, opposing and polarizing messages to specific parts of the electorate, because watchdogs, civil society, journalists and other parts of the electorate will be able to perform their scrutiny. (LIBE 25)*
- ~~(48) Targeting and amplification techniques in the context of political advertising involving the processing of data referred to in Article 9(1) of Regulation (EU) 2016/679 and Article 10(1) of Regulation (EU) 2018/1725 should therefore be prohibited. The use of such techniques should only be allowed when carried out by the controller, or someone acting on its behalf, on the basis of the explicit consent of the data subject or in the course of their legitimate activities with appropriate safeguards by a foundation, association or any other not for profit body with a political, philosophical or religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects. This should be accompanied by specific safeguards. Consent should be understood as consent within the meaning of~~

~~Regulation (EU) 2016/679 and Regulation (EU) 2018/1725. Therefore, it should not be possible to rely on the exceptions as laid down in Article 9(2), points(b), (c), (e), (f), (g), (h), (i) and (j) of Regulation (EU) 2016/679 and Article 10(2), points(b), (c), (e), (f), (g), (h), (i) and (j) of Regulation (EU) 2018/1725 respectively for using techniques targeting and amplification techniques to publish, promote or disseminate political advertising involving the processing of personal data referred to in Article 9(1) of Regulation (EU) 2016/679 and 10(1) of Regulation (EU) 2018/1725. (LIBE 26)~~

- (49) In order to ensure enhanced transparency and accountability, when making use of targeting and *ad delivery* ~~amplification~~ techniques in the context of political advertising involving the processing of personal data, controllers should implement additional safeguards. They should adopt and implement a policy describing the use of such techniques to target individuals or *deliver the* ~~amplify their~~ *content of their ad, make annual risk assessments of the use of those techniques on the fundamental rights and freedoms of individuals and the society as a whole* and keep record of their relevant activities. When publishing, promoting, *delivering* or disseminating a political advertisement making use of targeting and ~~amplification~~ techniques, controllers should provide, together with the political advertisement, meaningful information to allow the concerned individual to understand the logic involved and main parameters of the targeting used, and the use of third-party data and additional analytical techniques, including whether the targeting of the advertisement was further optimised during delivery. (246 Greens, 247 S&D, LIBE 27)
- (50) Political advertising publishers making use of targeting or *ad delivery* ~~amplification~~ techniques should include in their transparency notice information necessary to allow the concerned individual to understand the logic involved and main parameters of the technique used, and the use of third-party data and additional analytical techniques used and a link to the relevant policy of the *political advertising service provider controller*. In case the *political advertising service provider controller* is different from the advertising publisher the *service provider controller* should transmit to *the* political advertising publisher the internal policy or a reference to it. Providers of advertising services should, as necessary, transmit to the political advertising publisher the information necessary to comply with their obligations under this Regulation. The provision of such information could be automated and integrated in the ordinary business processes on the basis of standards. (248 S&D, LIBE 28)
- (51) In order to further empower individuals to exercise their data protection rights, political advertising publishers should provide additional information and effective tools to the concerned data subject to support the exercise of their rights under the EU data protection legal framework including to ~~object or~~ withdraw their consent when targeted with a political advertisement. This information should also be easily accessible directly from the transparency notice. The tools made available to the individuals to support the exercise of their rights should be effective to prevent an individual from being targeted with political advertisements, as well as to prevent targeting on the basis of specific criteria and by one or several specific controllers. (LIBE 29)

- (52) The Commission should **draw up guidelines** ~~encourage the drawing up of codes of conduct as referred to in Article 40 of Regulation (EU) 2016/679~~ to support the exercise of data subjects' rights in this context. (LIBE 30)
- (53) Information to be provided in accordance with all requirements applicable to the use of targeting and **ad delivery** ~~amplification~~ techniques under this Regulation should be presented in a format which is easily accessible, **complete**, clearly visible and user-friendly, including through the use of plain language **and suitable for persons with hearing difficulties and visual impairments**. (251 Greens, 252 S&D, LIBE 31)
- (54) It is appropriate to lay down rules on the transmission of information on targeting **and ad delivery** ~~amplification~~ to other interested entities. The applicable regime should be consistent with the regime for the transmission of information linked to the transparency requirements. (253 Greens)

Compromise Amendment 10

Compromise amendment replacing Amendments: 43 - 45; 127 - 131; 254 - 262; 572 - 636; 651 - 653; CULT 12 CULT 15; CULT 38 - CULT 42; JURI 37 - JURI 38; JURI 106 - JURI 111; LIBE 32; LIBE 107; LIBE 140 - LIBE 159; AFCO 23 - AFCO 26; AFCO 53 - AFCO 54;

[Legal representative]

[Competent authorities and contact points]

Articles 14 - 15, 15a, 15b; Recitals 55, 56 - 62;

- (55) Providers of political advertising services established in a third country that offer services in the Union should designate a mandated legal representative in the Union *that is registered with the national single contact point*, to allow for effective oversight of this Regulation in relation to those providers. The legal representative could be the one designated on the basis of Article 27 of Regulation (EU) 2016/679 or the representative designated on the basis of Article 13 ~~44~~ of Regulation (EU) 2022/2065 (Digital Services Act) 2021/xxx [the DSA]. *Member States should keep a publicly available register of all legal representatives registered on their territory under this Regulation, and the Commission should keep a publicly available and easily accessible database of legal representatives registered within the Union. (43 RE)*
- (56) In the interest of the effective supervision of this Regulation, it is necessary to entrust oversight authorities with the competence to monitor and enforce the relevant rules *and endow them with resources commensurate with such additional competences*. Depending on the legal system of each Member State and in line with existing Union law including Regulation (EU) 2016/679 and Regulation (EU) 2022/2065 2021/xxx {(Digital Services Act)}, different national judicial or administrative authorities may be designated to that effect. **(JURI 37, AFCO 24)**
- (57) As regards the supervision of online intermediary services under this Regulation, Member States should designate competent authorities and ensure that such supervision is coherent with the competent authorities designated pursuant to Article 38 of Regulation (EU) 2022/2065 {(Digital Services Act)}. Digital Services Coordinators, pursuant to Regulation (EU) 2022/2065 (Digital Services Act), in each Member State should in any event be responsible for ensuring coordination at national level in respect to those matters and engage, where necessary, cross-border cooperation with other Digital Services Coordinators following the mechanisms laid down in Regulation (EU) 2022/2065 (Digital Services Act). In the framework of application of this Regulation, this mechanism should be limited to the national cooperation across Digital Services Coordinators [and should not include the escalation to the Union level as provided by the Regulation (EU) 2022/2065 (Digital Services Act)].

- (58) For the oversight of those aspects of this Regulation that do not fall within the competence of the supervisory authorities under Regulation (EU) 2016/679, Regulation (EU) 2018/725 **and Regulation (EU) 2022/2065 (Digital Services Act)**, Member States should designate competent authorities **to monitor and enforce relevant rules**. To support the upholding of fundamental rights and freedoms, the rule of law, democratic principles and public confidence in the oversight of political advertising it is necessary that such authorities are structurally independent from external intervention or political pressure and are appropriately empowered effectively monitor and take the measures necessary to ensure compliance with this Regulation, in particular the obligations laid down in Article 7. Member States may designate, in particular, the national regulatory authorities or bodies under Article 30 of Directive 2010/13/EU of the European Parliament and of the Council³. **(255 S&D, JURI 38, AFCO 25)**
- (58a) For the purpose of the exercise of their powers under this Regulation, the competent authorities referred to in Article 15 and the European Data Protection Board should be provided with sufficient resources. (LIBE 32)**
- (59) Where rules already exist under Union law regarding the provision of information to competent authorities and cooperation with and between those authorities such as Article 9 of Regulation (EU) **2022/2065** ~~2021/xxx~~ **{(Digital Services Act)}**, or those contained in Regulation (EU) 2016/679, those rules should apply mutatis mutandis to the relevant provisions of this Regulation.
- (60) Authorities competent for the oversight of this Regulation should cooperate with each other both at national and at EU level making best use of existing structures including national cooperation networks, the European Cooperation Network on Elections as referred to in Recommendation C(2018) 5949 final, **the European Board for Digital Services as referred to in Regulation (EU) 2022/2065 (Digital Services Act)** and the European Regulators Group for Audiovisual Media Services established under Directive 2010/13/EU. Such cooperation should facilitate the swift, secured exchange of information on issues connected to the exercise of their supervisory and **enforcement** ~~enforcements~~ tasks pursuant to this Regulation, including by jointly identifying infringements, sharing findings and expertise, and liaising on the application and enforcement of relevant rules. **(257 S&D)**
- (60a) Within the framework of the European Cooperation Network on Elections, a permanent Network of National Contact Points should be established to serve as platform for the regular exchange of information, and for structured cooperation, between national contact points and the Commission concerning all aspects of this Regulation. (44 RE)**
- (62) Member States should designate a **national** contact point at Union level for the purpose of this Regulation. The contact point should, if possible, be a member of the European Cooperation Network on Elections. The contact point should facilitate cooperation among competent authorities between Member States in their supervision

³ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

and enforcement tasks, in particular by intermediating with the contact points in other Member States and with *other* the competent authorities in their own. (262 S&D)

Obtenu par CONTEXTE

Compromise Amendment 11

Compromise amendment replacing Amendments: 46, 47, 48, 132 - 134; 637 - 656; CULT 16; CULT 43 - 44; JURI 39 - JURI 41; JURI 105; JURI 112 - JURI 115; LIBE 160 - LIBE 168; AFCO 55;

[Sanctions]

[Publication of electoral periods]

[Evaluation and review]

Articles 16 - 18, 18a; Recitals 63 - 64, 65, 67;

Proposed by: Rapporteur

- (63) Member States authorities should ensure that infringements of the obligations laid down in this Regulation are sanctioned by administrative fines or financial penalties. When doing so, they should take into account the nature, gravity, recurrence and duration of the infringement in view of the public interest at stake, the scope and kind of activities carried out, as well as the *size and* economic capacity of the infringer. In that context, the crucial role played by the obligations laid down in ~~Article~~ **Articles 3a, 5, 7, 7a, 7b and 12** for the effective pursuit of the objectives of the present Regulation should be taken into account *and infringements of those Articles should be regarded as particularly serious*. Furthermore, they should take into account whether the service provider concerned systematically or recurrently fails to comply with its obligations stemming from this Regulation, including by delaying the provision of information to interested entities, as well as, where relevant, whether the provider of political advertising services is active in several Member States. Financial penalties and administrative fines shall in each individual case be effective, proportionate and dissuasive, with due regard to the provision of sufficient and accessible procedural safeguards, and in particular to ensure that the political debate remains open and accessible. (CULT 16)
- (63a) *Member States should lay down rules on penalties, including administrative fines and financial penalties, applicable to infringements of this Regulation and should ensure that those rules are effectively enforced. The fines and penalties provided for should be effective, proportionate and dissuasive. Member States may also impose periodic penalty payments for serious and repeated violation of this Regulation. At Union level, the Network of National Contact Points should facilitate the development of a harmonised approach on sanctions applicable at national level.* (48 RE)
- (64) The exercise by the competent authorities of their powers under this Regulation should be subject to appropriate procedural safeguards in accordance with Union and national law, including effective judicial remedy and due process.

- (65) Member States should publish the exact duration of their electoral periods, established according to their *legislation and* electoral traditions, sufficiently in advance of the beginning of the electoral calendar. (JURI 40)
- (67) Within two years after each election to the European Parliament, the Commission should submit a public report on the evaluation and review of this Regulation. In preparing that report the Commission should also take into account the implementation of this Regulation in the context of other elections and referendums taking place in the Union. The report should review inter alia the continued suitability of the provisions of this *Regulation and its* Regulation's annexes and consider the need for their revision. *In particular, the Commission should assess the appropriateness of the scope and definitions and the effectiveness of the obligations, the governance and enforcement provisions, including in the light of technological progress and new scientific evidence.* (47 RE)

Compromise Amendment 12

Compromise amendment replacing Amendments: 135 - 139; 657 - 667; JURI 116; LIBE 169 - LIBE 171; AFCO 56;

[Excercise of the delegation]

[Entry into force and application]

Articles 19 - 20; Recitals 66, 68, 69, 71;

Proposed by: Rapporteur

- (66) In order to fulfil the objectives of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of Article 7(7) to further specify the form in which the requirements for the provision of information in the transparency notices according to that Article should be provided; and in respect of Article 12(8) to further specify the form in which the requirements of the provision of information about targeting should be provided. It is of particular importance that the Commission carries out appropriate consultations, including of experts designated by each Member State, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (68) Complementary obligations on the use of political advertising by European political parties are provided in Regulation (EU) 1141/2014 on the statute and funding of European political parties and foundations.
- (68a) In the interest of ensuring that a high level of transparency and strengthened individual personal data protections are provided for political advertising in the context of the European Parliament elections 2024, political advertising service providers should ensure that the labelling and transparency notice requirements are complied with immediately, notwithstanding the availability of supplementary elements to be provided by the Commission. Political advertising publishers should make best efforts to ensure the availability of transparency notices notwithstanding the availability of a European repository for online political advertising.***
- (69) Since the objectives of this Regulation, namely the contribution to the proper functioning of the internal market for political advertising and related services and the establishment of rules on the use of targeting in the context of the publication and dissemination of political advertising, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt this Regulation, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article,

this Regulation does not go beyond what is necessary in order to achieve those objectives.

- (71) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on **20 January** ~~XX XX~~ 2022.

Obtenu par CONTEXTE