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COVER NOTE

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To:	Delegations
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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the transparency and targeting of political advertising - Member States' replies to the Presidency questionnaire on the provisions of Chapters III to V

Delegations will find attached replies to the Presidency questionnaire (ST 11578/22) and Member States' views on the provisions of Chapters III to V of the Presidency compromise text (ST 8647 2022 REV 3) as well as on other elements of the proposal.

12000/22

Contents

BELGIUM	2
BULGARIA	9
CYPRUS	13
DENMARK	15
ESTONIA	19
GERMANY	20
GREECE	28
HUNGARY	33
LATVIA	35
LUXEMBOURG	39
THE NETHERLANDS	44
POLAND	48
ROMANIA	50
SLOVAKIA	53
SLOVENIA	56
SWEDEN	60

BELGIUM

CHAPTER III

Article 12 - Specific requirements to targeting and amplification

Please indicate your positions on the possibilities/provisions outlined below.

1.1 Distinguishing various types of data (provided data vs observed or inferred data)

1.1a Do you think that Article 12 should differentiate profiling techniques or differentiate observed or inferred sensitive personal data from other personal data?

Belgium eagerly awaits a written analysis from the Commission on the interaction and linkages between the Digital Services Act and the regulation on political advertising.

We think that it makes sense to differentiate between targeting and amplification techniques. Likewise, it makes sense to have separate rules/prohibitions for the use of certain types of data depending on whether a targeting or an amplification technique is being used.

Recital 47 of the proposed Regulation explains that inferred data “*is increasingly used to target political messages*” and that “*this negatively impacts the democratic process*”. We therefore think it makes sense to limit the targeting and amplification activities only to the data for which the user has provided his explicit consent (i.e. gender, age, location, and other identity data that are provided by the users to the platform) and prohibit targeting on the basis of data inferred by the platform (and not provided by the user), at least as regards the inferred data that allows companies to show the political preferences of the user.

1.2 Complete prohibition of targeting and amplification techniques using sensitive data

1.2a If you support completely prohibiting the use of targeting and amplification techniques involving the processing of sensitive data, would you agree to keep the exception referred to in Article 9.2(d) of Regulation 2016/679 and Article 10.2(d) of Regulation 2018/1725 or to additionally incorporate an exception when it comes to intra party communication (messages to current and former members)?

References to article 9(2)(d) of Regulation (EU) 2016/679 and Article 10(2) (d) of Regulation (EU) 2018/1725 are important: this assures coherence with the GDPR regulation and strengthens the data protection of individuals.

1.2b If you do not support such a complete prohibition, do you think that targeting and amplification techniques using sensitive data should be specifically prohibited during electoral periods?

No. The term ‘electoral periods’ is not clearly delineated as there is no harmonized definition on EU level.

1.2c Are there other categories of techniques involving the processing of personal data that should be addressed specifically?

The use of inferred data and micro-targeting should be addressed as well.

1.3 Obligations for data controllers and political advertising publishers

1.3a Do you think the provisions laid out in paragraphs 3 to 6, as proposed by the French Presidency, need to be further revised (e .g. clarification of obligations; scope of information to be included in the transparency notice etc.)?

CHAPTER IV

2. Article 14 - Legal representative

2.1 Should the Member States establish a publicly available register of all legal representatives referred to in Article 14.1?

The administrative burden on MS should be kept to a minimum. Registers should only be imposed where there is a real need and a clearly defined objective.

3. Article 15 - Competent authorities and contact points

Please indicate your positions on the possibilities/provisions outlined below.

3.1 Clarification of competencies - Article 15.1-15.5

3.1a Do you think Article 15 should further specify the roles and powers of respective competent national authorities?

Clarification of the roles and powers of the competent supervisory authorities is desirable.

BE has some questions regarding this article 15:

- Is it a deliberate choice that the authorities referred to in Articles 15.1 and 15.2 only seem competent for monitoring, while the competent authorities referred to in Article 15.3 on the other hand are responsible for monitoring, application and enforcement, and must take the necessary measures to ensure compliance with this Regulation? Who ensures compliance for Art. 15.1 and 15.2?
- Article 15.2 is not clear: "within the meaning of the DSA": this seems to refer to intermediate services instead of competent authorities.
- Does the competent authority for the supervision of online service intermediaries have to meet a specific independence criterion? This criterion does not seem to be clear from Article 15.2, nor from Recital 57. The words "within the meaning of Regulation (EU) 2021/xx (DSA)" seem to be related to "intermediary services" rather than to "competent authorities".

- Regarding the powers of supervisory authorities, §1 refers to Article 58 of Regulations 2016/679 and 2018/1725. Shouldn't §2 also refer to Article 41 of the DSA ("Powers of the DSC")? Indeed, §§ 4 and 5 only refer to "competent authorities referred to in paragraph 3".
- The reference to Articles 45 (cross-border cooperation among DSC) and 46 (joint investigations), at the end of the paragraph, should take into account the evolutions of the DSA text and be adapted, if necessary (in particular the addition of Article 45a (which allows the transfer to the COM (?)).

Finally, we would like to recall that even if the supervisory authority designated under this Regulation will not necessarily be the Belgian DSC designated under the DSA (this will have to be the subject of a subsequent technical and political discussion), we note that the latter will nevertheless have a role to play ("The Digital Services Coordinator referred to in Article 38 of Regulation (EU) 2021/xxx in each Member State shall be responsible for ensuring coordination at national level in respect of providers of intermediary services (...) + via Articles 45 and 46, if applicable).

It is therefore essential to ensure that the deadlines for the application of this Regulation (currently 1 April 2023) and the DSA (1 January 2024) are aligned.

3.1 b Should the power to require information from the political advertising service providers be explicitly included in Article 15.5?

The administrative burden for audiovisual and print media services should be kept to a minimum.

BE has some questions:

- Would this not be a duplication of Article 15.4, which stipulates that competent authorities must have the power to demand any necessary information from providers of political advertising services for the performance of their supervisory tasks?

- There is also a limited overlap with Article 10.1 in which the competent national authorities are granted the power, in order to verify compliance with Articles 6, 7 and 8, to request that providers of political advertising services transmit any necessary information. Both the request for information and the information itself must meet a number of conditions in such cases, which do not apply to requests for information pursuant to Article 15.4.

3.2 Clarification cooperation at the national or EU level - Article 15.6-15.9

3.2a Is the proposed framework for cooperation within and between Member States, and at EU level (national elections networks, European Cooperation Network on Elections) suitable?

BE has some doubts about national elections networks: Political advertising goes much further than the remits of their work?

ERGA should also be mentioned in this article to ensure coherence with other regulatory instruments. National audiovisual authorities should also have a seat at the table. In addition, there should be a synergy with the Digital Services Board (which is not mentioned so far).

3.2b Do the provisions on cooperation between the Member States laid out in Article 15.8 need further clarification, for instance as regards deadlines?

Yes, BE has some questions:

- What is the connection between article 15.6 and article 15.8? Article 15.6 states that cooperation must be ensured, particularly in the context of national elections networks (is this the European Cooperation Network on Elections mentioned in Article 15.10?), and mentions a number of examples. Article 15.8 provides concrete cooperation modalities, without mentioning national election networks?
- Does Article 15.8(c) contain an internal contradiction in the sense that competent authorities on the one hand have to give each other assistance, but on the other hand these competent authorities can also simply reject a request from another competent authority if they do not consider that the conditions for requesting assistance under this Regulation have been met?

- Concerning the supervision of "intermediary services", article 15.2 refers to article 45 of the DSA, dealing with cross-border cooperation between DSCs. Is the cooperation of these actors therefore considered as "already regulated by Union law", so that §8 would not be applicable to authorities designated for the supervision of intermediaries?

4. Article 16 - Sanctions

Please indicate your positions on the possibilities/provisions outlined below:

4.1 Consideration of responsibilities that apply to sponsors in the provisions of Article 16 (e.g. by the explicit exclusion of the applicability of sanctions to service providers if the sponsor provided false information that was not manifestly erroneous)

The competence to evaluate and impose sanctions remains the competence of the authorities. In the regulation there must also be an explicit exclusion of the applicability of sanctions for political advertising publishers if the sponsor of the service provider provided false information that was not manifestly erroneous.

4.2 Harmonizing the level of sanctions (e.g. by introducing minimum and/or maximum amount) - **Article 16.3**

BE support the harmonization of sanctions as much as possible. A minimum and maximum sanction must be set so that "forum shopping" between Member States is excluded. However, national authorities retain the competence to determine the concrete sanction.

4.3 Reinforcing/changing scope of infringements to be considered particularly serious during an electoral period (e.g. by also referring to other Articles of the Regulation) - **Article 16.4**

Any reference to 'electoral period' in sanctions should be avoided, as there is no harmonized definition of 'electoral period' on the EU level. It would be very difficult to apply in practice.

Why would there only an aggravating circumstance for violations of article 7 during election time and not for violations of, say, Articles 9, 10, 11, 12 and 13 ?

4.4 Introduction of an obligation for the Member States to annually report on the type and amount of sanctions imposed

We should be cautious about imposing a too heavy reporting burden on the Member States. It is therefore not appropriate to impose a new obligation for the transmission of reports on the Member States.

CHAPTER V

5. Article 18 - Evaluation and review

5.1 Do you think the content of the report should be specified?

The content of the report should be limited to essential elements so as not to increase the administrative burden on Member States to provide information.

6. Article 19 - Exercise of the delegation

6.1 Do you think the power to adopt delegated acts should be supported by other criteria (e.g. obligation to consult the Member States in advance)?

BE is not in favour of delegated acts and if they are to be maintained, they must be very limited and subject to consultation of Member States.

6.2 What is your position on the period for which the Commission is empowered to adopt delegated acts?

BE would like to ask for the opinion of ERGA on this matter. Consistency with the DSA seems appropriate.

6.3 Do you think that a process is needed to make codes and standards binding (cf. Article 40 GDPR)?

BE would be in favour of setting up a process that can make codes of conduct binding and enforceable by an appointed authority, in parallel with art. 40 of the GDPR. However, the text of this Regulation must be unequivocally compatible with the provisions of the DSA regarding codes of conduct, in particular the codes of conduct for online advertising (Art. 36).

We also have a question: What would be the legal relationship between this regulation and a code of conduct with conflicting provisions?

Finally, we would also like to ask the Commission to provide the Member States with a study on the interaction between the Code of Practice on Disinformation and this Regulation on political advertising (e.g. blackout period, definitions).

BULGARIA

CHAPTER III

1. Article 12 - Specific requirements to targeting and amplification

Please indicate your positions on the possibilities/provisions outlined below.

1.1 Distinguishing various types of data (provided data vs observed or inferred data)

1.1a Do you think that Article 12 should differentiate profiling techniques or differentiate observed or inferred sensitive personal data from other personal data?

Yes, for transparency reasons.

1.2 Complete prohibition of targeting and amplification techniques using sensitive data

1.2a If you support completely prohibition the use of targeting and amplification techniques involving the processing of sensitive data, would you agree to keep the exception referred to in Article 9.2(d) of Regulation 2016/679 and Article 10.2(d) of Regulation 2018/1725 or to additionally incorporate an exception when it comes to intraparty communication (messages to current and former members)?

We consider that the exceptions from art.12 (2) of the proposed Regulation are adequate and can be supported.

1.2b If you do not support such a complete prohibition, do you think that targeting and amplification techniques using sensitive data should be specifically prohibited during electoral periods?

Yes, we believe there should be stricter rules during the electoral period.

1.2c Are there other categories of technique involving the processing of personal data that should be addressed specifically?

If there are such known techniques, in principle all of them should be addressed. At the same time the text should keep the technological neutrality.

We believe the codes of conduct are more flexible instruments to address the new techniques. It would be easier to update codes of conduct rather than to regularly update the entire regulation.

1.3 Obligations for data controllers and political advertising publishers

1.3a Do you think the provisions laid out in paragraphs 3 to 6, as proposed by the French Presidency, need to be further revised (e.g. clarification of obligations; scope of information to be included in the transparency notice etc.)?

Yes, we would support further clarification of obligations. We support the proposal to clarify paragraphs 3 to 6 in order to ensure uniform implementation.

CHAPTER IV

2. Article 14 - Legal representative

2.1 Should the Member' States establish a publicly available register of all legal representatives referred to in Article 14.1?

Yes, we support the proposal for a public register. Public registers contribute to the transparency and accountability of the political process.

3. Article 15- Competent authorities and contact points

Please indicate your positions on the possibilities/provisions outlined below.

3.1 Clarification of competencies - Article 15.1-15.5

3.1a Do you think Article 15 should further specify the roles and powers of respective competent national authorities?

Yes, to avoid disputes about competence.

3.1b Should the power to require information from the political advertising service providers be explicitly included in Article 15.5?

Yes, the competent authorities should have the powers to request information from providers The supervisory authorities referred to in art.15, para 1, should have the same powers, in case of an investigation.

3.2 Clarification cooperation at the national or EU level -Article 15.6-15.9

3.2a Is the proposed framework for cooperation within and between Member States, and at EU level (national elections networks, European Cooperation Network on Elections) suitable?

Yes. It would be good to strengthen it with ERGA involvement.

3.2b Do the provisions on cooperation between the Member States laid out in Article 15.8 need further clarification, for instance as regards deadlines?

We support a provision that provides for clearer co-operation, including as regards the deadlines. Time limits could be set in line with national legislation.

4. Article 16 - Sanctions

Please indicate your positions on the possibilities/provisions outlined below:

4.1 Consideration of responsibilities that apply to sponsors in the provisions of Article 16 (e.g. by the explicit exclusion of the applicability of sanctions to service providers if the sponsor provided false information that was not manifestly erroneous)

We support the approach applied in the field of data protection, e.g. the controller and the processor are jointly liable for the lawfulness of the data processing.

4.2 Harmonizing the level of sanctions (e. g. by introducing minimum and/or maximum amount) - Article 16.3

We are in favour of introducing minimum and/or maximum level of sanctions. This is also in line with ERGA's position.

4.3 Reinforcing/changing scope of infringements to be considered particularly serious during an electoral period (e. g. by also referring to other Articles of the Regulation)-Article 16.4

We support the rules as they are proposed.

4.4 Introduction of an obligation for the Member States to annually report on the type and amount of sanctions imposed

We support such a good practice which could serve for further analysis and assessment. The report should also include the infringements identified during the investigation.

CHAPTER V

5. Article 18 - Evaluation and review

5.1 Do you think the content of the report should be specified?

Yes, we support the suggestion that the report has an exemplary and predefined structure.

Article 19 - Exercise of the delegation

6.1 Do you think the power to adopt delegated acts should be supported by other criteria (e.g. obligation to consult the Member States in advance)?

Yes. Further assessment is needed as regards delegated vs implementing acts.

6.2 What is your position on the period for which the Commission is empowered to adopt delegated acts?

See above.

6.3 Do you think that a process is needed to make codes and standards binding (cf. Article 40GDPR)?

Yes, as the codes and standards contribute to transparency and accountability in the processing of personal data. Codes may also regulate cases of personal data intrusive campaigns, which are not regulated in the current regulation.

CYPRUS

1. *GENERAL REMARK: In relation to the issues tackled in this part, the national Supervisory Authorities will collectively express their positions through the European Data Protection Board.*
 - 1.1.a In general, we believe that the clearer and the more detailed the differentiation of different types of personal data is, the more transparent the targeting of the political advertising is.
 - 1.2a,b Especially during the electoral campaign, we believe that the use of targeting techniques involving sensitive data should be restricted or be completely prohibited, the aim being the protection of voters and the facilitation of their voting right without any kind of influence.
 - 1.2c No firm/final position yet.
 - 1.3a We regard the terms as sufficiently clear.
- 2.1. A publicly available register of legal representatives referred to in Article 14.1 would enhance transparency. However, at the same time, the competent authority for keeping such a register, as well as the possible sanctions that the authority could impose in case of a provider's omission to provide information should be clarified.
- 3.1a Yes, the competent national authorities' role and powers, as well as the administrative fines and financial sanctions (the procedures for imposing fines/sanctions and the level of fines/sanctions should be defined) should be clarified in greater detail.
- 3.1b Yes.
- 3.2a The proposed network of cooperation within and between national electoral authorities is considered to be appropriate. But for it to work, it will require adequate staffing, both in terms of numbers and in terms of expertise on the technical issues related to political advertising.
- 3.2b The provisions are sufficiently clear.

- 4.1 No final position on the matter yet.
- 4.2 Harmonising the level of sanctions would mean moving towards the right direction.
- 4.3 Imposing tougher penalties during the pre-election period would act as a deterrent.
- 4.4 This proposal would burden the Member States with additional administrative costs, so the benefit of its implementation should be explained.
- 5.1 No.
- 6.1 Yes, specific criteria could be set.
- 6.2 It is considered to be a reasonable period.
- 6.3 Yes.

DENMARK

Chapter III – Targeting and amplification of political advertising

- **Article 12:** Denmark would like some clarification on, how the provisions in the proposal apply to the processing of data that are inferred from behavior on online intermediary services? For example through group memberships, likes or searches?
- **Article 13:** Denmark is supportive of the addition of "without costs" in order to align with the wording in article 11(1).

Chapter IV – Supervision and enforcement

- **Article 15 (1):** According to Article 15 (1) the supervisory authorities referred to in Article 51 of Regulation (EU) 2016/679 or Article 52 of Regulation (EU) 2018/1725 shall be competent to monitor the application of Article 12 of this Regulation in their respective field of competence. It should be clarified whether the same supervisory authorities would be competent to monitor the application of article 13.

- **Article 15 (2):** The third sentence of this article is drafted as follows:

“The Digital Services Coordinator referred to in Article 38 of Regulation (EU) 2021/xxx in each Member State shall be responsible for ensuring coordination at national level in respect of providers of intermediary services as defined in Regulation (EU) 2021/xxx [Digital Services Act].”

The role of the Digital Services Coordinator related to monitoring the compliance of this Regulation should perhaps be clarified. The wording in the third sentence – specifically "*shall be responsible for*" seems to imply, that the Digital Coordinator referred to in the DSA is also designated to monitor the compliance of this Regulation by default. Is this worded as intended?

Further, please note that the articles of the DSA have been renumbered and what was earlier article 38 is now article 49.

- **Article 15 (3):** It is unclear what is meant by "*the aspects of this Regulation not referred to in paragraphs 1 and 2*". Specifically, it would become clearer by specifying whether it for example refers to articles or actors.

The second and third sentences in Article 15(3) provide general requirements for the independence of the competent authorities.

Article 50 in the DSA describes in much more detail the requirements to ensure the independence of the Digital Services Coordinator. As the wording of Article 15(3) paragraphs 2 and 3 is different to Article 50 in the DSA, it gives rise to considerations as to whether the requirements are in substance different. For the sake of legal certainty and to ensure a harmonised supervision regime across the Union, it could be considered to align the wording of the provisions with Article 50 of the DSA if the substance is the same.

- **Article 15 (4):** If the substance of this provision is to be similar to the power of Digital Services Coordinators to obtain access to data from providers of Very Large Online Platforms and Very Large Online Search Engines, it could be considered to align the wording with Article 40 of the DSA. Article 40 of the DSA stipulates in detail the power of the competent authorities to access data that are necessary to monitor and assess compliance with this DSA.
- **Article 15 (5):** This provision contains enforcement powers of the competent authority designated in accordance with this Regulation. We are wondering why the competent authorities do not have the power to order the cessation of infringements of this Regulation as is the case for Digital Services Coordinators when monitoring the compliance with the DSA, cf. Article 51(2), b, of the DSA.

- **Article 15 (5) c and Article 16:** It follows from the widely accepted interpretation of Section 3(3) of the Danish Constitutional Act, that Danish administrative authorities cannot, with binding effect, impose fines or other sanctions characterized as punitive under Danish law. Thus, if Denmark were to introduce the possibility of applying administrative fines, understood as pecuniary penalties imposed by an administrative authority, as a means of sanctioning breaches of EU law, it is highly likely that Danish courts – ultimately the Supreme Court – would strike down such fines as unconstitutional. As a result, it would not be possible for Danish authorities to impose such fines.

We have submitted a proposal to the Presidency on how the issue could be solved while still ensuring effective implementation, which we will share when going through the relevant articles at GAG.

- **Article 15(7):** It could be considered to add to this provision that after the Member State has designated one competent authority as a contact point at Union level for the purposes of this Regulation, the Member State shall also be obliged to make that information publicly available and communicate the information to the Commission, in the same way as it is regulated in the DSA article 49(3) (previous article 38) in order to make it easier for competent authorities from other Member States to contact them:

Article 49(3) of the DSA:

“Member States shall designate the Digital Services Coordinators by [15 months from [the date of entry into force of this Regulation]].

Member States shall make publicly available, and communicate to the Commission and the Board, the name of their competent authority designated as Digital Services Coordinator and information on how it can be contacted. The Member State concerned shall communicate to the Commission and the Board the name of the other competent authorities referred to in paragraph 2, as well as their respective tasks.”

Chapter V

- **Article 18:** We suggest specifying in the recitals that the evaluation should include certain elements such as evaluations of the scope of the regulation concerning specific cases of political advertising and accordingly the scope of providers of political advertising.

ESTONIA

Chapter III

1.1a: As regards to differentiating profiling techniques: as it has also been pointed out by the EDPS, it seems that certain targeting or amplification techniques are more intrusive and problematic than others. In light of that, we would support establishing further restrictions on the more problematic profiling techniques.

On whether **Article 12** should differentiate between how the personal data has been obtained: we could agree with either full prohibition of the use of sensitive personal data in the context of political advertising or prohibiting sensitive personal data which has been inferred or observed, while allowing processing of data expressly provided by data subject. Additionally, if the question also concerns non-sensitive personal data, then establishing certain restrictions to the use of observed or inferred non-sensitive personal data (but not to personal data provided by the data subject) may also be a feasible solution to ensure better protection of privacy of individuals, while remaining proportional.

GERMANY

The following remarks are preliminary. Further comments may be sent at a later stage.

Chapter III

1 Article 12 – Specific requirements to targeting and amplification

Please indicate your position on the possibilities/provisions outlined below.

1.1 Distinguish various types of data (provided data vs observed or inferred data)

1.1a Do you think that Article 12 should differentiate profiling techniques or differentiate observed or inferred sensitive personal data from other personal data?

As we support a general ban on using any personal data for targeting, amplification and ad delivery of political ads (see our answer under question 1.2 a), consequently, this question would not be relevant for us. Nevertheless, we would like to draw attention to two aspects.

Firstly, we would like to point out that, in our view, Article 12 so far does not regulate *profiling*, but *targeting and amplification*. We understand targeting and amplification to be technical steps within the broader purpose of delivering personalised content, e.g. advertising. By contrast, profiling in accordance with working paper 251 of the Art. 29 Working Party means creating an overall profile of a natural person with the objective to evaluate personal aspects about that person and possibly predict future behavior. We understand profiling therefore as a common means for (micro) targeting but do not view targeting/amplification and profiling as synonymous. The personal aspects evaluated by profiling may be used as a foundation to target specific natural persons which are predicted to react in a certain way (here voting behaviour) or amplify content to them but there may also be targeting/amplification activities that do not build upon prior profiling. We do however consider the DSA as the base for the level of protection regarding personalised advertising which needs to remain unaffected even when the Regulation chooses to not build upon the term “profiling”.

The Presidency's question concerns a possible differentiation based on *specific* techniques in Article 12 that may include or be themselves qualified as profiling. In our view, and as elaborated above, profiling is not (explicitly) subject to Article 12.

However, if regulation on the use of special categories of personal data was differentiated according to where and how these data have been collected, we would see a risk that controllers might be able to circumvent restrictions using “creative” ways or simply other “channels” to collect or receive special categories of personal data. We also doubt that it would be practically verifiable (and enforceable) that certain data have not been collected in a prohibited way.

Secondly, we would like to point out that the CJEU has recently ruled in Decision C-184/20 that “personal data that are liable to disclose indirectly the sexual orientation of a natural person constitutes processing of special categories of personal data”. In our view, this strongly indicates that Article 9(1) of the GDPR needs to be interpreted in a broad manner anyways, and thus already comprises inferred data.

1.2 Complete prohibition of targeting and amplification techniques using sensitive data

1.2a If you support completely prohibiting the use of targeting and amplifications techniques involving the processing of sensitive data, would you agree to keep the exception referred to in Article 9.2(d) of Regulation 2016/679 and Article 10.2(d) of Regulation 2018/1725 or to additionally incorporate an exception when it comes to intraparty communication (messages to current and former members)?

- *Targeting of political advertising can affect fair and free elections. The Regulation aims at the protection of democracy and fundamental rights and freedoms in particular respect for freedom, democracy and the rule of law and, by guaranteeing that Union citizens can exercise their basic democratic rights, in particular to protect electoral processes and preserve open democratic debate and the right to form an opinion and the right to vote in a transparent environment. We consider these fundamental pillars of the European democracy to be beyond what can be subject to individual choice by giving consent to the very data processing that endangers the integrity of the electoral process.*

- *However, this overall objective of the regulation calls for stronger restrictions than for commercial advertising not only regarding the question of consent but the scope of protected data in general. The current wording of Art. 12 mainly reaffirms the protection already given by the GDPR/EU-DPR including two of the GDPR exceptions allowing the processing of special categories of personal data.*
- *For the targeting/delivering of political ads problems arise not only from using special category data (as in Art. 9 (1) GDPR), but also from using other personal data which can be very revealing (e.g. financial status or educational background). Also, algorithms can derive sensitive personal data by analysing vast amounts of non-sensitive personal data. For clarity of this regulation we would strongly recommend to consider whether specific rules for targeting/ad delivery/amplification are necessary that are tailored to the purpose of this Regulation instead of trying to use categories from other legislation.*
- *We therefore strongly support a ban on using all personal data for targeting, amplification and ad delivery of political ads. This is especially important for observed and inferred data as individuals would not expect such data to be used to target them with political ads and most will not know how revealing this data can be about their personality and vulnerability. Moreover, often platforms will have collected much more observed and inferred data about a user than the user has provided.*
- *We see the need for only one exception: Sponsors of political ads will want these ads to be delivered only to the electorate of the relevant elections, e.g. a local candidate in North Germany will not want to pay for ads being shown to people in South Germany. This degree of targeting – not ad delivery or amplification – should be possible to enable meaningful political ads.*
- *We do not see the need for an exception for the communication of a party with its current or former members. In our understanding, the communication of a party with its current members is an inherent part of the membership of a political party and not political advertising. We would suggest clarifying this in a recital:*

(18a) Communication of a political party with its members are an inherent part of the membership in a political party and should not constitute political advertising.

1.2b If you do not support such a complete prohibition, do you think that targeting and amplification techniques should be specifically prohibited during electoral periods?

- *No need for specific rules during electoral periods. Also, not practical to have different rules on transparency and targeting during electoral periods as most likely there will nearly always be an electoral period somewhere in the EU.*

1.2c Are there other categories of techniques involving the processing of personal data that should be addressed specifically?

- *Necessary to clarify definitions of targeting, amplification and add ad delivery techniques and their distinction from profiling. The Regulation should apply to all steps that determine who finally gets to see a political ad. The restrictions on the use of personal data should also apply to amplification and ad delivery.*

1.3 Obligations for data controllers and political advertising publishers

1.3a Do you think that the provisions laid in paragraphs 3 to 6, as proposed by the French Presidency, need to be further revised (e.g. clarification of obligations; scope of information to be included in the transparency notice etc.)?

- *We suggest adding information about targeting to the (short) transparency notice (Art. 7 (1)), so viewer sees this information with the ad:*

(d) a statement on the targeted nature of the advertisement, the data used for targeting and the type of personal information used if personal data is processed to determine the audience to which the advertisement is presented

CHAPTER IV

2 Article 14 – Legal representative

2.1 Should the Member states establish a publicly available register of all legal representatives referred to in Article 14.1?

- *This could be useful. Then there should also be one central site with links to all the national registers.*

3 Article 15 – Competent authorities and contact points

Please indicate your position on the possibilities/provisions outlined below.

3.1 Clarification of competencies – Article 15.1-15.5

3.1a Do you think Article 15 should further specify the roles and powers of respective competent national authorities?

- *Yes, it could be useful to be more specific.*

3.1b Should the power to require information from the political advertising service providers be explicitly included in Article 15.5.?

- *Yes. We would suggest having one provision for all powers of the authorities.*

3.2 Clarification cooperation at the national or EU level – Article 15.6.-15.9

Please indicate your position on the possibilities/provisions outlined below.

3.2a Is the proposed framework for cooperation within and between Member States, and at EU level (national elections networks, European Cooperation Network on Elections) suitable?

- *The question of competent authorities and contact points need detailed assessment in the Council Working Group. While it seems a good idea also to exchange information on (possibly) serious breaches of the regulation, new competences of the several supervisory authorities introduced in Art.15 need to be clearly defined and assigned.*
- *The current framework of the European Cooperation Network on Elections and the MS contact points therein (at least in GER) would not be authorized or equipped to execute such broad supervisory duties. In any case, the new tasks in the TTPA do not allow for the current national contact points in the Regulation on the statute and funding of European political parties and European political foundations (1141/2014) to be transferred to the supervision of political ads.*

- *In addition, national competences in media law (in GER esp. of the Länder) and constitutional limits need to be respected. E.g. the GER Basic Law guarantees the freedom of political parties which does not allow any state supervision of political parties.*

3.2b Do the provisions on cooperation between the Member States laid out in Article 15.8 need further clarification, for instance as regards deadlines?

- *Suggest clarification by adding “without undue delay” at the end of 15.8(a) and in 15.8(c) (instead of the unclear wording “timeframe proportionate to the urgency of the request”).*

4 Article 16 – Sanctions

Please indicate your position on the possibilities/provisions outlined below.

4.1 Consideration of responsibilities that apply to sponsors in the provisions of Article 16 (e.g. by the explicit exclusion of the applicability of sanctions to service providers if the sponsor provided false information that was not manifestly erroneous)

- *We see no reason to explicitly exclude sanctions for service providers if the sponsor provides false information. The regulation sets up obligations for service providers (and should also include a due diligence & best effort obligation, see above). If service providers fail to meet these obligations they should incur sanctions. For example, even if false information was initially not obvious service providers can become aware of it through flagging/notification. Then they have an obligation to act. Failure to fulfil one’s obligations should be sanctions for all those addressed by the regulation.*
- *We would also suggest adding specific rules for infringements by VLOPs by adding a reference to the DSA’s regime for fines for “very large online platforms” so to better link both regulations and emphasize the potentially higher risks posed by these providers:*

Art. 16 (4a) For infringements of Article 7 by political advertising publishers or service providers that are very large online platforms or very large search engines as defined in Article 25 and Article 33a, respectively, of Regulation (EU) 2022/XX [Digital Services Act], Member States may impose fines up to the amount referred to in Article 59 (1) of that Regulation.

- *Individuals should also have the right to lodge a complaint about incorrectly labelled, illegally targeted or non-declared political ads. We suggest wording based on the DSA:*

Art. 16 a: Any person and any organisation or association mandated to exercise the rights conferred by this Regulation on their behalf shall have the right to lodge a complaint against political actors, publishers, sponsors and service providers alleging an infringement of this Regulation with the contact point of the Member State where the person is located or established. During these proceedings, all parties shall have the right to be heard and receive appropriate information about the status of the complaint, in accordance with national law. Where the complaint falls under the responsibility of another competent authority in its Member State, the contact point receiving the complaint shall transmit it to that authority within four weeks. During electoral periods, the transmission shall happen within two weeks. The competent authority receiving the complaint shall assess and, where appropriate, act upon it within six weeks. During electoral periods, the assessment shall happen within two weeks.

4.2 Harmonizing the level of sanctions (e.g. by introducing minimum and/or maximum amount) – **Article 16.3**

- *Minimum sanctions seem a good idea.*

4.3 Reinforcing/changing scope of infringements to be considered particularly serious during an electoral period (e.g. by also referring to other Articles of the Regulation) – **Article 16.4.**

- *We do not see this as necessary. As there are many different (local, regional, national) elections within member states it might be very difficult to determine if an infringement took place during the electoral period.*

4.4 Introduction of an obligation for the member States to annually report on the type and amount of sanctions imposed

- *This might be useful to inform the delegated act. A separate report might not be necessary but interesting in order to facilitate easy access to a list of the sanctions imposed. Such a report could be an incentive for actors to comply with their obligations in order to avoid appearing in such a report. Also, quickly sharing information on serious infringements among national contact points would be useful to prevent future infringements.*

CHAPTER V

5 Article 18- Evaluation and review

5.1 Do you think the content of the report should be specified?

- *This does not seem necessary.*

6 Article 19 – Exercise of the delegation

6.1 Do you think the power to adopt delegated acts should be supported by other criteria (e.g. obligation to consult the Member States in advance)?

- *Yes, a prior consultation of Member States should be added.*

6.2 What is your position on the period for which the Commission is empowered to adopt delegated acts?

- *2 years would be a good time frame.*

6.3 Do you think that a process is needed to make codes and standards binding (cf. Article 40 GDPR)?

- *No. All important parts of this regulation should be included in the text of the regulation or in a delegated act, not in codes and standards.*

GREECE

1. Article 12

1.1a. **(HDP)** We support the complete prohibition of the use of targeting and amplification techniques involving the processing of personal data for purposes of political advertising. Besides, in the context of the recital 47 of the Proposal, the E.U. legislator expresses his concern regarding the detrimental effects that the use of targeting and amplification techniques in the field of political advertising has on citizens' fundamental rights without making any distinction between processing ordinary personal data and special categories of personal data. [In any case, we consider that article 12 doesn't fulfil the required, increased protection that special categories of personal data need, especially in view of the explosive spread of the targeting and amplification techniques.]

1.2 **(HDP)** We do not agree with keeping the exception referred to in article 9.2 (d) of the GDPR, because we believe that this exception can potentially limit the practical effect of the prohibition laid down in article 12 of the Proposal, since political parties are the main sponsors of political advertising in the meaning of article 2 (7) of the Proposal.

1.2c **(HDP)** We are in favor of providing for a full ban of microtargeting for political purposes, as well as prohibiting targeted advertising based on pervasive tracking, namely processing of information regarding a person's behaviour across the internet with a view of targeted advertising on the basis of profiling.

1.3a **(HDP)** N/A since we are of the view that the use of targeting and amplification techniques involving the processing of personal data for purposes of political advertising should be fully banned.

1.1a, 1.2a, 1.2b, 1.2c, 1.3a (**MoI**): According to the exceptions of articles 9.2 (d) of Regulation 2016/679 and 10.2 (d) of Regulation 2018/1725, the processing of personal data exclusively concerns the members or former members of the organization (Foundations, Associations and Non-Profit Organizations) or persons who have regular communication with it in relation to its purposes. These data must not be shared outside the specific organization without the consent of the data subjects. In our opinion, if political parties wish to send messages to their members, former members and persons who have regular contact with them, and only to them, then it would be possible to allow advertising to be placed on a medium and only for these people.

2. Article 14

2.1 (**HDP**) We are in favor of establishing a publicly available register of all legal representatives referred to in article 14.1 of the Proposal for the sake of transparency. Besides, it should be noted that the designation of a representative in the E.U. constitutes an obligation imposed by article 27 of the GDPR, when a controller or processor not established in the Union falls within the territorial scope of the GDPR by processing data of data subjects who are in the Union and is of crucial importance regarding the effective supervision of the implementation of the data protection legislation in relation to the political advertisement providers.

2.1 (**MoI**): The register of legal representatives of providers who are not established in the EU is a necessary condition on the one hand for reasons of transparency and on the other for the ability of the authorities and special bodies of the member states, which have the responsibility of monitoring and controlling compliance with provisions of the regulation, for direct, timely and effective submission of requests for access and obtaining data and information about the expenses of political parties and candidates.

3. Article 15

3.1.a (**HDP**) Article 15 of the Proposal explicitly sets out the roles and powers of the Hellenic Data Protection Authority which regard the monitoring of the application of article 12 of the Proposal. Article 15 of the Proposal further refers to Article 58 of the GDPR which provides for a wide spectrum of investigative, corrective, authorization and advisory powers for the Hellenic Data Protection Authority within its respective field of competence. Therefore, we consider that article 15 is, in principle, sufficient regarding the roles and powers of our Authority.

3.1.b. (**HDP**) The Hellenic Data Protection Authority has, within its field of competence, all the investigative powers provided for in Article 58 of the GDPR, vis-à-vis controllers, processors and legal representatives thereof. Accordingly, the issue of whether or not the power to require information from the political advertising service providers should be explicitly assigned to another authority of the article 15.3 as well, falls outside the framework of our competence.

3.1a, 3.1b (**MoI**): According to articles 5, 6 and 7 of the Regulation, political advertising can be a product of sponsorship. In this case information must be provided on the identity of the sponsor, the period of publication, with an emphasis on the pre-election period, and the amounts spent on the service provided. The interest for these data falls under the competence of specialized auditing bodies for the expenses of political parties and candidates, especially during the pre-election period. In Greece, the competent body for this purpose is the Audit Committee of the Hellenic Parliament. Consequently, the phrase "**and audit bodies**" may be added to paragraph 3 of article 15 as follows: "Each member state shall designate one or more competent authorities **and audit bodies** to be responsible for the application..." and the following paragraphs may be formulated accordingly. Also, where there is a reference to supervisory tasks, add the phrase "and audit". So the paragraph 4 of article 15 to be shaped as follows: "Competent authorities referred to in paragraph 3, where exercising their supervisory **and audit** tasks in relation to this Regulation..."

3.2.a. **(HDP)** According to Article 15.1 of the Proposal, EU Data Protection Authorities apply the provisions of Chapter VII of the GDPR, when monitoring the application of activities falling within the scope of Article 12 of the Proposal. Chapter VII of the GDPR provides for a detailed and organized mechanism of cooperation and consistency.

3.2.b. **(HDP)** We believe that the provisions laid out in Article 15.8 of the Proposal would benefit from the application of certain qualitative criteria regarding the possibility to request another authority to take supervisory or enforcement measures against a political advertising provider. For timely reasons, we also think that some extendable deadlines should be stipulated. We refer to the aforementioned Chapter VII of the GDPR, which could serve as an example of an efficient cooperation mechanism.

3.2a, 3.2b **(MoI)**: In paragraph 8, it would be useful to add point (d) for the development of a mechanism (standard tool) for the exchange of information by the European Commission, in order for the Member States to be able to effectively support their objectives of the Regulation and operate in a clear, comprehensible and equivalent manner. This mechanism could be developed within the framework of the European Cooperation Network for the Elections of paragraph 9, through the cooperation of the European Commission with the contact points of the competent Authorities of the Member States.

4. Article 16

4.1 – 4.4. **(HDP)** N/A since Article 16 of the Proposal refers to the monitoring of the application of Articles 5 to 11, 13 and 14. Besides, articles 58 and 83 of the GDPR specify the sanctions framework regarding the infringements that fall within the competence of our Authority.

4.3 **(MoI)**: The reference for determining common infringements and sanctions for reasons of equality should be considered in the context of the pre-election period for the election of the European Parliament, and especially taking into account article 15 (Union – wide constituency) of the proposed Regulation for the reform of the relevant Electoral Act. A new constituency shall be formed throughout the territory of the European Union and 28 members of the European Parliament shall be elected from single ballots addressed to the voters of all member states”.

5. Article 18

5.1. **(HDP)** N/A. Not within the Hellenic Data Protection Authority's field of competence.

6. Article 19

6.3. **(HDP)** In our opinion, the development of codes of conduct to be adhered to, among others, by political advertisement publishers, according to article 40 GDPR, and aiming to effectively protect personal data in the field of the political advertisement is reasonable and beneficial.

HUNGARY

Comments of Hungary regarding the proposed regulation on the transparency and targeting of political advertising

Hungary took note of the Czech Presidency's aim to continue the negotiations of the Commission's proposal on the transparency and targeting of political advertising. We believe that **adequate time has to be allowed for the discussions** on this rather complex and sensitive dossier.

In view of the further negotiations, we consider it important to emphasize the **main elements of our position** already consistently presented, and we are of the opinion that **these issues deserve due attention**.

First of all, as we have already highlighted, **we seriously doubt that Article 114 TFEU constitutes the right legal base** as we do not consider the extent of the linkage to the internal market or the justifications for it to be sufficient. In order to clarify this issue, we still consider it **necessary** to have the **legal opinion of the CLS in a written form as well**.

Furthermore, as for the **form of the legal act** is considered, we reiterate our position that **we do not see the form of regulation justified**. In fact, we believe that the **form of directive would be sufficient** to achieve the same purpose. Moreover, since the proposed changes in the Presidency compromise text (8647/3/22 REV3) – that are ultimately based on the Members States' contributions in the context of the assessment of the proposal in the General Affairs Working Group – already aim to set out the primacy of national regulations in several areas, it would be sensible to revert to the form of directive.

Although the **definitions have been refined in the Presidency compromise text** (8647/3/22 REV3), **they still lack clarity** in some cases and therefore, we support further work on Chapter I and II of the proposal. Hungary is convinced that **transparency rules should only apply to advertisements published for remuneration during campaign periods in the Member States**. Indeed, we find it necessary to reinforce in the text that advertisement published for free does not fall under the scope of the proposal.

Finally, we have **serious concerns regarding the authorisation of the Commission to adopt delegated acts**, as in our assessment, this carries the risk of adversely affecting the legislative power of the co-legislators.

As for the other aspects of the proposal touched upon by the Presidency's questionnaire (11578/22), we will forward our reply at a later stage.

LATVIA

Article 12

1.1.a. Latvia is in favor of prohibiting the use of targeting and amplification techniques using sensitive data altogether. If however such use is supported by majority of member states Latvia is of opinion that inferred sensitive data should be differentiated.

1.2.a. Latvia can agree to keep the exception referred to in Article 9(2)d of Regulation 2016/679 and Article 10(2)d of Regulation 2018/1725.

1.2.b. At this point Latvia doesn't see the necessity to apply different rules of data processing to electoral periods.

1.2.c. No.

1.3.a Latvia doesn't see the need for further clarifications.

Article 14

2.1. In Latvia's opinion, the creation of such a public register would facilitate communication and requesting/obtaining information.

However, it would initially be necessary to make sure that the appointment of such a legal representative will ensure a complete and sufficient control mechanism over the relevant service providers, as well as determine the control mechanism of the said requirement, namely whether the control of the fulfillment of the said requirement is the Member State where the service provider offers its services, in responsibility/competence.

It would also be necessary to clarify (including in connection with the provisions of Article 16 of the Regulation) the extent (scope) of the responsibility of the legal representative and whether the responsibility would be applicable to the legal representative, similarly as it would be applicable to the service provider it represents.

In addition, we draw attention to the fact that a similar requirement for the appointment of a legal representative is provided for in Article 11 of the DPTA for intermediary service providers. Thus, the requirement to appoint a legal representative duplicates the DPTA requirement if the particular advertising service provider providing its services online meets the definition and criteria of an intermediary service provider within the meaning of the DPTA. Therefore, it is not clear if an advertising service provider that meets the definition and criteria of an intermediary service provider in the sense of the DPTA appoints a legal representative in accordance with the requirement of the DPTA, whether the requirement of Article 14 of the regulation will also be met. Considering the above, we believe that it is necessary to harmonize both legal acts (regulation and DPTA) in order to exclude the possibility of contradictions.

The creation of such a public register is associated with additional financial resources and time to create it, therefore, if the deadline for the implementation of the Regulation is not changed, it could be difficult to implement such a register in such a short period of time. Also, creating such a public register will require the processing of personal data. Therefore, it is necessary to evaluate the necessity of creating such a register, proportionality, amount of data, duration of storage, etc.

Article 15

3.1.a In Latvia's view, it is not necessary to further specify the duties and powers of the relevant competent state institutions.

3.1.b Presumably not, considering that such rights are already provided for in Article 15, Clause 4 of the Regulation. However, the order of how this happens should be left to the competence of the national legislation.

3.2.a There are no comments.

3.2.b In Latvia's opinion, it would be useful to set a maximum term or a recommended term.

Article 16

4.1. There are no comments.

4.2. In Latvia's opinion, the possibility of providing a common EU mechanism for the application of sanctions should be considered, especially in relation to political advertising service providers whose place of establishment is outside the EU.

4.3. In principle, the strengthening of responsibility in the election and pre-election period is supported, here it could be supplemented with a reference to Article 10 of the regulation, which provides for the provision of information to the competent authorities.

4.4. There are no comments.

In addition to the instructions of Article 16 - it is not clear from the said Article whether one of the punishments in the sense of this Article can also be a ban on political advertising (in Latvia, according to the Law on Pre-Election Agitation, Corruption Prevention and Combating Bureau has the right to make a decision on the prohibition of further pre-election campaigning), therefore it would be necessary an explanation of the future application of this type of penalty.

Article 18

5.1. In Latvia's view, at least general requirements for the report could be set. Also, it is not clear on the basis of which information such a report will be prepared (shouldn't there be an opportunity for member states to report on problems with the application of the regulation).

Article 19

6.1. In Latvia's view, taking into account the national characteristics and national legislation of each country, "delegated acts" should also be adopted in consultation with the member states.

6.2. There are no comments.

6.3. There are no comments.

Additionally, Latvia's comment regarding **Article 20 of the Regulation (entry into force and application)**:

According to Article 20, paragraph 2 of the regulation, the regulation applies from April 1, 2023. Considering the importance of the issue and the time required for an in-depth study of the regulation, we believe that the discussion on the provisions contained in the regulation needs more time, as it is important that individual issues are not rushed excessively, losing the quality of the discussions. In Latvia, several conditions included in the regulation are already in force, at the same time it is expected that additional amendments will have to be made to various national regulatory acts of Latvia in order to meet the requirements of the regulation. Latvia is concerned about the short period that will be allocated to the member states to change the national regulation.

According to the good practice of election regulation, amendments to election laws cannot be made later than one year before the elections. So, if the proposals are adopted in 2023, then nationally it may be very difficult until the 2024 European Parliament elections (in the spring) to develop and adopt new national regulations and amend existing regulations (e.g. administrative fines and financial sanctions regarding advertising goal orientation).

CHAPTER III

1. Article 12 – Specific requirements to targeting and amplification

Please indicate your positions on the possibilities/provisions outlined below:

1.1 Distinguishing various types of data (provided data vs observed or inferred data)

1.1a Do you think that Article 12 should differentiate profiling techniques or differentiate observed or inferred sensitive personal data from other personal data?

“The categories of personal data used for the targeting” is among the information to be provided under Annex II. This should theoretically also include data profiling. However, since the word “profiling” is only mentioned once in the regulation (47), we believe that the information provided under Annex II point c should also clearly indicate whether the data was obtained through profiling. Likewise, Annex II should also clearly indicate if sensitive data was used for the targeting.

1.2 Complete prohibition of targeting and amplification techniques using sensitive data

1.2a If you support completely prohibiting the use of targeting and amplification techniques involving the processing of sensitive data, would you agree to keep the exception referred to in Article 9.2(d) of Regulation 2016/679 and Article 10.2(d) of Regulation 2018/1725 or to additionally incorporate an exception when it comes to intraparty communication (messages to current and former members)?

We agree to maintain the exception referred to in Article 9.2 (d) of Regulation 2016/679 and Article 10.2 (d) of Regulation 2018/1725. However, we are not completely sure the intraparty communication falls/should fall within the scope of this regulation since these messages are not provided for remuneration. We would like to receive additional information on that specific aspect. Additionally, we believe that for the sake of efficiency, intraparty communication should be out of the scope of this regulation. The benefit of including a transparency notice in every intraparty communication seems rather limited since current party members know who contacts them (the sponsor) and for what reasons they are contacted. On the other hand, the same does not apply to messages to former members.

- 1.2b If you do not support such a complete prohibition, do you think that targeting and amplification techniques using sensitive data should be specifically prohibited during electoral periods?

No, because we don't see any added value in the suggestion.

- 1.2c Are there other categories of technique involving the processing of personal data that should be addressed specifically?

No.

1.3 Obligations for data controllers and political advertising publishers

- 1.3a Do you think the provisions laid out in paragraphs 3 to 6, as proposed by the French Presidency, need to be further revised (e.g. clarification of obligations; scope of to be included in the transparency notice etc.)?

We believe that the provisions are clear and that they provide for increased transparency

CHAPTER IV

2. Article 14 – Legal representative

- 2.1 Should the Member States establish a publicly available register of all legal representatives referred to in Article 14.1?

Would it not be worthwhile to establish such a register at the EU level, given that political ads service providers are offering their services across the Union?

3. Article 15 – Competent authorities and contact points

Please indicate your positions on the possibilities/provisions outlined below:

3.1 Clarification of competencies - Article 15.1-15.5

- 3.1a Do you think Article 15 should further specify the roles and powers of respective competent national authorities?

Yes.

- 3.1b Should the power to require information from the political advertising service providers be explicitly included in Article 15.5?

Shouldn't political advertising publisher and sponsors also be included in Article 15.4 and 15.5?

3.2 Clarification cooperation at the national or EU level – Article 15.6-15.9

- 3.2a Is the proposed framework for cooperation within and between Member States, and at EU level (national elections networks, European Cooperation Network on Elections) suitable?

The European Cooperation Network on Elections is the most suitable framework for cooperation.

- 3.2b Do the provisions on cooperation between the Member States laid out in Article 15.8 need further clarification, for instance as regards deadlines?

We don't see a reason to modify the current version of the article.

4. Article 16 - Sanctions

Please indicate your positions on the possibilities/provisions outlined below:

- 4.1 **Consideration of responsibilities that apply to sponsors in the provisions of Article 16** (e.g. by the explicit exclusion of the applicability of sanctions to service providers if the sponsor provided false information that was not manifestly erroneous)

We welcome the fact that the compromise text shifts the burden of proof mainly to the sponsor/providers of political ads. We would also favor an explicit exclusion of sanctions for service providers and specifically publisher if the sponsor provided information that was not manifestly erroneous.

- 4.2 **Harmonizing the level of sanctions** (e. g. by introducing minimum and/or maximum amount) – **Article 16.3**

We would like to maintain the current version of the article.

- 4.3 **Reinforcing/changing scope of infringements to be considered particularly serious during an electoral period** (e. g. by also referring to other Articles of the Regulation) – **Article 16.4**

The application of the article could be difficult in Luxembourg since the electoral period is not defined by law.

- 4.4 **Introduction of an obligation for the Member States to annually report on the type and amount of sanctions imposed**

Rather than Member States, competent authorities should release annual reports on the sanctions imposed.

CHAPTER V

5. **Article 18 – Evaluation and review**

5.1 Do you think the content of the report should be specified?

No.

6. Article 19 – Exercise of the delegation

6.1 Do you think the power to adopt delegated acts should be supported by other criteria (e.g. obligation to consult the Member States in advance)?

No.

6.2 What is your position on the period for which the Commission is empowered to adopt delegated acts?

The power to adopt delegated acts should be conferred to the Commission until the regulation is evaluated.

6.3 Do you think that a process is needed to make codes and standards binding (cf. Article 40 GDPR)?

This aspect should be considered in the evaluation of the regulation.

CHAPTER III

1. Article 12 – Specific requirements to targeting and amplification

Please indicate your positions on the possibilities/provisions outlined below:

1.1 Distinguishing various types of data (provided data vs observed or inferred data)

1.1a Do you think that Article 12 should differentiate profiling techniques or differentiate observed or inferred sensitive personal data from other personal data?

Including observed and inferred sensitive personal data would be a good addition to Article 12. By doing so, citizens gain better control of their data. It also makes the regulation stronger by limiting alternative ways to reach citizens by using data closely related to sensitive data.

1.2 Complete prohibition of targeting and amplification techniques using sensitive data

1.2a If you support completely prohibiting the use of targeting and amplification techniques involving the processing of sensitive data, would you agree to keep the exception referred to in Article 9.2(d) of Regulation 2016/679 and Article 10.2(d) of Regulation 2018/1725 or to additionally incorporate an exception when it comes to intraparty communication (messages to current and former members)?

The Netherlands can support a complete prohibition of targeting and amplification techniques using sensitive data, which is in line with the DSA. Keeping the exception referred to in Article 9.2(d) of Regulation 2016/679 and Article 10.2(d) of Regulation 2018/1725 is also something we can support.

1.2b If you do not support such a complete prohibition, do you think that targeting and amplification techniques using sensitive data should be specifically prohibited during electoral periods?

1.2c Are there other categories of technique involving the processing of personal data that should be addressed specifically?

1.3 Obligations for data controllers and political advertising publishers

1.3a Do you think the provisions laid out in paragraphs 3 to 6, as proposed by the French Presidency, need to be further revised (e.g. clarification of obligations; scope of information to be included in the transparency notice etc.)?

This is currently still under discussion.

CHAPTER IV

2. Article 14 – Legal representative

2.1 Should the Member States establish a publicly available register of all legal representatives referred to in Article 14.1?

As this increases the administrative burden, the Netherlands is not in favour of such a register.

3. Article 15 – Competent authorities and contact points

Please indicate your positions on the possibilities/provisions outlined below:

3.1 Clarification of competencies - Article 15.1-15.5

3.1a Do you think Article 15 should further specify the roles and powers of respective competent national authorities?

Additional clarification of the roles and power of the competent national authorities would be helpful.

3.1b Should the power to require information from the political advertising service providers be explicitly included in Article 15.5?

As this is already included in Article 15.4, the Netherlands thinks this is not necessary.

3.2 Clarification cooperation at the national or EU level – Article 15.6-15.9

3.2a Is the proposed framework for cooperation within and between Member States, and at EU level (national elections networks, European Cooperation Network on Elections) suitable?

This can be further clarified. For instance, will there be dedicated meeting for the contact points of the competent authority? Or will the Member State representative discuss this on behalf of the competent authorities?

3.2b Do the provisions on cooperation between the Member States laid out in Article 15.8 need further clarification, for instance as regards deadlines?

Regarding the GDPR, procedures for mutual cooperation and support are already present in chapter VII. These should be sufficient regarding GDPR.

4. Article 16 - Sanctions

Please indicate your positions on the possibilities/provisions outlined below:

4.1 Consideration of responsibilities that apply to sponsors in the provisions of Article 16

(e.g. by the explicit exclusion of the applicability of sanctions to service providers if the sponsor provided false information that was not manifestly erroneous)

This is currently still under discussion.

4.2 Harmonizing the level of sanctions (e. g. by introducing minimum and/or maximum amount) – Article 16.3

The Netherlands would be in favour of including guidance on the amount of possible sanctions.

4.3 Reinforcing/changing scope of infringements to be considered particularly serious during an electoral period (e. g. by also referring to other Articles of the Regulation) – Article 16.4

In the Netherlands there is no defined electoral period. Therefore we do not have a strong opinion on article 16.4.

4.4 Introduction of an obligation for the Member States to annually report on the type and amount of sanctions imposed

As this increases the administrative burden, the Netherlands is not in favour of such a register.

CHAPTER V

5. Article 18 – Evaluation and review

5.1 Do you think the content of the report should be specified?

The Netherlands thinks that it is desirable to specify certain element of the evaluation. For instance one can think of: the empowerment of the Commission to adopt delegated acts and binding codes and standards (potentially).

6. Article 19 – Exercise of the delegation

6.1 Do you think the power to adopt delegated acts should be supported by other criteria (e.g. obligation to consult the Member States in advance)?

The procedure to adopt delegated acts is sufficient, therefore the Netherlands does not think other criteria should be added.

6.2 What is your position on the period for which the Commission is empowered to adopt delegated acts?

This is an element that could be included in the evaluation.

6.3 Do you think that a process is needed to make codes and standards binding (cf. Article 40GDPR)?

With regards to the elements of the regulation, this can also be included in the evaluation.

POLAND

Chapter III

1. Article 12 – specific requirements to targeting and amplification

1.1. *Distinguishing various types of data (provided data vs observed or inferred data)*

1.1a Do you think that article 12 should differentiate profiling techniques or differentiate observed or inferred sensitive personal data from other personal data?

ANSWER: Yes to both questions

1.2. *Complete prohibition of targeting and amplification techniques using sensitive data*

1.2.a If you support completely prohibiting the use of targeting and amplification techniques involving the processing of sensitive data, would you agree to keep the exception referred to in Article 9.2(d) of Regulation 2016/679 and article 10.2(d) of Regulation 2018/1725 or to additionally incorporate an exception when it comes to intraparty communication (messages to current and former members)?

ANSWER: No exceptions

CHAPTER IV

3. Article 15 – competent authorities and contact points

3.1. *Clarification of competences – Articles 15.1-15.5*

3.1a Do you think Article 15 should further specify the roles and powers of respective competent national authorities?

ANSWER: Yes

3.1b Should the power to require information from the political advertising service providers be explicitly included in Article 15.5?

ANSWER: Yes

3.2 Clarification cooperation at the national or EU level – Articles 15.5-15.9

3.2a Is the proposed framework of cooperation within and between Member States, and at EU level (national elections networks, European Cooperation Network on Elections) suitable?

ANSWER: IMCO draft report (PE732.754v01-00) includes interesting proposals concerning these provisions

3.2b Do the provisions on cooperation between Member States laid out in Article 15.8 need further clarification, for instance as regards deadlines?

ANSWER: No

ROMANIA

1.1a: There should be a clear distinction between the general personal data and observed or inferred sensitive personal data from other personal data, given the nature of the latter category of personal data and the impact that the processing of such data would have for the data subjects.

1.2a: We would consider it necessary to maintain the prohibition from Article 12 paragraph (1) regarding the use of targeting and amplification techniques involving the processing of sensitive data as proposed in the text of the regulation, and to maintain the exceptions mentioned, respectively that the prohibition laid down in the paragraph 1 shall not apply to the situations referred to in Article 9(2)(a) and (d) of Regulation (EU) 2016/679 and Article 10(2)(a) and (d) of Regulation (EU) 2018/1725.

1.2c: At this moment, we have no observations or proposals in relation to other categories of techniques involving the processing of personal data that should be specifically addressed.

1.3a: The provisions laid down in paragraphs (3)-(6) of Article 12 appear at this moment to represent a sufficient mandatory minimum content.

2.1: Such a register would be beneficial to the competent authorities in monitoring the compliance of the said service providers in regards to their obligations as set under the regulation. In case such a register shall be publicly available, it should observe the principles related to the processing of personal data established in Regulation (EU) 2016/679.

3.1a: To ensure a proper understanding of the roles and powers of the respective competent national authorities, it is recommendable for these to be further specified in Article 15.

3.1b: In order to reinforce and underline the power of the competent national authorities to require information from the political advertising service providers, this should be explicitly included in Article 15.5.

3.2a: We support the development of national electoral networks and the European Cooperation Network on Elections. The designation of the national authority as contact point at Union level (Art.15.7) should be decided by each Member State according to the competencies conferred to the different authorities at national level.

3.2b: The provisions on the cooperation between Member States laid down in Article 15.8 should be further detailed and clarified in order for the provisions regarding the cooperation of the competent authorities from the Members States to be applied in a unitary manner, not solely from the view of the deadlines to be established, but also at the level of the work procedure in connection herein. Moreover, we believe that setting deadlines would be necessary especially when needing to receive prompt replies, i.e. particularly during electoral periods.

4.1: We believe that in situations where the sponsor conveys information that could not be identified by the service provider as being false (in the context of Art.5.3) leading to a breach of the provisions of the regulation, then sanctions should apply solely to the sponsor. The responsibility of the service provider to check the received information should be correlated with the actual possibility of the service provider to perform these checks.

4.2: It is advisable for the text of the regulation to include the thresholds between which the sanctions can be applied. Such an approach would contribute to preventing potential discrepancies between the practices of Member States in connection with the amount of the administrative fines and financial sanctions applicable to the providers of political advertising services.

4.3: We have no observations at this point regarding the current content of Art.16.4.

4.4: An obligation for the Member States to annually report on the type and amount of sanctions imposed would be advisable, given that such a provision would contribute to a better information not only of the data subjects whose personal data are processed, but specifically by the main actors involved in the processing. Moreover, this would be a good instrument for ensuring public awareness on the activity of the Member States in relation to the application of sanctions in this field. However, the deadlines for reporting should be set in a way that allows for sufficient time to collect and centralise information.

5.1: Specifying the content of the Commission's evaluation and review report would be desirable in the context of having a clear understanding of the information to be provided in such a report as well as in ensuring a coherent picture over the Member States, although we acknowledge that the content could also be shaped by future developments connected to the implementation of the regulation.

6.1: We believe there should be an obligation to consult Member States in advance on potential changes to the regulation, e.g. through national focal points of the European Cooperation Network on Elections.

6.2: We have no observations regarding the period for which the Commission is empowered to adopt delegated acts.

6.3: In order to maintain the correlation of the provisions of this regulation with those of Regulation (EU) 2016/679, from our point of view a process for making codes and standards binding is necessary.

SLOVAKIA

CHAPTER III

1. Article 12 – Specific requirements to targeting and amplification

1.1 Distinguishing various types of data (provided data vs observed or inferred data)

1.1a Article 12 should differentiate (create categories) profiling techniques and differentiate observed of inferred sensitive personal data from other personal data. In this case, the regulation has to create categories and establish definitions of profiling techniques and data.

1.2 Complete prohibition of targeting and amplification techniques using sensitive data

1.2a At this stage, we cannot assess whether a complete ban on the use of targeting and leverage techniques is necessary. However, in the case of a complete prohibition of the use of targeting and amplification techniques using sensitive personal data, we agree to an exception for intraparty communications.

1.2b See answer 1. 2a

1.2c We are not aware other categories of any at this point.

1. 3 Obligations for data controllers and political advertising publishers

1. 3a Even though there has been a lot of improvements made in the proposal, there is still a room for revision of definitions and clarification of obligations.

CHAPTER IV

2. Article 14 – Legal representative

2.1 In our opinion, there should be a publicly available register of legal representatives referred to in Article 14.

3. Article 15 – Competent authorities and contact points

3.1 Clarification of competencies – Article 15. 1 – 15. 5

3.1a At the moment, the provisions of Article 15 seem to be satisfactory, but as we have no practical experience with application of these provisions, it is hard to determine. In any case, implementation at the national level is likely to require an expansion of the staff base or even creation of the new institutions in all Member States, further impacting the respective national budgets.

3.1b It would be beneficial to explicitly include the power to require information from the political advertising service providers in Article 15. 5.

3.2 Clarification of cooperation at the national or EU level – Article 15. 6 – 15. 9

3.2a At the moment, the proposed framework of cooperation seems satisfactory.

3.2b Provisions on cooperation between member states seems satisfactory, but inclusion of deadlines could be considered.

4. Article 16 – Sanctions

4.1 In general, consideration of responsibilities should be left to member states with consideration to the circumstances of the particular case. If the sponsor provided false information that was not manifestly erroneous, the responsibility should lay on the sponsor.

4.2 Level of sanctions should be left to the national legislations of the member states with consideration to the national differences. Introduction of the minimum and maximum amount in the regulation can be considered.

4.3 Infringements should be considered more serious during an electoral period. Infringement during the silence period (moratorium) should be considered more serious as well.

4.4 In our opinion, annual reports by member states on the type and amount of sanctions imposed should not be introduced as the obligation in the regulation. This should be left to the decision of the member states.

CHAPTER V

5. Article 18 – Evaluation and review

5.1 Specification of the content of the report can be considered, but we do not see it as necessary.

6. Article 19 – Exercise of the delegation

6.1 Yes, the power to adopt delegated acts should be supported by the obligation to consult with the member states in advance, at least.

6.2 The period for which the Commission is empowered to adopt delegated acts seems satisfactory.

6.3 Yes, there should be a process to make codes and standards binding.

1. Article 12 – Specific requirements to targeting and amplification

With regard to the use of targeting and amplification techniques in the processing of personal data under the proposed regulation, emphasis should be placed on the possibility that in such case individuals would be able to verify when and where they have given such consent and, as already proposed in Article 12(5), that they will also have the possibility to withdraw the consent or to lodge an objection.

In relation to the processing of sensitive data – we would prefer the clear prohibition of targeting and amplification techniques in relation to such data. We could be flexible only in cases when it regards the internal communication with their members (+ prior consent) and in line with the GDPR provisions.

Please indicate your positions on the possibilities/provisions outlined below:

Distinguishing various types of data (provided data vs observed or inferred data)

- 1.1.a Do you think that Article 12 should differentiate profiling techniques or differentiate observed or inferred sensitive personal data from other personal data?

The provisions should be the same irrespective of whether the personal data is provided, observed or inferred.

1.2 Complete prohibition of targeting and amplification techniques using sensitive data

- 1.2a If you support completely prohibiting the use of targeting and amplification techniques involving the processing of sensitive data, would you agree to keep the exception referred to in Article 9.2(d) of Regulation 2016/679 and Article 10.2(d) of Regulation 2018/1725 or to additionally incorporate an exception when it comes to intraparty communication (messages to current and former members)?

See above the general comment.

1.2.b If you do not support such a complete prohibition, do you think that targeting and amplification techniques using sensitive data should be specifically prohibited during electoral periods?

1.2.c Are there other categories of technique involving the processing of personal data that should be addressed specifically?

1.3 Obligations for data controllers and political advertising publishers

1.3.a Do you think the provisions laid out in paragraphs 3 to 6, as proposed by the French Presidency, need to be further revised (e.g. clarification of obligations; scope of information to be included in the transparency notice etc.)?

CHAPTER IV

2. Article 14 – Legal representative

2.1 Should the Member States establish a publicly available register of all legal representatives referred to in Article 14.1?

Yes.

3. Article 15 – Competent authorities and contact points

Please indicate your positions on the possibilities/provisions outlined below:

3.1 Clarification of competencies - Article 15.1-15.5

3.1 a Do you think Article 15 should further specify the roles and powers of respective competent national authorities?

Yes, primarily in relation to verifying the financial amounts in the transparency notice (additional powers).

3.1.b Should the power to require information from the political advertising service providers be explicitly included in Article 15.5?

Yes

3.2 Clarification cooperation at the national or EU level – Article 15.6-15.9

3.2.a Is the proposed framework for cooperation within and between Member States, and at EU level (national elections networks, European Cooperation Network on Elections) suitable?

We believe that formal communication between competent authorities will be key in this case.

3.2b Do the provisions on cooperation between the Member States laid out in Article 15.8 need further clarification, for instance as regards deadlines?

Yes, it is crucial to define deadlines in this case.

4. Article 16 - Sanctions

Please indicate your positions on the possibilities/provisions outlined below:

4.1 Consideration of responsibilities that apply to sponsors in the provisions of Article 16 (e.g. by the explicit exclusion of the applicability of sanctions to service providers if the sponsor provided false information that was not manifestly erroneous)

It would be useful that this Regulation already list the provisions of the Regulation, the infringement of which must be defined as an offence (and fined) in national law.

4.2 Harmonizing the level of sanctions (e. g. by introducing minimum and/or maximum amount) – **Article 16.3**

Yes

4.3 Reinforcing/changing scope of infringements to be considered particularly serious during an electoral period (e. g. by also referring to other Articles of the Regulation) – **Article 16.4**

Yes

4.4 Introduction of an obligation for the Member States to annually report on the type and amount of sanctions imposed

Yes

CHAPTER V

5. Article 18 – Evaluation and review

5.1 Do you think the content of the report should be specified?

Yes

6. Article 19 – Exercise of the delegation

6.1 Do you think the power to adopt delegated acts should be supported by other criteria (e.g. obligation to consult the Member States in advance)?

We support the proposal that EC have to consult Member States before adoption of delegated acts.

6.2 What is your position on the period for which the Commission is empowered to adopt delegated acts?

We prefer this period to be short.

6.3 Do you think that a process is needed to make codes and standards binding (cf. Article 40 GDPR)?

Not necessarily

SWEDEN

Sweden would like to thank the Presidency for the invitation to comment on the provisions of Chapters III to V of the Regulation on the transparency and targeting of political advertising, based on the Presidency compromise text in document ST 8647 2022 REV 3.

Chapter I

Sweden welcomes the clarification in Article 2.2 that political advertising shall not include political opinions expressed in any media under its editorial responsibility unless specific remuneration is provided for or in connection with expressing that political opinion. However, we feel that there is still need for further clarification in the core definition of *political advertising*.

Sweden maintains its position, as expressed in a memorandum submitted to the French presidency on 25 May 2022, that the scope of the Regulation should be narrowed to cover only *online* political advertising. In Sweden's view, the provisions of the compromise text are not proportionate and exceed what is necessary to achieve a proper functioning of the internal market, especially to the extent that they target print advertising. Such advertising does not need to be regulated at EU-level to secure an open and fair political debate, free and fair elections, or referendums. Nor is it necessary to regulate this kind of advertising for combatting disinformation or unlawful interference including from abroad.

These changes are crucial for Sweden's ability to show flexibility and accept the provisions of the regulation, including what is stated below regarding Chapter III.

Chapter III

Sweden has no specific objections regarding the Commission proposal and how it has been further developed in the Presidency compromise for Chapter III. With the proposed exception in Article 12.2, the specific requirements related to targeting and amplification seem balanced, and we are not convinced that there is a need for a complete prohibition of the use of such techniques involving the processing of sensitive personal data. Sweden can thus be flexible in order to contribute to a satisfying finalisation of the text in Chapter III.

Regarding question 1.3a in the questionnaire, Sweden would like a clarification on how article 12 targets controllers who are not providers of political advertisement services, in the specific instance of self-promotion.

Chapter IV

The provisions on supervision and enforcement need to be proportionate and not impose a too heavy administrative burden on the competent authorities and service providers. In the context that many Member States are in the process of finding structures for the implementation of DSA, it is important that the provisions align with other regulations in the field.