

Can the regulation of online political ads make a Swiss cheese out of our democracy?

By EPPP – European Public Policy Partnership

Getting the regulation of online political ads right is especially relevant in the region of Central and Eastern Europe, whose democracy is still more vulnerable and not as entrenched and cherished as in its Western partners. Failing to do so could turn our solid democracy into a holed Emmentaler cheese more vulnerable than ever.

With numerous cases of foreign actors meddling in national elections in Europe and elsewhere thanks to microtargeting and opportunities that social networks offer in this regard in the online sphere, the EU decided to regulate and protect the European democracy. The proposed Regulation on political advertising, which aims to increase the transparency of political campaigns online and prevent foreign interference, is now moving to trilogues and its actual adoption could be a matter of coming months. This will have far-reaching consequences for political parties and their campaigns; yet the debate seems to be subdued outside of the EU bubble in national capitals.

Having access to factual, objective information about politics matters – as does knowing where it is coming from. To that end, the EU's goal of greater transparency in political advertising is the right one. Yet, as currently drafted, the proposal to regulate political advertising could have a significant impact on the freedom of speech and political expression.

The concerns as they relate to freedom of speech are threefold. Firstly, and most importantly, is the potential for these rules to overstep their stated aim - i.e. regulating political ads - and restrict content posted by any user if it touches on political issues. While the legislation has a welcome goal of attempting to tackle the abusive practices that have debased other elections, the text as it is currently written implies that anyone who expresses a view online that may influence the outcome of an election will fall foul of the rules. This is not just paid content – any content could be considered advertising.

This could have severe unintended consequences. The online sphere has become a vital place in which to have political discussions, yet political opinions would have to be watered down to such an extent that they could be meaningless. Even sharing political analysis about a party's prospects or study on climate change, which has become a political topic, might be impacted. Users, creators, think tanks and civil organisations would all be limited in their expression online, dulling democratic debate.

Secondly, there is a risk that limited political speech in this way will increase opportunities for foreign actors to interfere. This is ironic given the political ads regulation is intended to do precisely the opposite. The minority groups and campaigners have already reported being subject to excessive and targeted efforts to report their content. The user flag feature in Article 9 could take this to the next level and, in theory, be weaponised by malicious foreign actors in much the same way that armies of bots have served to amplify harmful content.

A requirement mandating platforms to make judgment and potentially take down information that is flagged within 48 hours will only lead to one thing: platforms will take down legitimate content in the rush to comply with the rules and avoid liability. It is essentially impossible to expect the online platforms to be able to thoroughly understand the detail, context and truth of thousands of political posts within such a limited time frame. Such requirements are

clearly disproportionate and in conflict with liability exemptions re-confirmed in the recent Digital Services Act – getting the content proactively monitored by platforms is not even in the interest of users, we would dare to say.

Thirdly, political speech would be severely impacted not just inside the EU but outside it too. Activists and citizens in other parts of the world often depend on the EU's content creators and robust political debate to access information that is impartial, easy to access and of high quality. For many, particularly in more authoritarian states headed by dictators and military hardmen, it is the only way to inform themselves politically. As such, the proposal poses a threat to Europe's role as a leader in political and human rights.

Ultimately, the proposal could restrict the range of views EU citizens are exposed to. The topic of unintended consequences is especially relevant in the region of Central and Eastern Europe, whose democracy is still more vulnerable and not as entrenched and cherished as in its Western partners. This creates even more urgent necessity to get the final mixture of rights and duties correct in the final text to promote diversity of views while protecting EU states, especially those with low levels of media literacy and critical thinking, from foreign interference. Failing to do so could turn our solid democracy into a holed Emmentaler cheese more vulnerable than ever.

Rules are needed for political ads online. Avoiding the problems that have impacted recent votes and referendums will boost democratic legitimacy and people's confidence in the electoral process. However, nuance is needed and there is a fine line between what these rules aim to do and what their outcome might actually be in practice. In the run up to the 2024 European elections, MEPs must therefore carefully consider all ramifications so that future elections can take place where people are free to speak their mind.

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