

Expert webinar on the open issues in the negotiations on the EU Proposal for a Regulation on the transparency and targeting of political advertising

27 April 2023

On 27 April 2023, think-tank EPPP – European Public Policy Partnership organized an expert webinar on the **current open questions in the ongoing negotiations on the EU Proposal for a Regulation on the transparency and targeting of political advertising (COM (2021) 731)**, featuring Mr Ondrej Maly (digital policy expert and former State Secretary of the Ministry of Industry and Trade of the Czech Republic), Ms Ruth Anderson (CEO of NGO Index on Censorship), Mr Andrei Richter (Professor of Media Studies at Comenius University in Bratislava and consultant for UN, UNESCO, OSCE and Council of Europe) and Mr Jakub Szymik (policy comms expert with Red Flag and advisory board member for Polish Basta Foundation for LGBTQ+ rights).

Participants and panellists raised several points to be considered by the negotiators and policy-makers in the ongoing trilogues:

WHAT IS A POLITICAL AD?: Regulation aims to stop disinformation but fights the wrong target and often with inappropriate means. Panellists mentioned their first-hand experience with **anti-racism or LGBTQ+ campaigns, which could now be considered as "political"** under current draft regulations. **Such non-paid content dealing with these or other important social issues might be unintentionally hit by the new rules.** When it comes to impact of messages, there is a parallel to ordinary commercial advertising – ads can be restricted or banned if promoting harmful products; restrictions on political ads should also be sufficiently clear and related to potential harm.

Recommendation: Need to have a clear definition of political ads and a focus on paid advertising instead of non-paid content.

VOTER ACCESS TO INFORMATION AND TARGETING: If the rules on targeting are tightened too much (e.g. prohibiting targeting based on gender, age group or language), **reaching the electorate quickly and cheaply might be limited** and any voter mobilisation campaign will not be possible. **Without properly functioning targeting, recommendation and amplification mechanisms, minorities** might have problems finding their supportive community, **NGOs** will be limited in effectively communicating their positions on issues such as climate change or women's rights and **smaller political parties** (both on EU and national level), which significantly depend on social media to gain better access to voters, will be at disadvantage in campaigns compared to larger established parties with sufficient resources. Whether we like it or not, **social media have become primary source of information for many voters and if we cut political ads online, where do they get information from and what instruments will be used to mobilize the public to vote?** The regulation as it stands could mark the "end of virality in politics", works against the candidates and against the promotion of political messages.

Recommendation: While understanding the need to limit targeting based on sensitive data after scandals such as Cambridge Analytica, the final regulation should not overly restrict targeting based on any kind of data.

SAFEGUARDS AGAINST MISUSE: Flagging of online political content can be easily misused and the current draft regulation does not offer sufficient safeguards. Risks are two-fold:

- **Misuse by national governments** – as the alignment with the Regulation has to be ensured by governments of Member States, they could easily **utilize the loopholes to clamp on dissenting opinions**. With some Member States and many politicians across the EU already flirting with autocratic tendencies, there are ample examples of how minority-related content is suppressed and this goes for many other civil society issues that could be labelled as undesirable by political leadership.
- **Misuse by malicious third actors:** Legitimate content could be flagged and removed based on activities of external actors outside of the EU. Regulation in its current form will impact primarily good faith actors while the bad ones will avoid regulation as they will have no problems to get access into the EU and disseminate their messages throughout the EU using different means.

Recommendation: Flagging of content should be monitored and cannot become a political tool – although we are talking about thousands of pieces of content, it should be easy to trace where flagging originates from. Regulation must offer sufficient safeguards against misuse. Short turnaround times (e.g. 48 hours) should be dropped as it could lead to excessive removal of content due to compliance fears.

WHO DECIDES WHAT IS TRUE AND FALSE?: What is the distinction between true and false? **Political messages in campaigns are oftentimes inherently false and misleading** (e.g. false promises to the electorate on decreasing inflation or increasing GDP). It is not just false information by itself that should be stopped but also false information used for propaganda - this is not sufficiently covered in the Regulation. Panellists believed that the EU was giving more power to platforms to decide who is and is not compliant - but **this should not be the call of platforms' content moderators but rather a matter of judicial review and judges.**

Recommendation: Find meaningful balance between the responsibilities of governments (and EU institutions), advertisers and social media and avoid taking too much power away from fundamental institutions of the democratic system.

TRANSPARENCY: Transparency is the key and **we should “follow the money” rather than focusing on unpaid political speech.**

Recommendation: Public should get concise and transparent information on who is funded and how they are funded. Let's focus on improving transparency rather than restricting political speech.

Overall, panellists agreed it was good to have some sort of regulation of digital economy but we should **avoid overregulation and situations where social platforms would ban political ads in the EU completely** due to fears of compliance, which is a real option under consideration. It is right to talk about safeguards, but **nobody wants political advocacy to disappear** – however, the draft regulation as it stands currently does not respect the right to freedom to expression nor does it prevent false/misleading political advertising. It might put excessive burden on platforms, lead political advertising grey zones (e.g. influencers) and **limit political speech instead of improving it.**

Instead of **limitations and restrictions guiding the philosophy of this regulatory effort, the overarching goal EU institutions should be looking at when dealing with this regulation is to unify the rules for everyone.** Policy-makers will also have to take into account the **implementation of DSA** that already incorporates a lot of due diligence obligations for platforms which have not been tested yet in practice.

Everyone wants an **effective and workable document** in the end. We hope that these key takeaways will be useful for the stakeholders involved in shaping the future regulation of political advertising and thus also the future of democracy in Europe.

EPPP – European Public Policy Partnership

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