

ACT RESPONSE TO THE EUROPEAN COMMISSION'S INCEPTION IMPACT ASSESSMENT ON POLITICAL ADVERTISING

CONTEXT

This paper aims to provide input on the European Commission's Inception Impact Assessment on its proposal related to political content and outlines the Association of Commercial Television in Europe's views on political and issue-based advertising.

Reference documents:

- European Commission [Inception Impact Assessment](#) on a "Proposal for an initiative on greater transparency in sponsored political content, and other supporting measures"
- [ACT Perspectives on the Digital Services Act](#) (see pages 18 and 19)

ACT VIEW

Commercial broadcasters play a major part in informing the public, offering diverse opinions and content. As such, they are subject to heavy regulatory requirements at national and EU level, especially when it comes to political advertising. These requirements may define strict periods when political advertising is allowed during elections, disclosure obligations related to electoral campaigns for political parties or candidates, or simply ban political advertising from TV. Additionally, broadcasters are subject to rules governing what they may broadcast and in what manner they may broadcast it in order to meet various requirements enacted under relevant laws that aim to ensure functioning democracies. Such regulations cover political content and are often extremely stringent as to broadcaster conduct. For instance, in Italy - where political advertising is banned from TV- the time allocated to each political party on television is closely monitored, broadcasters face high compliance costs to provide equal treatment to all political parties and may be sanctioned by the Italian NRA if the timeslots are not balanced. To set a consistent set of rules commercial broadcasters welcome the European Commission's decision to tackle the issue of sponsored political content online in the context of the European Democracy Action Plan.

Scope. Political advertising is barely regulated in the online environment. Yet, sponsored political content, including issue-based ads, is rampant online with very little oversight, transparency and accountability. This regulatory asymmetry is not only harmful to the democratic process, but also creates a systemic imbalance between online and traditional media services, which needs to be addressed.

Most EU countries have rules in place related to political advertising and ensure that broadcasters have editorial responsibility for the content they cater to viewers. Where online platforms make the decision to distribute political advertising, and therefore profit from it, an equal level of accountability should exist. They need to be held to equivalent standards as traditional players to ensure that citizens are protected and that a level playing field exists. The focus of the new rules should therefore be on platforms that distribute and profit from third-party content.

Political parties in certain countries have made commitments with regards to political advertising online, but the issue is much broader. Most of the "manifestly bad" political advertising online is not done directly by political parties or candidates, but rather by interest groups, and is not declared at

all. It is therefore essential that any upcoming initiative in the area of political advertising online cast the net wide. An initiative that would focus solely on official political parties or candidates would completely miss the mark.

The same can be said about the political advertising vs. issue-based advertising distinction: given that fact that they are not disclosed, issue-based ads often contribute more to the outcome of elections as actual political advertising placed by political parties or candidates. As such, they have a comparable or larger impact on the democratic discourse and should therefore be treated in the same way as traditional political advertising. Issue-based ads can not only be dishonest and misleading, but they can also be very harmful, negatively impacting democratic processes. Focusing new obligations purely on political advertising would not only be ineffective, it would also give a false sense that the issue has been solved.

Objectives. The Commission rightfully notes in its inception impact assessment that political advertising appearing online is often cross-border. However, we would respectfully disagree with its assessment (see general objective (i) and specific aim (i) in “Objectives and Policy options”) that the primary goal of the initiative should be to facilitate the cross-border provision of advertising. As outlined above, the primary issue is that political advertising online is largely unregulated. Therefore, the primary goals of the initiative should be to:

- Establish basic rules around what type of political and issue-based advertising is and is not allowed online, including what means are acceptable (eg. amplification, micro-targeting), with the view of creating a consistent regulatory environment between the online and offline world
- Establish strong transparency rules
- Create a system of accountability, compliance and oversight, with the view of reducing the potential for disinformation and misinformation, as well as manipulative techniques and other misuses of political advertising.

Policy options. ACT would welcome a combination of the different options set out in the inception impact assessment. There needs to be legislation to harmonise the conditions and criteria for political advertising with the view of tackling the regulatory asymmetry between the online and offline world. In particular, the following is needed:

- National rules related to the financing of political advertising should fully apply to online activities
- Restrictions on political advertising (e.g. bans) should apply online as they do offline for traditional media
- Certain practices related to the targeting and amplification of political and issue-based advertising should be limited or banned
- Minimum standards of transparency, including who paid for the advertising (incl. their possible affiliation to political parties, candidates or causes), targeting criteria, information about dissemination and effectiveness (eg. engagement) of the campaign. This information should be available to relevant authorities responsible for the oversight of elections, but also in public repositories. A high-level of transparency is key because while it is typically clear who is responsible for a specific political communication and political advertising offline, it is next to impossible to identify sponsors of political ads online.
- Measures to ensure accountability, in particular when it comes to the content of political advertising. Political advertising should not be misleading, factually inaccurate, or generally harmful or illegal (eg. polarizing advertising against minorities) without triggering the responsibility of the platform.

- Oversight by a regulatory body is essential. Depending on the country, media authorities, authorities supervising elections, or even consumer protection authorities could be relevant.
- Effective penalties and enforcement not only against the advertisers but also the digital platforms. Just as broadcasters are responsible for the advertising they carry on their TV channels, so too should digital platforms be responsible for ensuring the advertising they carry and profit from is compliant with any rules on political advertising. Ideally this should be supported through an interface with the DSA.
- As outlined above, issue-based advertising should be fully in scope

Given that electoral law and, more broadly, political advertising rules, vary amongst member states, the best legislative instrument to address the issue of political advertising would be a directive. Soft-law approaches, such as codes of conducts, recommendations and media literacy campaigns, may effectively complement legislation but would not be enough on their own. As previous attempts to encourage online platforms to self-regulate have shown, without hard law, it will be impossible to guarantee the same levels of protections for citizens online and offline and a level playing field in this area.