

ACT POSITION PAPER ON THE PROPOSAL FOR A REGULATION ON THE TRANSPARENCY AND TARGETING OF POLITICAL ADVERTISING

ACT VIEW

Overview. Commercial broadcasters play a major part in informing the public by delivering diverse, trusted and verified news and political coverage. The responsibility is subject to heavy regulatory requirements at national and EU level, especially when it comes to political advertising. These requirements often take the form of restrictions or outright bans on political advertising and strict disclosure obligations related to electoral campaigns. This is the reality of political advertising for broadcasters in Europe across all of their services while online political advertising is barely regulated. We therefore welcome efforts to establish rules for online providers of political advertising services. This will be best achieved by focusing measures on online service providers; namely by levelling up of obligations for video sharing platforms and social networks. We therefore call on a regulation that maintains existing frameworks for regulated players – thereby respecting national frameworks - and apply equivalent rules to unregulated players.

Key points to consider in EC’s Impact Assessment (IA) (see [here](#)). The IA provides helpful data underlining some key facts of interest to guide the co-legislators:

The case for European measures to facilitate the cross-border supply of political advertising is slim given the very small market it addresses. As expressed in the IA and focusing notably on digital providers, “the total amount of cross-border online political advertising reached EUR 6,193,950” (p.94) for March 2019 to April 2021, and the total political advertising market “ranged from EUR 43 million to almost EUR 100 million in 2019” (p.90). For comparison, the EU digital advertising market in 2019 was 64 billion (Source : [IAB Europe](#)), so at best measures aiming at cross-border facilitation address 0,09% of the online advertising market. **There is no compelling data to show that this market is economically significant to warrant European cross-border facilitation of services; nor market projections demonstrating how this would significantly boost job creation to the effect that it warrants intervention.**

The IA does make a strong case as regards democratic and transparency deficits that stem from the provision of online advertising. The IA makes clear that the underlying rationale for the Regulation is first and foremost to address the online sphere; gaps between unregulated and regulated players¹ and tackle circumvention by the former of existing rules. The IA repeatedly characterises this Regulation as complementing the Review of the Code of Practice on Online Disinformation with binding measures to counter manipulative techniques and shed light on opaque actors and practices. **There is a significant case and a democratic urgency, clearly outlined by stakeholder responses to the consultation, to focus on unregulated providers of political ads and issue-based ads of a political nature.**

Scope, instrument, proportionality. We welcome the intent to address untransparent political advertising and its effects on the democratic process. In line with stated goals and impact assessment of the initiative, we see that the internal market issues are essentially tied to the online sphere; traditional political advertising in the media, where it is legal, being largely circumscribed to the national level and heavily regulated. As such, the proportionality requirement and choice of instrument call for a scope focused on the online environment to ensure complementarity with, rather than undermining of, national regimes and mechanisms in place. This would ensure a

¹ “Offline operators therefore face a heavier regulatory burden than those working with online political ads”, p.13

proportionate impact on broadcasters and guarantee the independence of regulators as provided for under AVMSD. We welcome the broad scope foreseen in the Commission’s proposal covering both political and issue-based advertising provided the regulation clearly addresses the online environment and unregulated players are the primary addresses of the Regulation. On this basis, we welcome a broad definition of political actors that covers relevant stakeholders (“by, for or on behalf of” – see article 2(2)a of the proposal). We do however propose a minor clarification on this point.

Cross-border & levelling up. The objective of this regulation should not be to facilitate the cross-border provision of political advertising services. Political advertising is not a service like others given its impact on our democracies. The objective should be to rectify imbalances and safeguard national democratic debate, not to facilitate harmful business models cross-border. While the proposal discards outright banning online political advertising, it should *de minimis* deliver very high standards of transparency, reporting and enforcement to ensure that offline restrictions are properly reflected online. Furthermore, the regulation of political advertising must be considered holistically by European and national authorities. Differences in political advertising substantive rules online and in broadcasts do not make sense from the viewer’s perspective, and fundamentally alter the competitive landscape and aggravate regulatory distortions.

Platform responsibility. There is no reason for digital platforms to avoid liability for advertising content which they select, place, promote and ultimately profit from. An effective regime should ensure that platforms are directly liable for all advertising content on their services – political, or not – and must make this assessment themselves, as is the case for broadcasters. Unlabelled political advertising should not be published without meeting the Regulation’s preconditions.

Interaction with AV law. We welcome the recognition in recital 19 that political views expressed in AV programmes without remuneration are not political ads. National rules already exist to ensure balanced media coverage of political parties during electoral periods, the new rules should not conflict with these. This clarification should be moved to the main body of the regulation. It should also be clarified that this applies to programmes both live and on-demand. Content produced and distributed under the editorial control of an AVMS provider and regulated under national law and the AVMSD (eg. rules on sponsorship) should not be affected. To ensure legal certainty, we would encourage co-legislators to specify that the regulation does not apply to regulated AVMS providers, yet applies to online services not covered by national rules on political advertising.

Effective measures. To ensure regulators have the means to curb problematic political advertising, they need the tools to do so. Platforms must be able to tie specific political ads to legal or natural persons, keep a transparent and up to date repository and verify the identity of customers before allowing the publication of ads (in line with cultural industry demands for a wide scope of the Know Your Business Customer principle in the DSA – <https://www.kybc.eu/>).

Political micro-targeting. Political advertising is often banned entirely for broadcasters because of their reach. Currently, the lack of rules and nature of online political advertising means unlimited reach and ability to microtarget individuals. This regulation is therefore an opportunity to tackle such problematic practices such as political micro-targeting using sensitive data.

Enforcement. Beyond fines, regulators should be able to order the removal of content or take more important remedies.