

Study to support the preparation of an EU instrument on to help improve the resilience of our democracies and address the threats of interference in elections through greater transparency in political advertising, and other measures to promote resilient democracy in the EU

Mapping of national legislation – Germany

Research question	Legal source (Article and full name of the source, including hyperlink) <u>May include legal acts, practices, self-/co-regulatory codes or guidelines</u>	Summary of the rules
I. General information about the national legal framework		
National legal act(s) governing political advertising	<p>Art. 5 Abs. 1 and Art. 21 Grundgesetz (Basic Law or Constitution)</p> <p>§ 5 Parteiengesetz (Law on political parties)</p> <p>§ 8 Abs. 9, n § 22 Abs. 1 Satz 3 and § 74 Satz 1 oder 2 <u>Medienstaatsvertrag</u> (MedienStV-E) – Interstate Media Agreement</p> <p><u>Leitfaden der Medienanstalten zu den Wahlsendezeiten für politische Parteien im bundesweit verbreiteten privaten Rundfunk</u></p> <p>German Press Code (<u>Pressekodex</u>)</p> <p>Strafgesetzbuch (StGB) – Criminal Code</p>	<p>Please provide an overview of how political advertising is regulated in your Member State:</p> <p><i>Which legal act(s) is the principal piece of legislation governing political advertising (e.g. national elections act, specific act on political advertising, media act etc.)? How are they interlinked (e.g. via definitions or other common provisions)?</i></p> <p><i>Please, specify the principal piece of legislation or other regulations, (self-/co-regulatory codes or guidelines) governing online political advertising, if applicable. Please, provide any other relevant legislation and self-regulatory/co-regulatory instruments applicable to political advertising, political campaigning and parties/candidates funding.</i></p> <p>Political advertising – as all other types of political expression – has the basis of its regulation in the constitutional provisions, specifically in § 5 Abs 1 GG and § 21 GG. § 5 Abs. 1 GG provides for freedom of opinion and expression, under which freedom to form and express political opinion falls (including by the way of advertising). This provision also guarantees freedom of press and broadcasting and prohibits censorship.</p> <p>One of the important limitations to the freedom of expression is the criminal prohibition of insult (Beleidigung) and defamation (Üble Nachrede, Verleumdung). These are considered crimes (§ 185 - §</p>

Research question	Legal source (Article and full name of the source, including hyperlink) <u>May include legal acts, practices, self-/co-regulatory codes or guidelines</u>	Summary of the rules
		<p>188). There is a separate crime of defamation of a political person (§ 189).</p> <p>§ 21 GG contains constitutional provisions on political parties. In relation to political advertising, § 21 Abs. 1 GG states that political parties contribute to forming political will of the people, which is interpreted as granting them a right to campaign (including via advertising) and granting them equal opportunities in the campaign (among other things, through equal access to various media for advertising). The equality of opportunities is further rendered more detailed in § 5 Parteigesetz (Law on political parties).</p> <p>The Interstate Media Agreement (MedienStV-E) contains rules on clear separation of advertising and editorial content (applicable to all advertising, also to political). It also prohibits all political advertising outside of the electoral campaign (§ 8 Abs. 9, n § 22 Abs. 1 Satz 3 and § 74 Satz 1 oder 2). This rule applies to public and private broadcasters and similar telemedia (the latter cover online audio-visual services on-demand). The guidelines of the media authority are a non-binding document explaining in more detail how private broadcasters should treat political parties during the campaign (e.g. how to calculate the costs, how to calculate time for each party, when to broadcast, at what day time etc).</p> <p>Advertising in the press at the national level is not regulated by law (however, there are regional laws – Landespressegesetz). For the national level the provisions of the Press Code by the German Press Council (Presserat) are relevant – a self-regulation to which most German publishers adhere. It establishes the standards (guidelines) for editorial content, news and journalist research. The highest priorities for the press are respect for the truth, safeguarding human dignity and truthful information to the public. The Press Code requires the separation of advertising (in general) and editorial content.</p>
Legal and/or statutory definition of the notion of “ political advertising ” and “ online ”		<i>Does your national legislation or regulations define political advertising? N/A</i>

Research question	Legal source (Article and full name of the source, including hyperlink) <u>May include legal acts, practices, self-/co-regulatory codes or guidelines</u>	Summary of the rules
political advertising” (if applicable)		<i>Does your national legislation or regulations define online political advertising? N/A</i>
If not applicable, provide other definitions/terms used in the legislation close to the notion of “political advertising”	§ 2 Abs. 2 Nr 7 Interstate Media Agreement § 8 Abs. 9 Interstate Media Agreement	<i>Examples: “partisan advertising”, “campaign advertising”, “elections advertising and issues based advertising” etc.</i> There is no specific legal term (i.e. with a legal definition) designating political advertising. There is a definition of “advertising” (Werbung), and when it is used in the context of this study the term “Werbung politischer Art” (can be translated as “political advertising”) is used in law without further definition. <i>Please, specify whether the available definitions apply towards specific actors/persons. (e.g. political parties/candidates, media, civil society, online intermediaries or other service providers etc.).</i> The term “advertising” can be applied to all natural and legal persons.
Evaluation of the current legislative framework and draft legislations on political advertising and/or online political advertising	Future laws of potential relevance: <u>Gesetzesentwurf zur Bekämpfung des Rechtsextremismus und der Hasskriminalität</u> (Draft law to combat right-wing extremism and hate crime)	<i>Has an evaluation of the rules and practices in place for political advertising and/or online political advertising already been carried out and if so, what are the results?</i> No <i>Further to that, is there any draft legislation currently discussed in your Member State relevant for political advertising and/or online political advertising? If so, please provide a brief overview.</i> The proposed law should strengthen the measures to combat right-wing extremism and hate crime, enhancing the Network Enforcement Act (Netzwerkdurchsetzungsgesetz, NetzDG). The proposed law extends elements of some relevant crimes, increases punishments for publicly committed crimes, extends the protection of political figures against defamation to municipal level.
II. Political advertising rules during pre-election campaigns		
Definitions of pre-election campaigns in the Member State (if applicable)		<i>Are pre-election campaigns defined in your Member State? If so, how?</i> No

Research question	Legal source (Article and full name of the source, including hyperlink) <u>May include legal acts, practices, self-/co-regulatory codes or guidelines</u>	Summary of the rules
National rules on paid political advertising during pre-election campaigns	§ 8 Abs. 9 Interstate Media Agreement	<i>Is paid political advertising during pre-election campaigns prohibited or allowed in your Member State? Prohibited in broadcasting</i> <i>If prohibited, what is the scope of the ban of paid political advertising? All of it.</i> <i>In the opposite case, to which extend is paid political advertising allowed? What are the limitations applicable? N/A</i> <i>Please, specify whether such rules during pre-election campaigns are also applicable and enforceable online and whether they apply to actors registered outside the jurisdiction. N/A</i>
National rules on financing of political parties/candidates in relation to political adverts		<i>Please, provide a brief description of the national rules on financing of political parties/candidates in relation to political adverts (e.g. earmarking donations and contributions for advertising or specific campaigns, bank loans obtention for sponsoring advertising campaigns, entities or categories of actors not entitled to purchase or finance political adverts). No regulation in this regard</i>
National rules on free political advertising (or free airtime) during pre-election campaigns		<i>Are political parties in your Member State allocated free political advertising during pre-election campaigns? If so, on which media is free political advertising granted? N/A</i>
National rules on political advertising on broadcast media during pre-election campaigns (incl. public service and private broadcasters)	§ 8 Abs. 9 Interstate Media Agreement (§ 10 Abs. 4 Interstate Media Agreement)	<i>Please, provide a brief description of the national rules on political advertising on broadcast media during pre-election campaigns. All ads are prohibited.</i> <i>(It can be added that political information programmes are not allowed to be sponsored.)</i>
National rules on political advertising in print media during pre-election campaigns		<i>Please, provide a brief description of the national rules on political advertising in print media during pre-election campaigns. N/A</i>

Research question	Legal source (Article and full name of the source, including hyperlink) <u>May include legal acts, practices, self-/co-regulatory codes or guidelines</u>	Summary of the rules
National rules on political advertising on online media applicable to political parties , during pre-election campaigns		<i>Data protection and privacy rules, rules applicable to political parties for addressing electronic political communication...</i> N/A
Particular rules applicable to online platforms and intermediaries , such as social media, for political advertising during pre-election campaigns	§ 22 Abs.1 Interstate Media Agreement	<i>Are there any particular rules to online platforms during pre-election campaigns in your Member State?</i> Political advertising online does not seem to be prohibited, but needs to be clearly marked as such and the advertiser or sponsor needs to be indicated.
Specific rules relating to “ false information ”, fake news ” or “ disinformation campaigns ” during pre-election campaigns		<i>Are there specific provisions in your Member State about the dissemination of “untrue information”, “false information”, “fake news” or ‘disinformation campaigns’ during pre-election campaigns?</i> N/A
III. Political advertising rules during elections period		
Definitions of elections period in the Member State (if applicable)		<i>How is the elections period defined in your Member State?</i> No fixed campaign period under federal law, the jurisprudence about the exact timeline is also vague or inconsistent (e.g. “directly before the elections”, “few weeks before the elections”). Therefore, local laws can define campaign periods and periods of permissible campaign activities. For example, municipal authorities can issue ordinances regarding assemblies and visual advertising in public places.
National rules on paid political advertising during elections period	§ 5 Abs.1 and § 21 Abs. 1 Basic Law § 68 Abs.2 Interstate Media Agreement § 5 Law on political parties	<i>Is paid political advertising during election period prohibited or allowed in your Member State?</i> Allowed. <i>If prohibited, what is the scope of the ban of paid political advertising?</i> N/A <i>In the opposite case, to which extend is paid political advertising allowed? What are the limitations applicable?</i> There are no limitations on the spending on political advertising and how it is spent. However, the broadcasters must respect the principle of equal opportunities for all parties when allocating airtime. Public broadcasters must grant the

Research question	Legal source (Article and full name of the source, including hyperlink) <u>May include legal acts, practices, self-/co-regulatory codes or guidelines</u>	Summary of the rules
		<p>advertising time to political parties free of charge. Private broadcasters can only claim the reimbursement of expenses.</p> <p>Publishers (written/online press) are not subject to the equal opportunities principle (i.e. do not have to provide equal advertising space to all parties).</p> <p><i>Please, specify whether such rules during elections period are also applicable and enforceable online and whether they apply to actors registered outside the jurisdiction (e.g. enforcement of 'silence periods' online)</i> The rules of MedienSTV-E are applicable to online media intermediaries, media platforms and user interfaces, insofar as they are intended for use in Germany. This is the case if they are aimed at users in Germany overall, in particular through the language used, the content offered or marketing activities, or if they achieve a not insignificant part of their refinancing in Germany.</p>
National rules on financing of political parties/candidates in relation to political adverts		<i>Please, provide a brief description of the national rules on financing of political parties/candidates in relation to political adverts (e.g. earmarking donations and contributions for advertising or specific campaigns, bank loans obtention for sponsoring advertising campaigns, entities or categories of actors not entitled to purchase or finance political adverts). N/A</i>
National rules on free political advertising (or free airtime) during elections period		<p><i>Are political parties in your Member State allocated free political advertising during elections period?</i></p> <p>Public broadcasters must grant the advertising time to political parties free of charge, subject to equal opportunities principle and political neutrality (i.e. equal time for all parties).</p>
National rules on political advertising on broadcast media during elections period (incl. public service and private broadcasters)		<i>Please, provide a brief description of the national rules on political advertising on broadcast media during elections period N/A</i>
National rules on political advertising in print media during elections period	Guideline 1.2 Press Code	<i>Please, provide a brief description of the national rules on political advertising in print media during elections period</i>

Research question	Legal source (Article and full name of the source, including hyperlink) <u>May include legal acts, practices, self-/co-regulatory codes or guidelines</u>	Summary of the rules
		A very broad guideline provides that, to properly inform the public, the press should also report views that it does not share when covering electoral campaigns.
National rules on political advertising on online media applicable to political parties , during elections period		<i>Examples: Data protection and privacy rules, rules applicable to political parties for addressing electronic political communication...</i> The online content of written media and broadcasters is subject to the same rules as offline.
Particular rules applicable to online platforms and intermediaries , such as social media, for political advertising during elections period		<i>Are there any particular rules to online platforms during elections period in your Member State?</i> No
Specific rules relating to “ false information ,” “ fake news ” or “ disinformation campaigns ” during elections period		<i>Are there specific provisions in your Member State about the dissemination of “untrue information”, “false information”, “fake news” or “disinformation campaigns” during elections period?</i> N/A
IV. Political advertising rules outside of elections period		
National rules on paid political advertising outside of elections period		<i>Is paid political advertising during elections period prohibited or allowed in your Member State?</i> Political advertising – paid or unpaid – is completely prohibited in Germany outside of elections period. <i>If prohibited, what is the scope of the ban of paid political advertising?</i> Complete prohibition <i>If allowed, are there restrictions on paid political advertising?</i> N/A <i>Please, specify whether such rules outside of elections period are also applicable and enforceable online and whether they apply to actors registered outside the jurisdiction.</i> N/A
National rules on financing of political parties in relation to political adverts		<i>Please, provide a brief description of the national rules on financing of political parties/candidates in relation to political adverts (e.g. earmarking donations and contributions for advertising or specific campaigns, bank loans obtention for sponsoring advertising</i>

Research question	Legal source (Article and full name of the source, including hyperlink) <u>May include legal acts, practices, self-/co-regulatory codes or guidelines</u>	Summary of the rules
		<i>campaigns, entities or categories of actors not entitled to purchase or finance political adverts).</i> N/A
National rules on free political advertising (or free airtime) outside of elections period		<i>Are political parties in your Member State allocated free political advertising outside of elections campaigns?</i> N/A
National rules on political advertising on broadcast media outside of elections period (incl. public service and private broadcasters)		<i>Please, provide a brief description of the national rules on political advertising on broadcast media outside of elections period</i> N/A
National rules on political advertising in print media outside of elections period		<i>Please, provide a brief description of the national rules on political advertising in print media outside of elections period</i> N/A
National rules on political advertising on online media applicable to political parties , outside of elections period		<i>Examples: Data protection and privacy rules, rules applicable to political parties for addressing electronic political communication...</i> N/A
V. Rules and obligations applicable to online platform operators and intermediaries of political advertising		
Particular rules applicable to online platforms and intermediaries such as social media for political advertising	Network Enforcement Law	<p><i>Are there any particular rules applicable to online platforms in your Member State (e.g. disclosure requirements to users, record-keeping requirements, reporting requirements)?</i> Yes</p> <p><i>If so, which are the online platforms operators and other intermediaries concerned by the legislation/guidelines/self-regulatory code?</i></p> <p><i>Are there any particular rules applicable to online platforms to set up means to fight disinformation?</i> The NetzDG is not specifically addressing political advertising, but may have an indirect effect. § 1 I NetzDG prohibits harmful contents that are exhaustively listed in § 1 III NetzDG. Such contents need to be checked by the online provider and delete them, if illegal. Among such contents are hate speech, political extremism etc – which may be part of the political expression (also in the form of advertising).</p>

Research question	Legal source (Article and full name of the source, including hyperlink) <u>May include legal acts, practices, self-/co-regulatory codes or guidelines</u>	Summary of the rules
VI. Transparency rules for political parties/candidates funding		
Rules on direct public funding¹ to political parties and/or candidates	§ 18-22 Law on political parties	<p><i>Are there provisions for direct public funding to political parties in your Member State? Please give a brief description. Yes</i></p> <p>The public funding for political parties is based on their "roots in society" (Verwurzelung in der Gesellschaft), as expressed in their success in European, Bundestag and Landtag elections as well as on the amount of donations (membership and elected representatives and private donations).</p> <p>There is a total annual volume of state funds that may be paid out to all parties (absolute upper limit), adjusted yearl.</p> <p>Parties are entitled to state funding if they have achieved at least 0.5% or 1% of the votes cast for the lists after the final election result of the last European or Bundestag elections or Landtag election, respectively. Anti-constitutional parties are excluded from public funding (§ 21 Abs.3 GG).</p> <p>The public financing to political parties is calculated as follows:</p> <ul style="list-style-type: none"> • 0.83 euros for each valid vote cast for their respective list, • 0.45 euros for every euro that the party has received as a donation, while only donations of up to EUR 3,300 per natural person are taken into account. <p>To compensate for the advantage that established parties represented in a parliament have over new, smaller parties, 1.00 instead of 0.83 euros is granted for the first 4 million votes.</p> <p>The amount of public funding for the party may not exceed the income generated by the party itself. Parties therefore have to finance themselves at least to 50%.</p>

¹ Public funding refers to funds or resources provided by the State/Government to political parties and/or candidates. Depending on the form in which public resources are made available, public funding is divided into direct public funding or indirect public funding. Direct public funding corresponds to the allocation of direct public funds to political parties and/or candidates in the form of money, usually as bank transfers but at times in cash or cheque. See more information at: <https://aceproject.org/ace-en/topics/pc/pca/pca02/pca02a/default>

Research question	Legal source (Article and full name of the source, including hyperlink) <u>May include legal acts, practices, self-/co-regulatory codes or guidelines</u>	Summary of the rules
Rules on indirect public funding² to political parties and/or candidates	§ 24 Abs. 5 Nr 2 Law on political parties	<i>Are there provisions for indirect public funding for electoral campaigns in your Member State? Please give a brief description and specify transparency provisions.</i> There is free airtime for campaign spots on all public broadcasters and free billboard space and premises that is rented from commercial providers by municipal authorities and distributed for free among campaigning parties. The Parteiengesetz only requires that the spending report lists the material expenses during the electoral campaign.
Rules on free or subsidised access to media for political parties and/or candidates		<i>Are there provisions for free or subsidized access to media for political parties in your Member State? Please give a brief description and specify transparency provisions.</i> During the election campaign, public broadcasters must grant the advertising time to political parties free of charge, subject to equal opportunities principle and political neutrality (i.e. equal time for all parties).
Rules on foreign contributions to political parties and political campaigns	§ 25 Abs. 2 Satz 3 Law on political parties	<i>Is there a ban on contributions from foreign interests (i.e. foreign countries and governments, foreign companies, foreign organisations, foreign private persons) to political parties and/or to candidates during political campaigns in your Member State?</i> Yes, but exceptions apply for: <ul style="list-style-type: none"> • the donation comes from the assets of a German within the meaning of the Basic Law (Grundgesetz) or • the donation comes from the property of a citizen of the EU or • the donation comes from a company whose shares are more than 50 percent owned by Germans within the meaning of the Basic Law or a citizen of the EU or whose headquarters are in a Member State of the EU,

² Indirect public funding is when resources with a monetary value are provided by the Government to political parties and/or candidates. Such resources may be, for instance, granting of media access (free advertising slots in publicly owned media), interest-free loans for paying registration fees or mounting a basic election campaign, free printing and distribution of ballot papers, use of Government buildings for meetings and rallies, tax-free donations etc. . See the list of indirect public funding of parties and candidates at: <https://aceproject.org/ace-en/topics/pc/pca/pca02/pca02a/pca02a4>

Research question	Legal source (Article and full name of the source, including hyperlink) <u>May include legal acts, practices, self-/co-regulatory codes or guidelines</u>	Summary of the rules
		<ul style="list-style-type: none"> the donation is intended for parties of national minorities in their ancestral homeland, which are made to them from states bordering Germany and in which members of their nationality live donations from a foreigner of no more than 1,000 euros.
VII. Monitoring and enforcement of national rules on political advertising by national authorities		
National (or regional/local if applicable) authority or body responsible for monitoring national rules on political advertising	§ 104 Abs. 1 Interstate Media Agreement	<p><i>Who is responsible for monitoring national rules on political advertising, (e.g. political communications and advertisement messages, the balanced presence and equity of all political candidates)?</i></p> <p>Regional level (Länder) is responsible for the regulation and oversight of broadcasting and telemedia, therefore 14 regional media authorities are competent to monitor the compliance with the advertising rules. They oversee the commercial providers. Public broadcasters are subject to supervision by internal broadcasting boards, whose membership reflects a range of social groups.</p> <p>The German Press Council (Deutscher Presserat) is a self-regulatory body of newspaper and journalist associations, which oversees observance of press ethics in the print media and online equivalents.</p>
Particular measures for supervising online political advertising within and outside elections periods	§ 24 Abs. 5 Law on political parties § 19a Abs. 3 and § 23a Law on political parties	<p><i>How are national rules on political advertising, including online, ensured in your Member State, if these exist? What are the enforcement powers of the relevant authority/body, as well as procedural safeguards?</i></p> <p>N/A. There are no specific requirements to report on political advertising. The parties only provide annual financial reports (also called accountability reports). These accountability reports are only required to differentiate between election and day-to-day spending. All spending on electoral campaign are recorded in bulk (i.e. no distinction for advertising).</p>

Research question	Legal source (Article and full name of the source, including hyperlink) <u>May include legal acts, practices, self-/co-regulatory codes or guidelines</u>	Summary of the rules
		The institution that checks the accountability reports is the President of the Bundestag. He/she examines the submitted report for formal and substantive correctness.
Sanctions, penalties and remedy measures applicable in violation of the law	§ 115 Abs. 1 Satz 1 Nr 11, Satz 2 Nr 5 and Nr 19 and Abs. 2 Interstate Media Agreement	<p><i>How are national rules on political advertising enforced in your Member State and what sanctions and remedy measures are applicable?</i></p> <p>The rules are the same for all advertising in broadcasting and telemedia. Possible measures against the breach of advertising rules range from complaints, prohibitions, blocking, withdrawal and revocation. At the same time, the breach of advertising rules constitutes an administrative offense that can be punished with a fine of up to 500,000 euros.</p> <p>The sanctions by the German Press Council are:</p> <ul style="list-style-type: none"> • public reprimand (with obligation to print) • non-public reprimand (no reprint is made, e.g. for reasons of victim protection) • disapproval • note

Annex – List of relevant legislation

- In this Annex, please list all the sources provided in the second column of the table

Name of the sources	Link to the sources	Sources translated into EN
Grundgesetz für die Bundesrepublik Deutschland (GG)	https://www.gesetze-im-internet.de/gg/BJNR000010949.html#:~:text=(1)%20Die%20W%C3%BCrde%20des%20Menschen,der%20Gerechtigkeit%20in%20der%20Welt.	Basic Law of the Federal Republic of Germany https://www.gesetze-im-internet.de/englisch_gg/
Richtlinien für die publizistische Arbeit nach den Empfehlungen des Deutschen Presserats (Pressekodex)	https://www.presserat.de/pressekodex.html	Guidelines for journalism according to the recommendations of the German Press Council (Press Code) https://www.presserat.de/pressekodex.html?file=files/presserat/dokumente/pressekodex/Pressekodex2017english.pdf
Staatsvertrag zur Modernisierung der Medienordnung in Deutschland (MedienStV-E)	https://www.rlp.de/fileadmin/rlp-stk/pdf-Dateien/Medienpolitik/Medienstaatsvertrag.pdf	Interstate Agreement for the modernization of the media order in Germany
Leitfaden der Medienanstalten zu den Wahlsendezeiten für politische Parteien im bundesweit verbreiteten privaten Rundfunk	https://www.die-medienanstalten.de/fileadmin/user_upload/die_medienanstalten/Ueber_uns/Positionen/Leitfaden_der_Medienanstalten_zu_den_Wahlsendezeiten_fuer_politische_Parteien_im_bundesweit_verbreiteten_privaten_Rundfunk.pdf	Guidelines by the media authorities on the election airtime for political parties in nationwide private broadcasting
Gesetz über die politischen Parteien (Parteiengesetz)	https://www.gesetze-im-internet.de/partg/BJNR007730967.html	Law on political parties

Mapping of national legislation – Germany

Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken (Netzwerkdurchsetzungsgesetz - NetzDG)	https://www.gesetze-im-internet.de/netzdg/BJNR335210017.html	Network Enforcement Law https://www.bmjb.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/NetzDG_engl.pdf?__blob=publicationFile&v=2
Strafgesetzbuch (StGB)	https://www.gesetze-im-internet.de/stgb/	Criminal Code