



Framework Contract JUST/2020/PR/03/0001
for Evaluation, Impact Assessment and
Related Policy Support Services in the Justice
and Consumers Policy Areas (Lot 1)

**Study to support the preparation of an
EU instrument to help increase the
resilience of our democracy in the EU
and address the threats of interference
in elections through greater
transparency in political advertising,
and other measures**

**Request for Specific Services:
JUST/2020/RCIT/FW/RIGH/0103**

**Case Study Report – IRELAND/CONSTITUTIONAL
REFERENDA ON ABORTION**

16 April 2021

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1 Introduction

This case study analyses the campaign that preceded Ireland's constitutional referendum to repeal the 8th Amendment, which recognised the equal right to life of the pregnant woman and the unborn. In particular, the objectives of this case study are to understand:

- The role that disinformation and foreign interference play on campaigns where issues (rather than candidates or parties) are at the forefront.
- The challenges and interests that are at stake when introducing legislative and non-legislative measures aimed at creating greater transparency in online political advertising.
- The roles, responsibilities, activities and outcomes of the different actors involved in political advertising during this campaign – both Irish and foreign.

This case study will allow us to explore how misinformation and foreign interference occur within an unregulated digital space, and to evaluate the impact of civil society transparency initiatives as well as self-regulatory measures adopted by digital platforms such as Google and Facebook. Furthermore, we will focus on nation-wide legislative measures aimed towards regulating online advertisement, both before and after the referendum campaign.

2 Methodology

This is one of six case studies conducted to complete the description of the baseline and inform the policy options. The case study was developed between 26 March and 16 April 2021 and was based on the findings of previous study tasks including the literature review, legal mapping, mapping of actors and processes, and interviews with stakeholders. In particular, this case study was based on the following sources:

- Country report and summary of findings of the legal mapping which presents relevant legislation and practices, as well as self-regulatory/co-regulatory instruments, guidelines and professional guidelines/codes that exist in Ireland to date.
- Findings and bibliography from the literature review conducted by during the study's inception and interim phases.
- Interview conducted with Barry Ryan and Paris Beausang, from the Department of Housing, Franchise Unit, Government of Ireland on March 22, 2021.
- Additional quantitative and qualitative data collected through desk research. Additional details on the sources consulted can be found in Annex IV.

The inclusion and triangulation of information coming from multiple sources ensured that the case study included different perspectives and points of view.

Moreover, to ensure consistency of the approach and issues addressed in all case studies, we defined a table of contents containing a common set of research questions that each case study seek to answer (**Table 1**).

Table 1: Table of contents for the case study report

#	Section	Issues / questions addressed
1	Introduction	Objectives and scope of the case study
2	Methodology	Methodological approach and sources of data
3	Background and context	Key aspects of the election / political campaign under examination
4	Regulatory framework	Legal and political background of the campaign Legislative and non-legislative measures put in place to regulate political advertising and combat disinformation
5	The campaign and existing data	Key actors in the campaign, roles and interactions Existing data about online and offline advertisement and media coverage within this campaign
6	Measures to address disinformation and to regulate political advertisement	Evidence of disinformation during the campaign Enforcement of legislative measures by responsible authorities Effectiveness of legislative and non-legislative measures to regulate political advertisement and combat disinformation
7	Conclusion	
8	Annexes	

3 Background and context

On May 25 2018, a referendum was held in the Republic of Ireland to repeal the 8th Amendment to the constitution which guaranteed “the unborn” a right to life equal to that of a pregnant woman. This made Ireland one of the countries with the most restrictive abortion laws in the world.

The discussion regarding abortion began long before 2018. Abortion was first banned in Ireland in 1861 by the Offences Against the Person Act and remained prohibited after Irish independence. In 1983, the 8th Amendment was added to the constitution.

Following the deaths of two women due to risky pregnancies in 1992 and in 2012, a referendum was held in October 2013. The 2013 referendum approved the 13th Amendment allowing women to seek information or to have abortions in foreign countries such as the United Kingdom.

In 2016, Taoiseach Enda Kenny proposed the creation of a Citizens' Assembly to discuss changes to the 8th Amendment. In June 2017, Enda Kenny resigned and Leo Varadkar took over as Taoiseach. In his first speech, Varadkar promised a referendum to evaluate the repeal of the 8th Amendment.

The 2018 referendum campaign took place under strict regulations of traditional media (TV, radio and outdoor advertising), but few restrictions and disclosure requirements on spending, and no regulations on online outlets. Posters were allowed yet strictly regulated, while paid TV and radio advertisements were banned. On the other hand, there were no spending limits or disclosure regulations for political parties or “third parties”, although the latter were prohibited from accepting foreign donations¹. Lastly, electoral laws dating from the 1990s left online spaces unregulated and open for both sides of the campaign.

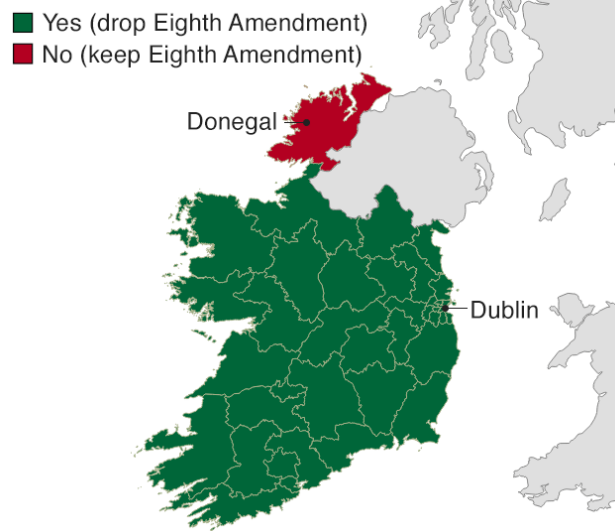
The referendum campaign to repeal the 8th Amendment prompted a contentious debate both among Irish citizens as well as pro-choice and anti-abortion groups outside of Ireland. An array of international groups saw the island, with its 4.7 million people, as the front line of a wider ideological battleground. And the divisive issue of abortion in Ireland engaged citizens in a public debate that prompted 64.13% of its citizens to vote on election day.

Despite widespread accusations about foreign interference, disinformation and the impact of digital platforms, 66.4% of the electorate voted in favour of repealing the abortion ban. The only constituency to vote against dropping the 8th Amendment was Donegal, with 51.9% voting in favour of keeping it.

For more information on the timeline of events, see Annex I.

¹ According to SIPO's definition, third parties are non-partisan organisations that receive money for political campaigning such as Youth Defence or Life institute.

Figure 1: Referendum vote by constituency



Source: BBC. Referendum Ireland constituency results

4 Regulatory Framework

4.1 Legal and political background to the campaign

At the time the campaign for Ireland's constitutional referendum on abortion took place, there were three main acts that regulated political campaigns: The Election Act of 1997, the Standards in Public Office Commission (SIPO) and the Broadcasting Authority of Ireland (BAI). The Election Law of 1997 set clear guidelines for traditional media on outdoor advertising, TV and radio, but had important loopholes regarding the definition of a political advertisement, regulations to online advertising and limitations on foreign influence. These are explained with greater detail below.

Although the national legislation does not define the term "political advertising", the Election Act of 1997 establishes that an advertisement connected to any activities set out in the definition of "political purposes" could be considered a political advertisement. Political purposes include "promoting or opposing, directly or indirectly, the interests of a third party in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to a policy or policies or functions of the Government or any public authority", among others. According to SIPO, third parties are defined as "any individual or group, other than a registered political party or election candidate, who or which accepts, in a particular calendar year, a donation for political purposes exceeding the value of €100".

Therefore, any of the activities described in the definition of "political purposes" could also be considered to be "political advertising", including the activities carried out by advocacy groups to campaign for or against repealing the 8th Amendment in the referendum. This broad definition encompasses issue-based campaigns too. According to interviews conducted with members of the Irish Department of Housing, civil society groups have raised concerns on the broad-ranging nature of this definition of political purposes as it could affect their capacity to conduct non-political advocacy work.

Moreover, the legal framework contains comprehensive definitions with respect to traditional media (such as leaflets and posters, TV, radio and print media) while digital and online advertising remain unregulated, as described below:

- Paid political advertising is prohibited on broadcast services in Ireland. However, during election periods, broadcasters can allocate free time for party political broadcasts, as long as a broadcaster does not give an unfair preference to any political party.
- Other media (such as outdoor posters or billboards) are allowed during the campaign period but it is mandatory to provide identification on all posters that promote a political party, candidate or position during elections and referendums.
- BAI rules do not apply to the many broadcasters licensed in other jurisdictions who target, or are available in, Ireland. However, the BAI does communicate with these services and asks them to respect guidelines on election coverage.
- Radio and TV broadcasters are required to observe a moratorium on election coverage from 14:00 on the day before the poll until the polling stations close.

- The legal framework does not cover digital media, and the internet.

The Irish legal framework also includes certain regulations regarding the financing of political parties and the intervention of foreign bodies in public affairs. Public funding received by political parties cannot be applied to political advertising, therefore, for the purposes of campaigning and political advertising, each organisation must seek funding elsewhere. However, the SIPO bans political parties “or any of its sub-units” from accepting “a donation, of any value” from any individual, other than Irish citizens, who is not residing on the island of Ireland.

Therefore, foreign organisations and citizens cannot legally donate money to a political campaign in Ireland. Nevertheless, nothing prevents them from spending any amount of money on digital ads that would reach Irish citizens via social media and the Internet.

4.2 Non-legislative regulations

In 2017, an Online Advertising and Social Media (Transparency) Bill was initiated in the Irish Parliament. The provisions suggested by this Bill included a requirement to display a transparency notice in cases of online political advertising, as well as a provision on the offence of using a bot to emulate multiple online presences directed towards a political end to present as an individual account or profile on an online platform.

In December 2017, the Government established an interdepartmental group to consider these issues, and in particular the substantive issues arising from recent experiences in other democratic countries regarding the use of social media by external, anonymous or hidden third parties. Its principal focus was on the risks to the electoral processes, including those arising from disinformation spread via social media and other means. A proposal for the regulation of online political advertising arose from the work of the group. Nonetheless, the Online Advertising and Social Media (Transparency) Bill lapsed and has not passed yet.

4.3 New proposals

In 2019, partly in response to the 2018 referendum experience, the Irish Government (particularly, the Department of Housing, Planning and Local Government) undertook a commitment to draft a law to regulate online political advertising. In January 2021, the proposal for legislation was issued and is now advancing in the Parliament.

In its current draft, the proposal contains provisions aimed at regulating online political advertising such as the establishment of an independent Electoral Commission, a framework for regulating online political advertising, requiring the disclosure of specific information in connection with online political advertising. The draft bill also suggests adopting a “transparency notice” requirement, where viewers will be able to see details regarding any given political advertisement and will require online platforms to establish and maintain an online archive or library comprising online political advertisements. Also, the draft Electoral Reform Bill suggests the possibility of adopting measures against false or misleading information.

5 The campaign and existing data

5.1 Key actors

The 2018 Irish constitutional referendum on abortion included a wide range of actors who were mostly aligned with the campaigns for or against abolishing the 8th Amendment to the constitution which criminalised abortion in the country.

5.1.1 *Together for yes*

The main campaign to abolish the 8th Amendment was named “Together for Yes” and it was conducted by a group formed not only by progressive political parties (Labour Party, Green Party, Social Democrats, Sinn Féin, Workers' Party, Solidarity–People Before Profit, Eirigi and the Communist Party of Ireland), but also by different non-partisan women’s rights organisations including *femnist@law* (feminist at law), The Institute of Obstetricians and Gynaecologists, Union of Students in Ireland, Irish Congress of Trade Unions, Unite, Mandate, Communications Workers' Union, Connect, SIPTU, Abortion Life Campaign and Amnesty International.

At the beginning of the campaign, the two largest parties, Fine Gael and Fianna Fail, did not adopt official positions on the referendum but allowed their members to vote freely. However, in January 2018, Micheál Martin from the Fianna Fail party openly supported a Yes vote to repeal the 8th Amendment and the Taoiseach Leo Varadkar, a Fine Gael member, campaigned in favour of repealing the 8th Amendment.

The Irish Times also took part in the campaign, publishing an editorial in favour of repealing the 8th Amendment two days before the election.

5.1.2 *Save the 8th*

Organisations that campaigned in favour of maintaining the 8th Amendment included not only conservative political parties (Renua Ireland and National Party), but also social organisations, mostly of a religious nature, such as Pro-Life Campaign, Youth Defence, the Life Institute, Cherish All the Children Equally, The Irish Catholic Bishops' Conference, the Presbyterian Church in Ireland, the Islamic Cultural Centre of Ireland and the Orange Order.

5.1.3 *Foreign groups*

There were foreign organisations that also sought to influence the electorate’s decision through political advertising and that contributed financially to the pro-No and the pro-Yes organisations. Some of the foreign groups that worked to retain the 8th Amendment included Let Them Live, U.S. Christian Right, Human Life International, Independent Funders in the U.S. and The Atlantic Philanthropies. Similarly, groups such as The Soros Foundation were associated with the campaign to repeal the 8th Amendment.

Additionally, the consultancy firm Kantos (UK) was hired by an anonymous pro-life group to support them in the No campaign. This firm has been linked to the Cambridge Analytica data scandal. Also involved was the organisation uCampaign (US), which has an app that was previously used in the Donald Trump and the Vote Leave campaigns. In an interview conducted by Open Democracy, data protection specialist Paul-Olivier Dehayé explained: “uCampaign provides the technical tool that helps collect more data on the electorate. This data is then aligned with existing voter lists and models, by companies such as Kanto. It is then used to target online advertisements”.

5.1.4 Government and regulators

The Ministry for Housing, Planning and Local Government established the statutory Referendum Commission to oversee the referendum campaign. In addition to this Commission, the SIPO was responsible for ensuring transparency regarding the funding of political parties, organisations and third parties. Furthermore, the BAI monitored that companies and the owners of TV and radio channels complied with the provisions of the Broadcasting Act in terms of political advertising.

5.1.5 Digital platforms and on-line organisations

The Transparent Referendum Initiative (TRI) was set up prior to the referendum. It was a volunteer-led civic initiative established to advocate for greater transparency in digital advertising during election campaigns in Ireland by monitoring online political advertising. Other non-governmental initiatives for monitoring the campaign were Storyful and TheJournal.ie. The former was an Irish Social Media Intelligence firm that processed all the data collected by the TRI. The latter was an independent journalism initiative which collaborated with Facebook to ensure transparency of information and fast checking of information and news to mitigate the spread of false information on the platform.

Digital fundraising platforms such as GoFundMe and CitizenGO were also used during the Irish referendum. American organisations such as Let Them Live and other Christian organisations contributed to fundraising through platforms like GoFundMe to support the No campaign. CitizenGO depends for the most part on donations from third parties around the world and conducted signature collections and open campaigning in favour of safeguarding the 8th Amendment.

Finally, two of the key players over the course of the campaign for the abolition of the 8th Amendment were Google Inc and Facebook Inc. Both US companies that took the decision to suspend online advertising about the referendum for all people outside Ireland in the case of Facebook, and all referendum-related advertising in the case of Google. This was mainly due to the large amount of foreign interference in political advertising online.

5.2 Online and offline political advertising

Given the unregulated nature of online political advertising in Ireland during the referendum campaign, it is worth analysing online and offline campaigning separately.

As mentioned above, paying for political advertisements in broadcast services was prohibited, but street advertisements, such as posters and billboards, was allowed as long as it complied with the requirements set forth by the Electoral Act. Subsequently, the streets of Ireland were flooded with posters both for and against the abolition of the 8th Amendment. According to Times Magazine, in a 20-minute walk through the streets of Dublin you could find yourself in front of 50 or 60 posters, asking you to vote either for Yes or No in the referendum.

The Dublin City Council received numerous complaints regarding the content of the posters. However, the City Council did not act as it did not have the statutory power to regulate the content of referendum posters. The only grounds for removing a poster were either the interest of the amenity or the environment of an area, or the failure to indicate the name and address of the printer as requested by law.

In terms of digital advertising, there was no regulatory framework. This opened the door to increased foreign influence in the campaign. Despite the fact that foreign donations to political parties or third parties were banned, there were several attempts

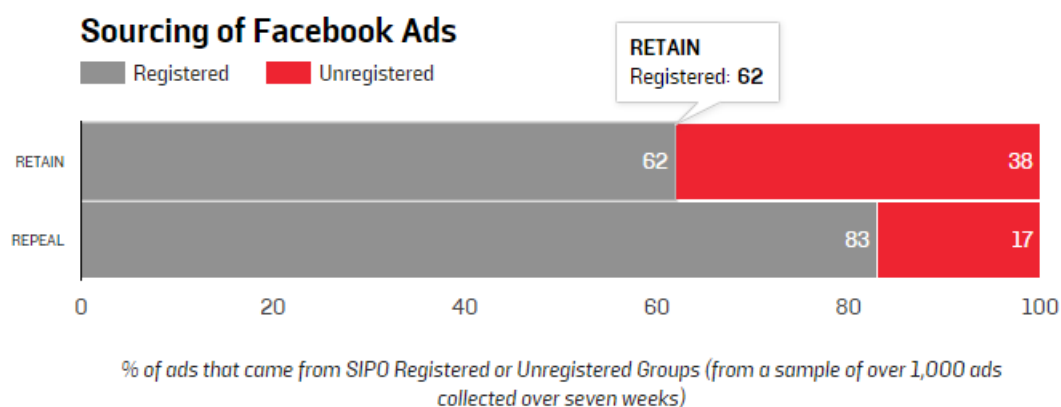
to circumvent the legislation through the utilisation of digital platforms e.g., online advertisements targeting the Irish public were paid from abroad.

An investigation conducted by the web portal Open Democracy, demonstrated that it was relatively easy to make donations to anti-abortion groups without being an Irish citizen or resident. For example, one could make small donations to anti-abortion portals using a foreign credit card and an internet connection and no questions would be raised. Conversely, pro-abortion portals were more likely to reject donations coming from donors who identified themselves as non-Irish residents or citizens. The same Open Democracy investigation noted that the US pro-life organisation Let Them Live claimed to have raised thousands of dollars online via GoFundMe to send activists to Ireland. The regulating agency SIPO said the law was "silent" on donations and spending that took place outside Ireland and that it had no role regarding foreign campaigners' visits.

Moreover, targeted online political ads spread during the referendum campaign on digital platforms such as Google or Facebook. For example, as reported by Open Democracy, the London-based political consulting firm Kanto was hired by members of the Save the 8th campaign to canvass supporters, create an online presence and use data analysis tools in a digital campaign that aimed to keep abortion illegal in Ireland.

In response to this, volunteers of the Transparent Referendum Initiative (TRI) started classifying the ads targeting voters. A group of 600 volunteers added a custom extension to their Google Chrome browsers to collect Facebook ads targeting them. As described in Figure 2, more than a third of the ads from the retain campaign and 17% of those from the repeal campaign came from unregistered groups.

Figure 2: Referendum vote by constituency



Source: Foreignpolicy.com 'How Ireland Beat Dark Ads'

During the campaign, Facebook released a tool that showed users in Ireland the number of people managing a page and the location of these managers. Storyful, an Irish network intelligence agency, combined this new information with data collected by the TRI and found that: "58 percent of pages posting anti-repeal ads on or before May 11 were managed by people solely based in Ireland. In comparison, 78 percent of pages posting pro-repeal content in the same period were managed solely in Ireland."

These results helped to raise awareness about foreign influence in online advertising and resulted in direct actions taken by Google and Facebook. Facebook banned foreign paid advertising on its platform and Google blocked any advertising about the referendum. Neither Google nor Facebook provided the reasons why they considered it

necessary to implement these restrictions and there is no data available to evaluate the impact of such measures.

6 Measures to address disinformation and regulate political advertising

6.1 Evidence of disinformation during the campaign

Journalists denounced fraudulent manoeuvres on both sides. This ranged from misinformation on posters and billboards to fake social media accounts disseminating dubious information, unreliable sources attempting to disseminate news by claiming the material to be from the Irish public broadcaster RTÉ, misinformation about the safety of abortion drugs, cyber-attacks and trolling.

In an interview to Susan Daly, editor of TheJournal.ie about misinformation and fake news during the campaign, she said: "it's noticeable that there are not so many blatant articles being disseminated that are #fakenews in the way you might understand it in an election campaign such as the most recent U.S. campaign. The misinformation or cloudiness is emanating from social media posts that are native to those platforms — memes/photos/videos — and on billboards, which naturally go for soundbites that can lack the context needed for a casual passer-by to make an informed decision on its veracity."

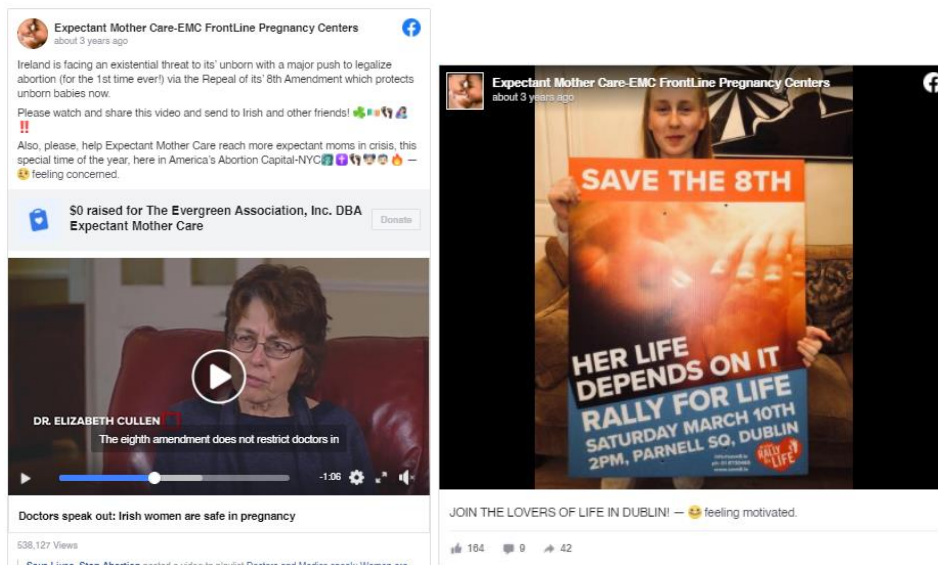
Figure 3: Retain Billboard



Source: TheJournal.ie 'FactCheck: Are 90% of babies with Down syndrome in Britain aborted?'

As a first step to fight misinformation, Facebook incorporated an "educational notice" that appeared at the top of people's news feeds in Ireland to help its users differentiate between "fake news" and genuine campaign content. However, it later had to strengthen its measures as misleading information was still increasing on the platform and foreign investment in paid online advertising continued to grow. A clear example of this foreign influence on Facebook was the case of the anti-abortion, New York-based group Expectant Mother Care-EMC FrontLine Pregnancy Centers. This group made several publications urging its Facebook users to share content from Save the 8th and included a link to donate money to Expectant Mother Care.

Figure 4: Facebook publications by Expectant Mother Care



Source: *Buzzfeed.com 'Ireland Is Holding A Referendum On Abortion, And Misinformation Is Already Being Spread On Facebook'*

It was not only through publications that efforts were made to influence public opinion and the election result. According to the media website The Independent and RTE, the Yes campaign's fundraising website was cyber-attacked just weeks before the election, which affected the group's funding. Similarly, In Her Shoes, a group which posts stories about women illegally accessing abortions, was trolled by Irish and US pro-life groups. According to the group's administrators, pro-life activists in both the Republic of Ireland and the US attacked the women in the group, attempting to have Facebook ban the page and its members. As a result, some of them were temporarily locked out of their accounts.

6.2 Enforcement of legislative measures by the responsible authorities

As mentioned above, campaigning on traditional broadcast media as well as street advertising was clearly regulated and enforced. Moreover, the SIPO played a key role during the referendum campaign overseeing funding of political organisations, third parties and political parties. It ensured compliance with the requirement that all organisations receiving donations for political purposes registered as third parties. Indeed, SIPO identified 43 organisations and 25 donors as Third Parties and required them to register as such. Similarly, during the campaign, Amnesty International Ireland returned a donation of 137,000EUR received from American billionaire and philanthropist George Soros as it did not comply with SIPO's regulations.

During 2018, SIPO also participated in initiatives to raise awareness on the rules on third parties' activities during the referendum campaign. For example, SIPO's staff participated in a meeting with campaigners, organised by Facebook, to review advertising and content policies in the context of the referendum on the 8th Amendment.

6.3 Effectiveness of legislative and non-legislative measures in regulating political advertising and combating disinformation

While existing laws to regulate political advertising and combat misinformation in broadcast media and street advertising were effective, the legal vacuum regarding political advertisements on social media and online platforms appeared as the main problem during the referendum.

The regulation of online platforms and social media was mainly citizen driven. Non-legal initiatives such as the TRI helped to demonstrate the amount of foreign influence on online political advertising. Furthermore, TheJournal.ie collaborated with Facebook to check content and identify fake news.

Moreover, the voluntarily measures taken by social platforms such as by Facebook were not enough. For example, Apologia Studios, a US-based Christian media company, used Facebook to promote a documentary it had produced called Saving Ireland. On 16 and 17 May, the page shared information about the documentary in two paid posts. "We can't discuss the content of this film, as algorithms would prevent you from watching it," read one of the two posts.

6.4 Extent and effectiveness of political advertising monitoring

In the context of the regulatory loopholes, the monitoring of online political advertising during the referendum campaign was mainly in the hands of organisations of volunteers such as the TRI, Open Democracy and TheJournal.ie. Digital platforms also played a key role when two weeks before the referendum, Facebook banned all foreign-funded election advertisements and Google banned all advertising related to the referendum. These interventions by Facebook and Google proved to be a turning point in the campaign as they removed the easiest mechanisms for large-scale non-state foreign interference in the Irish referendum. However, some claimed that the intervention of Facebook and Google could be considered as a foreign non-state intervention given that they are both US companies. Nonetheless, Facebook worked hand in hand with the Irish State. Once Facebook identified the campaign's problem with disinformation and foreign interference, and prior to their banning of foreign paid advertisements, the company approached the Joint Communications Committee of the Oireachtas (Irish Parliament) and subsequently rolled out a tool across Ireland as a pilot programme to provide transparency in advertisements.

Other non-state organisations that participated in the monitoring of the digital campaign were journalistic initiatives such as Open Democracy and TheJournal.ie, which through their efforts ended up contributing to the data that Facebook would later use to make its decision of banning all foreign paid advertisement about the referendum.

Finally, an organisation that played a key role during the campaign was TRI, which was a voluntary organisation that led the monitoring of social networks by generating a plugin to identify who was paying for the advertisement that reached a person's social network (e.g., Facebook), and through this tool they gathered important information that served to ascertain the magnitude of foreign interference.

7 Conclusions

The Irish constitutional referendum campaign to repeal the 8th Amendment provides some lessons learned in relation to the risks of foreign interference and spread of disinformation in the context of lack or limited regulation of online political advertising. Furthermore, this case serves to illustrate the key role that an active civil society can play in promoting transparency, as well as the importance of digital platforms' actions and decisions in relation to online political advertising. Finally, this case also helps to identify areas where there is room for improvement through proposed new legislation at the national level.

- **Broad definition of political advertisement leaves no room for non-political advocacy work.** Ireland does not define political advertisement in its Electoral Act, but it links advertisement to any activities specified in the broad definition of political purposes. Several civil society groups find this broad definition problematic as it affects their capacity to conduct non-political advocacy work.
- **Regulations on traditional media, including street advertising, are enforced for the most part.** Ireland's regulatory framework is effective in regulating political advertising in broadcasting media. In effect, paid advertisements were prohibited in radio and TV during the referendum campaign. The country also has a clear framework for street advertising which requires proper acknowledgement of the name and address of printers in the ads. Under this clear regulatory framework, the responsible authorities such as SIPO and BAI were, for the most part, able to enforce such measures.
- **Prohibitions to foreign donations can be easily infringed.** Although foreign organisations and individuals were prohibited from donating to the referendum campaign, there is evidence that shows that foreign groups and individuals still managed to donate to third party organizations or directly finance online advertisements from abroad.
- **Misinformation and foreign interference is more likely to occur online, especially in the context of weak or limited regulations for campaigning on digital platforms and the Internet.** There is evidence that foreign organisations and groups financed and promoted advertisements online. Foreign interference was more widespread on the side of the No campaign.
- **Transparency initiatives promoted by civil society organisations can increase public awareness and trigger self-regulating measures by digital platforms.** Initiatives such as the TRI, Storyful and TheJournal.ie gathered data that showed foreign interference on the election through online advertisement. As a result, Facebook banned foreign paid advertising on its platform and Google blocked any advertising about the referendum.
- **A new legislative proposal regulating online political advertisement was issued in 2021 and is now advancing in Parliament.** In its current draft, the proposal contains provisions regulating many of the issues identified in this case study such as: a framework for regulating online political advertising, a provision for the disclosure of specified information in connection with online political advertising, the adoption of a "transparency notice" requirement, where the viewer will be able to see details regarding the given political advertisement, and the requirement for online platforms to establish and maintain an online archive or library comprising online political advertisements. Also, the draft

Electoral Reform Bill suggests the possibility of adopting measures against false or misleading information.

Annex I Timeline of events

1861	Abortion is first banned in Ireland
1983	Constitutional amendment criminalizing abortion, unless the pregnancy is life-threatening (Eight amendment) Abortion was illegal before 1983, but the amendment made it even harder to terminate a pregnancy, even to save to mother's life. Right Parties (Fine Gael and Fianna Fáil: Pro 8th amendment) Left Parties (Against this amendment)
1992	A 14-year-old suicidal rape victim is initially prevented by the courts from travelling to England to terminate her pregnancy. It is a controversy that will become known as the X Case.
28th October 2012	Woman denied abortion of non-viable fetus dies in Ireland
2013	Referendum in which two new constitutional amendments are introduced, guaranteeing that under conditions of rape and other life-threatening conditions, abortion is possible. It is also possible for women to have abortions in other territories, e.g., England.
2015	The UN calls for another referendum
2015	Feminists at law create bill to decriminalize abortion in Ireland
2016	General elections, in which Enda Kenny, the leader of the party Fine Gael (centre-right), was elected Prime Minister. He has a programme which promised a randomly selected Citizens' Assembly to report on possible changes to the Eighth Amendment, which would be considered by an Oireachtas committee, to whose report the government would respond officially in debates in both houses of the Oireachtas
14th June 2017	Leo Varadkar takes office as prime minister, and in his first speech in office, he promises a referendum to evaluate the repeal of the eighth amendment on abortion.
November 2016 to April 2017	The Citizens' Assembly, chaired by Supreme Court judge Mary Laffoy, discussed the issue with invited experts and stakeholders, and voted to recommend repealing the existing text and replacing it with an explicit mandate for the Oireachtas to legislate on abortion
September to December 2017	The assembly's report was considered by a special Oireachtas committee of 21 members, which also discussed the issue with invited experts; its recommendations by majority vote were broadly similar to those of the assembly.
January 2018	Fianna Fáil leader Micheál Martin backs repeal of the Eighth Amendment
January 2018	Minister for Health Simon Harris opened the Dáil (Parliament low chamber) debate on the committee's report by listing the numbers from each county who travelled to Great Britain for an abortion in 2016.
March 2018	Minister for Housing, Planning and Local Government Eoghan Murphy established the statutory Referendum Commission to oversee the referendum campaign, with High Court judge Isobel Kennedy as Chair
March 2018	Both Fine Gael and Fianna Fáil allow their TDs a free vote on the issue in the Dáil

21st April 2018	<p>Taoiseach and Fine Gael leader Leo Varadkar launched a Fine Gael 'Vote Yes' campaign for Yes-supporting party members, along with party colleagues, including Minister for Health Simon Harris and Fine Gael referendum coordinator Josepha Madigan.</p>
8th May 2018	<p>Due to controversy over the origin, number, content and targeting of adverts on social media, Facebook announced that it would block advertisements placed by foreign entities, most of whom were in the United States, and would limit them to adverts placed by Irish organisations.</p>
9th May 2018	<p>Google announced that it was blocking all adverts on the referendum from its advertising platform and YouTube, citing concerns around the integrity of elections.</p>
9th May 2018	<p>The fund-raising web pages of Together for Yes, Amnesty Ireland and Termination for Medical Reasons were subjected to a denial-of-service attack.</p>
20th May 2018	<p>The parents of Savita Halappanavar called for a Yes vote, her father saying, "I hope the people of Ireland will vote yes for abortion, for the ladies of Ireland and the people of Ireland. My daughter, she lost her life because of this abortion law, because of the diagnosis, and she could not have an abortion. She died."</p>
23rd May 2018	<p>CNN reported that American-based anti-abortion groups, such as "Let Them Live", have flown to Ireland seeking to sway voters to vote No on the amendment. They entered Ireland by lying to Irish border control about their reason for entering the country, claiming they were only in Ireland to document the event and nothing more, therefore breaking Irish law by their activities. They did not obtain a "Volunteer Visa", required to do voluntary work.</p>
24th May 2018	<p>The New York Times reported that thousands of Irish citizens living outside the country were travelling back to Ireland to vote in the referendum, as postal or absentee voting is not generally allowed.</p>
25th May 2018	<p>Referendum</p>

Annex II Questionnaire for the interview



INTERVIEW GUIDE

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

February & March 2021



1 Context

7.1 About the project team

VVA Economics & Policy, a consultancy firm with significant experience in carrying out policy, market, legal and economic studies related to innovative and disruptive technologies in the transport sector for European institutions and entities, is leading the project team with Tetra Tech, Optimity Advisors and LE Europe. Together, the team bring the necessary expertise and knowledge in the policy areas covered by this study.

7.2 About the study

The general objective of the study is to provide the European Commission with “evidence and analysis to help prepare an EU instrument to enhance the transparency of political advertising, and other measures to increase the resilience of democracy in the EU”. ‘Political advertising’ is to be defined as broad concept – definitions of this terminology are further discussed under the section on Scope below.

The specific objectives of this assignment relate directly to the Single Market (SM) and the safeguarding of the SM, as well as to ensuring the integrity of electoral process and, consequently of democracy in the EU.

This particular objective ought to be achieved: i) through the safeguarding of fundamental rights and standards related to issues created by political advertising – making these comparable to the standards and rights in place in the offline world; and ii) by ensuring that legal certainty on political advertising is provided to market actors engaged in this activity.

The background to this initiative is provided [here](#).

The scope of the study is to provide a comprehensive understanding of the issue and challenges related to political advertising.

7.3 Policy Options

Within this study different policy options will be considered and analysed in the impact assessment against the background of the baseline scenario and the aims set out above.

Three main options will be considered against the baseline:

1. **Soft law measures to promote and clarify** the currently applicable EU and national frameworks on the basis of recommendations and potentially professional and industrial codes and standards:

- A. Increase the implementation of the Commission's 2018 electoral package and in particular the Recommendation on transparency and combatting disinformation, including strengthening the sharing of best practice in the framework of the European Cooperation Network on Elections and its links to other relevant structures including the Rapid Alert System on disinformation and the Network and Information Security Cooperation Group;
- B. Strengthen the implementation of the commitments set out in the Commission's report on the 2019 European elections and the Action Plan against Disinformation [continue implementing and improve on current implementation, for instance by discussing shared approaches to various issues within the Recommendation, and commitments to implementing best practice];
- C. New soft-law measures to promote the aims of the initiative, such as through:
 - a. Codes of conduct applicable to other actors in the political advertising process (for instance political parties) to conduct campaigning fairly and, for example, limit the number of adds, or the targeting methods used, and support for the development professional standards and industry self-regulation contributing to enhanced transparency/accountability;
 - b. Funding e.g. to support capacity building, pooled resources, and joint exercises; as well as to support citizens getting transparent information (and being better informed) on political communications (including with better tools to deal with techniques like microtargeting), to participate in the political debate, hold actors to account, and to form political decisions un-coerced;
 - c. Information campaigns directed to citizens and to relevant groups, such as journalists, to increase media literacy and raise awareness on political advertising and the techniques associated with it;
 - d. Recommendations to Member States to support transparency, accountability and oversight, for instance by updating rules and investigatory powers, converging relevant rules and cooperating in monitoring and enforcement across borders [These are further steps, building on what we have learned from the implementation of the existing Recommendation, which would seek to drive coordinated action to deliver the objectives of the intervention by soft law measures which are not already covered there];
 - e. Recommendations to European and national political parties and foundations to adopt practices which support transparent political advertising, in its financing, preparation, placement and dissemination.
- D. Parties and campaigners could also voluntarily promote greater transparency in political advertising and meaningful, timely financial disclosure standards.

2. Targeted legislation to increase transparency and establish the same standard for economic operators across the Union engaged in the preparation, placement, dissemination and financing of political advertising within the internal market, and to support the oversight of this standard, by introducing:

- A. Common, enlarged definitions of certain key terms, such as political and issues-based advertising;
- B. An obligation to provide a minimum standard of specific transparency, tailored to all the various relevant economic actors (including those not in direct contact with citizens, and those not established in the EU)². It would include complementary obligations to those addressed to online platforms in the proposed Digital Services Act. It would include more limited obligations for certain actors. In aggregate this transparency obligation would enable at least the following to be known during a relevant period (and where appropriate and practicable, in real time according to a standardised electronic format) about every political advert circulated online to users:
 - a. (where relevant) the campaign, issue or person the political advert is connected to;
 - b. who paid and how much, and what support services or material assistance (for instance behavioural profile targeting) were paid for;
 - c. targeting criteria (beyond GDPR);
 - d. relevant anonymised data about dissemination;
 - e. further information to ensure fairness in the context of political advertising, for instance duration of circulation, numbers of interactions etc, specific additional transparency concerning the use of targeting and other techniques (origin of data, size of groups targeted etc).
- C. Additional obligations to retain and disclose on request certain data (obligations to keep records to enable audit/certifications, regulatory oversight);
- D. Further measures to ensure that prominence is given to official factual information of public interest (e.g. opening hours of the voting stations);
- E. The main competent body and out-of-court arrangements to settle disagreements about transparency;
- F. In the context of European elections, an obligation on European political parties to ensure that the political advertising they place is funded, prepared, placed and disseminated to a high standard of transparency, including:
 - a. through the durable labelling of political adverts placed through any medium;
 - b. making publicly and timely (updated regularly during the campaign period) information available online regarding the advertising activities placed by the party, or directly on its behalf, detailing as a minimum each advert, its circulation, the amounts spent and the use of targeting and amplification.

² Tailoring of obligation is envisaged to take into account the size and impact of the actor and its activities on the relevant market and democratic process, and the nature of these activities, as well as the wider EU law framework and the commitment to ensure that EU interventions are proportionate and respect the principle of subsidiarity and the fundamental rights of citizens.

Accordingly, obligations to make certain information public are envisaged for very large online platforms which would complement those envisaged in the Digital Services Act. Corresponding obligations could apply to other actors who disseminate political advertising. All such actors could also be required to know certain information about their clients and to retain this information/provide anonymised and aggregated data for reporting purposes. A broader obligation applicable to more service providers to retain certain information regarding relevant transactions, and to disclose this to competent authorities where required by law could also be imposed.

3. Legislation harmonising specific conditions and criteria in the context of political advertising, to establish a common basis for its use and its regulation within national and European electoral processes, including:

- A. Common minimum rules regarding the financing of political advertising, including access financing, banking services and disclosure requirements;
- B. Measures to enable the limitation and/or banning of:
 - a. political advertising during certain periods;
 - b. certain techniques in targeting and amplifying political advertising.
- C. Measures to foster the development of co-regulation, for instance to provide a procedure and basic principles for establishing such standards, and a process for sanctions and a route for redress.

Entity:	Date:
Name:	Function:

E. Introductory questions

- 8 Please introduce yourself and your organisation and your role that it plays in online political advertising services

9 Description, monitoring and enforcement of the legal framework

The legal framework and its enforcement have been identified as a problem in relation to the political advertising due to several reasons. The absence of national legislation addressing political advertising, in particular in the online space as well as the lack of clear, agreed-upon definitions of key terms e.g. political advertising, political advertiser pose some concerns related to transparency and legal certainty in the election process. Additionally, fragmentation of enforcement responsibilities leads to difficulties in the application of the electoral rules.

10

a) From your perspective, what is the relevant legal framework that regulates political advertising services in your country? (e.g. data protection, e-commerce rules, European electoral rules, other).

11

Is there any ongoing / planned legislative process or policy reform in your country with regards to the monitoring and enforcement of the political advertising?

12

Traditionally, online political advertising has been defined as the advertising conducted by political parties in an official manner during an election period. Do you think that this should be the scope of a the definition of political advertising -especially in the online context- or should it be extended to include all ads? If you think that it should be extended, what scope should it have in your view?

13

What are the responsible institution(s) in your country that are in charge of monitoring and enforcing the legal framework in the political advertising market? Please list specific national authorities.

14

Can you describe the competences, roles and responsibilities of these monitoring authorities? Can you describe how they coordinate their work and their level of cooperation to the best of your knowledge?

15 Micro-targeting

Micro-targeting in the context of elections can affect the integrity of the democratic process, including during elections campaigns. It can pose questions about accountability gap when using large amounts of personal data in an untransparent ways and the provision of advertising to different audiences to impact their political choices. It can also raise concerns due to provision of misleading information as a result of blurry distinction between political advertising and news. The issue of undeclared influx of financial streams (e.g. via foreign donations) remains problematic too.

- 16 Does your organisation use microtargeting? If yes, please explain how your organisation uses microtargeting?
- 17 What is the impact of microtargeting that your organisation seeks through its use and why do you use it?
- 18 How much money is spent by your organisation on advertising with microtargeting? (Please, provide a range, an estimate or a reference by an indication by proportion of the total cost of a campaign).
- 19 How much money is spent by your organisation on data used in microtargeting? (Please, provide a range, an estimate or a reference by an indication by proportion of the total cost of a campaign).
- 20 How much is spent on using microtargeting overall?
- 21 How effective do you regard the use of micro-targeting in achieving its objectives within your organisation? How do you measure / monitor this?

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- 22 What is the relationship between the use of micro-targeting in online political advertising and data protection, disinformation and polarisation? Can you expand on each aspect and provide examples?

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- 23 What is the relationship between the use of micro-targeting in online political advertising and foreign interference in elections? Can you explain and provide examples?

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- 24 What are the mechanisms in place in order to recognise and track online political advertising (EU/ national level)?

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- 25 In your opinion, could the use of microtargeting pose a problem to electoral integrity? Do you see any problems with transparency in this area?

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26 Undeclared sources, misleading cross-border political advertising, recognisability of political advertising

Non-enforcement of relevant rules combined with regulatory inconsistency results in political advertising which is not properly notified to the competent authorities. This can mislead or manipulate citizens, and in other ways not comply with relevant national party and campaign financing rules or other standards, such as with respect to silence periods or content rules. It prevents journalists, civil society organisations and other relevant stakeholders from investigating expenditure in political campaigning and ensuring that the participants are held to account.

- In your experience, how are online political advertising campaigns funded? Are any of the following means of funding allowed and/or used?
- Loans
- Micro-funding/crowdfunding
- Monetised online content
- Any other

27 To which extent is insufficient notification of online political advertising to the relevant authorities a problem in the EU in general or in your Member State? How salient is the cross-border dimension in relation to the problem of the use of undeclared sources in online political advertising ?

28 To which extent do citizens struggle to distinguish online political advertising or online paid political messages from pieces of news or organic online content? What are the main factors hindering the ability of citizens to recognise online political advertising (i.e. the similarity with news reporting, *organically* shared content, lack of regulation)?

29 Are citizens sufficiently aware of the techniques used in online political advertising (including use of personal data, micro-targeting, etc)?

30 To which extent are civil society organisations and/or journalists able to trace and investigate expenditure in (online) political campaigning at the EU level and at the Member States' level? What problems and obstacle do they face? What are the most significant initiatives regarding the tracing and investigation of online political advertising?

31 Difficulties to enforce and monitor of electoral rules

Difficulties to enforce and monitor electoral rules might result from a lack of capacity, resources, awareness, capability and access to the online environment on the part of the competent authorities, as well as from relevant rules not being applicable online, or from a lack of the requisite powers to monitor and enforce safeguards in this context, especially across borders. Difficulties with the application of relevant rules online can also contribute to a number of further issues, including the use of financing to conduct political advertising in multiple Member States or across borders which might not be properly declared to the competent authorities, or which might be from sources which contravene relevant rules in certain Member States. Financing for political advertising is also generated online through anonymous donations or monetised content, which again might contravene relevant rules.

32

What challenges have and are emerging in the application of electoral rules as political advertising moves from the offline to the online realm? Are these challenges specific to your Member State or are they common to other/most Member States?

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33

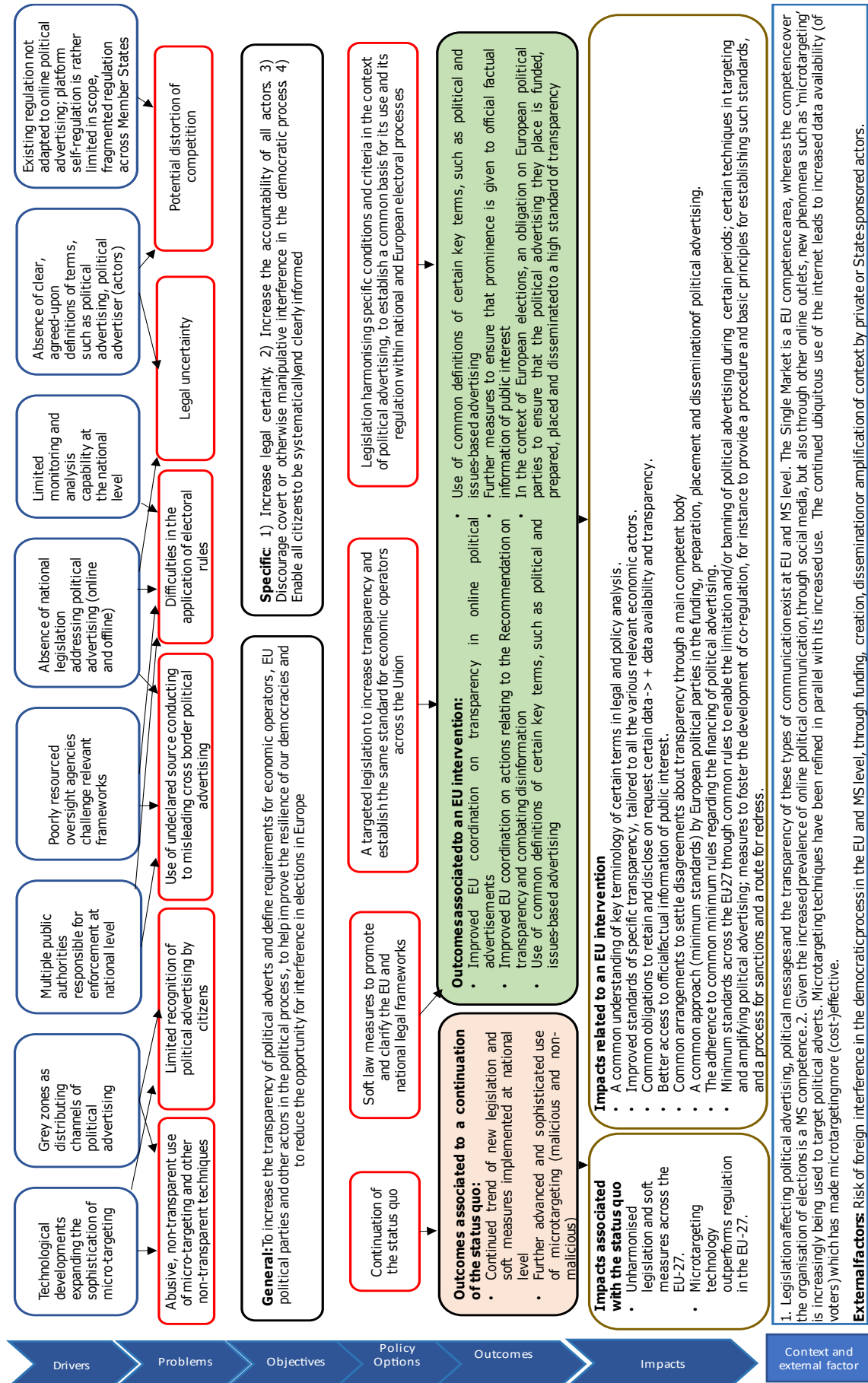
b) What are the main factors that hinder the monitoring and enforcement of the regulation of online political advertising in your Member State?

34

What measures would your Member State need to take to increase the effectiveness of the monitoring and enforcement of electoral rules in relation to online political advertising?

35 Impact of policy options

We have developed a preliminary intervention logic for policy action by the Union to create an EU instrument to help increase the resilience of our democracy in the EU and address the threats of interference in elections through greater transparency in political advertising. Please see below:



Please also find the **relevant information about the proposal for a Digital Services Act (DSA)** ensuring a safe and accountable online environment through establishing a powerful transparency and a clear accountability framework for online platforms.³

36 PO1: Based on the already identified economic, social and fundamental rights impact, what key effects do you foresee if the soft law measures are adopted? (e.g. increased activity of the European Cooperation Network on Elections and best practice sharing; following up on the Action Plan against Disinformation; introduction of codes of conduct?) Please explain why? Would you like to discuss any specific sub-option within policy option 1? (see section 1.3)

37 PO.2: Based on the already identified economic, social and fundamental rights impact, what key effects do you foresee if targeted measures to increase transparency and establish the same standards for economic operators across the Union engaged in the preparation, placement, dissemination and financing of political advertising within the internal market, and to support the oversight of this standard are adopted? Please explain why? Would you like to discuss any specific sub-option within policy option 1? (see section 1.3)

38 Which actors other than the ones defined in the DSA proposal as “core platform services” should be included in the targeted transparency measures? (e.g. those not in direct contact with the provision of online advertising services; those not established in the EU)

39 Should different economic actors have greater obligations in relation to transparency depending on factors such as their size?

40 Should obligations imposed on economic actors vary across time, potentially being higher during election periods or other specific periods?

41 Do you foresee administrative burdens related to PO.2? Can you provide specific examples and quantify associated costs if possible?

42 PO.3 Based on the already identified economic, social and fundamental rights impact, what key effects do you foresee if legislation harmonising specific conditions and criteria in the context of political advertising aiming to establish a common basis for its use and its regulation within national and European electoral processes is adopted? (e.g. common minimum rules on financing political advertising, limitation / banning of political advertising during certain periods, process for sanctions etc.) Please explain why? Would you like to discuss any specific sub-option within policy option 1? (see section 1.3)

³ https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment_en
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43 Wrap up

44 Is there anything, within the scope of this study, that you would like to add?

45 Is there any specific literature that you could recommend and that cover different aspects of the topic of this study?

46 Are there any relevant documents and/or data (such as data on the volume of the online political advertising industry, the typical cost of an online political campaign, the cost per impression, etc) that you are willing to share with us? If so, please provide such documents and indicate whether they contain any confidential information.

Annex III Interviews with stakeholders

Name	Organisation
Barry Ryan	Department of Housing, Local Government and Heritage. Franchise Unit (Electoral matter), Government of Ireland
Paris Beausang	Department of Housing, Local Government and Heritage. Franchise Unit (Electoral matter), Government of Ireland

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