



Study to support the preparation of an EU
instrument to facilitate the provision of cross-
border advertising and related services in
the internal market while supporting fair
democratic processes based on high
transparency standards

Final Report
13 July 2021

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Glossary

Ad Library	Ad Libraries are searchable database of ads.
Artificial Intelligence, AI	Artificial intelligence (AI) systems are software (and possibly also hardware) systems designed by humans that, given a complex goal, act in the physical or digital dimension by perceiving their environment through data acquisition, interpreting the collected structured or unstructured data, reasoning on the knowledge, or processing the information, derived from this data and deciding the best action(s) to take to achieve the given goal. AI systems can either use symbolic rules or learn a numeric model, and they can also adapt their behaviour by analysing how the environment is affected by their previous actions.
Algorithm	An unambiguous procedure to solve a problem or a class of problems. It is typically composed of a set of instructions or rules that take some input data and return outputs.
Algorithmic content curation	Automated selection of what content should be displayed to users, what should be hidden, and how it should be presented.
Algorithmic decision-making	The processing of input data to produce a score or a choice that is used to support decisions such as prioritisation, classification, association, and filtering.
Automated advertising	Automated advertising consists of automatically create ads based on the data available in a certain website.
Bots	A software program that can execute commands, reply to messages or perform routine tasks, thus mimicking human communication either automatically or with minimal human intervention. Social media bots may retweet certain posts to gather attention
Civil Society Organisation, CSO	A civil society organisation (CSO) is an organisational structure whose members serve the general interest through a democratic process, and which plays the role of mediator between public authorities and citizens.
Deep Fake	A Deep Fake is a video of a person in which their face or body has been digitally altered so that they appear to be someone else, typically used maliciously or to spread false information.
Digital Services Act, DSA	The DSA is a comprehensive set of new rules regulating the responsibilities of digital services that act as intermediaries to connect consumers with goods, services and content
Digital Single Market, DSM	A DSM is one in which the free movement of persons, services and capital is ensured and where the individuals and businesses can seamlessly access and engage in online activities under conditions of fair competition, and a high level of consumer and personal data protection, irrespective of their nationality or place of residence.
Disinformation	False, fabricated or manipulated content shared with intent to mislead or cause harm
European Cooperation Network on Elections	The European Cooperation Network on Elections brings together representatives of Member States' authorities with competence in electoral matters and allows for concrete and practical exchanges on a range of topics relevant to ensuring free and fair elections, including data protection, cybersecurity, transparency and awareness raising. It also supports cooperation with other European level groups and bodies, thereby enabling mutual support and a wider and effective dissemination of relevant alerts and other information.
Echo-chamber	An echo-chamber is an environment in which a person encounters only beliefs or opinions that coincide with their own, so that their existing views are

reinforced, and alternative ideas are not considered.

Electoral campaign	Electoral campaigns are the competitive efforts by candidates and political parties to win voter support in the period preceding and up to the eve of an election. In contrast, political campaigns go beyond elections.
European Democracy Action Plan, EDAP	The European Democracy Action Plan (EDAP) is designed to empower citizens and build more resilient democracies across the EU by promoting free and fair elections, strengthening media freedom, and countering disinformation
General Data Protection Regulation, GDPR	Regulation (EU) 2016/679 of the European Parliament and of the Council, the European Union's ('EU') General Data Protection Regulation ('GDPR'), regulates the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data.
Machine learning	Machine learning is the use and development of computer systems that are able to learn and adapt without following explicit instructions, by using algorithms and statistical models to analyse and draw inferences from patterns in data.
Micro-targeting	Micro-targeting is a marketing strategy that uses consumer data and demographics to identify the interests of specific individuals or very small groups of like-minded individuals and influence their thoughts or actions.
Misinformation	False or misleading content created and initially presented without malicious intent
Non-governmental organisation, NGO	Non-governmental organisations (NGOs) are voluntary organisations with a formal or institutional existence; non-profit-distributing; independent of government and public authorities; not managed for personal gain; and their activities contribute to the public good.
Online Platforms	Online platforms are a variety of hosting service providers such as social networks, content-sharing websites, app stores, online marketplaces, and online travel and accommodation websites. Online platforms are generally characterised by their intermediation role between different sides of the market – such as sellers and buyers, accommodation service providers, or content providers – and by intermediate access of user-generated content.
Profiling	Profiling is any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements (Article 4(4) GDPR)
Recommender system	Refers to the algorithmic systems used by online platforms to give prominence to content or offers, facilitating their discovery by the users. Recommender systems follow a variety of criteria and designs, sometimes personalised for the users, based on their navigation history, profiles, etc., other times based purely on the content analogy or ratings
Very Large Online Platform, VLOP	Online platforms with a significant societal and economic impact by covering, among their monthly users, at least 10% of the EU population (approximately 45 million users).

1. Introduction

The document constitutes the Final Report for the “*Study to support the preparation of an EU instrument to facilitate the provision of cross-border advertising and related services in the internal market while supporting fair democratic processes based on high transparency standards*”, a Request for Specific Services issued under the Framework Contract JUST/2020/RCIT/FW/RIGH/0103.

1.1. Study Objectives

This is a study to support a European Commission Impact Assessment and thus follows the impact assessment methodology as defined in the Better Regulation guidelines.¹

The general objective of this assignment 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 defined as a broad concept for the purposes of this report – definitions of this terminology is further discussed as part of the Problem definition.

1.1.1. Analytical framework

This study provides an analysis of the relevant status quo as well as a forward-looking analysis of a potential EU level intervention and options for its achievement.

The analysis of the status quo focused on:

1. Understanding the status quo of the legal situations in the EU Member States and third countries (for comparative purposes) with regards to political advertisement. This analysis explores, as far as possible, the extent to which the EU 27 Member States conforms with the 2018 EU Recommendation on election cooperation networks, online transparency, protection against cybersecurity incidents and fighting disinformation campaigns in the context of elections to the European Parliament (C(2018) 5949 final)). A comprehensive analysis of the regulation of political advertisement is presented in Annexes 4 and 5.
2. Describing the relevant market actors, the services they provide and their activity, in particular across borders. This is presented in Section 1.2.2.
3. Understanding the gaps in regulation (in law and in regulatory practice) nationally, between Member States and at European level. It also focused on understanding the conflicts between national regulatory approaches in relation to cross border activity. The gaps in regulation are discussed in Sections 2.1, 2.3 and 2.4, they are summarised in Annex 4, and they are presented in detail in Annex 5.
4. Analysing the role of third country actors and the possibilities to circumvent current regulation, especially in a cross-border context. This is analysed in different case studies in Annex 6.
5. Grouping Member States according to how advanced their frameworks currently are and their distance to the optimal framework regulating different aspects of online political advertising. The results of the study show that Member States cannot be grouped into

¹ https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en

more and less advanced regulatory frameworks overall, for there is great divergence in the way in which countries regulate different aspects of online political advertising (transparency on the case of ads, timely disclosure, funding, etc). Member States are instead grouped into more and less advanced regulatory frameworks *in relation to the problems covered in Sections 2.1.1, 2.1.3, 2.3, 2.4, 2.5.*

6. Searching for evidence on the extent to which Member States/third countries with advanced legislation have begun to strengthen their frameworks with regard to online political advertising and to what extent it proved successful. The current legislative process in Ireland is analysed and discussed, as well as the adoption of a Code of Conduct by platforms and parties in the Netherlands simultaneous to the study.
7. Identifying the universal elements of an ideal legal framework enabling to both strengthen the fair and democratic processes and enhance the integrity of the Single Market with regard to online political advertising. The Problem definition section identified the limitations of the present legal frameworks at national and EU level. In combination with the definition of objectives (cf. Section 4), the policy options specified under Section 5 identify the possible reforms and additions to the present legal framework that could potentially strengthen the democratic process and enhance the integrity of the Single Market.
8. On the basis of the above steps, the analysis finalised the problem definition, including assessing the issues of legal uncertainty and distortions of competition.

Subsequently, the forward-looking analysis:

9. Finalised the specific and general objectives of the desired action.
10. Refined the policy options based on the final problem definition.
11. Carried out the impact assessment (including quantifications as far as relevant data could be collected and qualitative assessments otherwise).

The study analysis presents in section 2 five specific problems as part of the problem definition. It then discusses the specific objectives of the study, each linked to a given problem. Sections 6 and 7 present the proposed policy blocks and preferred policy alternatives, the options within each block are compared. The overall impact of the preferred policy package (across blocks) is then assessed, as well as its proportionality (with respect to the policy objectives pursued).

1.2. Introductory context: the political advertising market in the EU, actors and processes

The market of political advertising in Europe, and the actors and processes which operate within this market, are fundamental elements to describe as part of the baseline.

The EU online political advertising market has been steadily growing in the past years, although it continues to be relatively small when compared with the United States or Canada. Estimates put the size of the online political advertising market in Europe at over EUR 100 million in 2019². Exact figures on the costs and spending of online political advertising services are scarce and vary to a large extent among sources. This makes inferences about the market challenging. The present analysis is based mainly on the Ad Transparency Report published by the Mozilla Foundation, which covers adverts placed via Google and Facebook in the elections to the European Parliament

² According to analysis by the political tech firm, Worldacquire, political parties and organisations across Europe spent at least EUR 100 million to advertise on Facebook and Google for their election campaigns in 2019 <https://worldacquire.com/2019/12/30/which-political-parties-in-europe-spent-the-most-on-online-political-advertising-in-2019/>

in 2019, and Google Transparency, which records data from 20 March 2019 to 20 April 2021. Other sources are used whenever possible to fill in data gaps.

Market characteristics of the 2019 European Parliament election

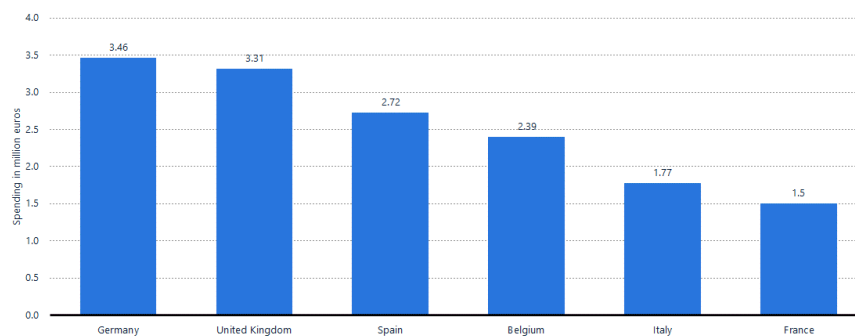
In the weeks leading up to the 2019 European Parliament election, a total of 241,500 ads amounting to EUR 23.5 million were published on Facebook from the beginning of March to the end of May 2019 in the (then) 28 EU Member States. Out of this total, 16% of the expenditure was borne by the EU institutions and pan-European parties, while the larger share (84%) was borne by national parties, individual candidates, businesses, and civil society organisations³.

The Member States in which the highest expenditures on Facebook⁴ advertising recorded in 2019 were Germany, UK and Spain, see the Figure below. Taking into account population sizes, the UK records double the expenditure of France on targeted political advertising, EUR 3.31 million and EUR 1.5 million respectively.

Figure 1: Countries which record the highest expenditures on targeted ads on Facebook

European Elections: countries that spent the most on targeted political advertising on Facebook from March 1 to May 26, 2019* (in million euros)

EU countries with the highest targeted political advertising spend on Facebook 2019



Source: EDJ Net and Facebook, via Statista

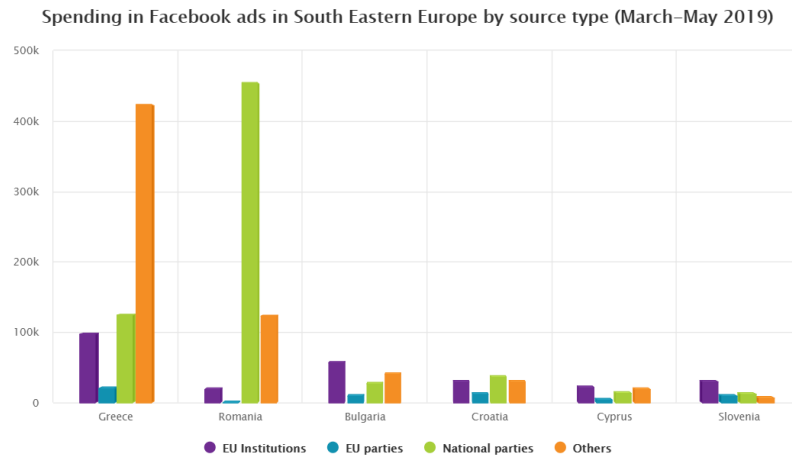
At the other end, Slovenia, Croatia, Romania, Bulgaria, Greece, and Cyprus spent a total of EUR 1.6 million on paid political ads on Facebook. This is slightly over the total spent in France. Investments were particularly high in Romania, where nearly half a million euros were spent on political ads on Facebook in three months – around EUR 2,300 per 100,000 inhabitants, more than double that of other countries in the region⁵ (See Figure 2 below).

³ Observatorio balcani e caucaso transeuropa, available at: <https://www.balcanicaucaso.org/aree/Romania/Quanto-costa-conquistare-gli-elettori-su-Facebook-195140>

⁴ Representatives from European political parties and MEPs interviewed indicate that Facebook was wide used in the 2019 European Parliament campaign and that many political actors spent more than half of their budget for online political advertising spent of Facebook

⁵ Ferrari, L. Gjergji, O. "Political advertising on Facebook in South-East Europe", European Data Journalism Network, 17 June 2019. Available at: www.europeandatajournalism.eu/eng/News/Data-news/Political-advertising-on-Facebook-in-South-East-Europe

Figure 2: Spending in Facebook - South Eastern Europe



Source: EDJNET; Facebook.

N.B: the category 'Others' refer to individual candidates

There are some major differences with regards to the amounts spent in Facebook per voter in each Member State. Actors in Malta and Belgium spend the most with approximately EUR 0.3 spent for each citizen eligible to vote in the country, followed by the Netherlands and Denmark. In contrast, potential voters in Portugal and Poland were targeted the least, with just EUR 0.01 spent for each⁶.

Spending on Facebook advertising per country where the ads were targeted

From 1 March to the last election day, Sunday 26 May. In euro.

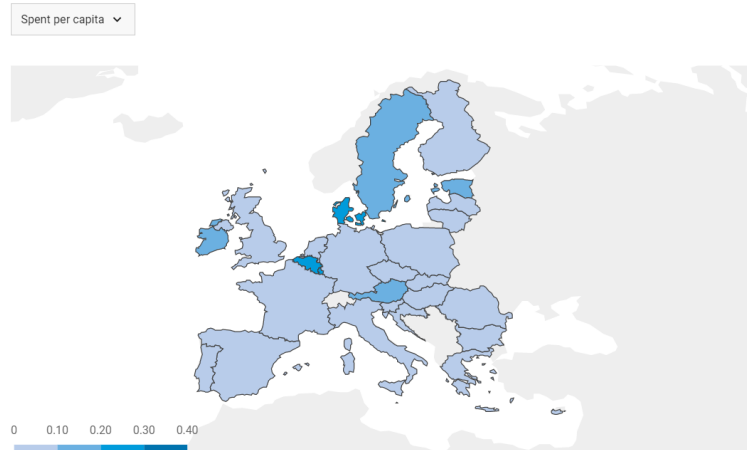


Figure 3: Spending on Facebook per country (per capita) – targeted ads

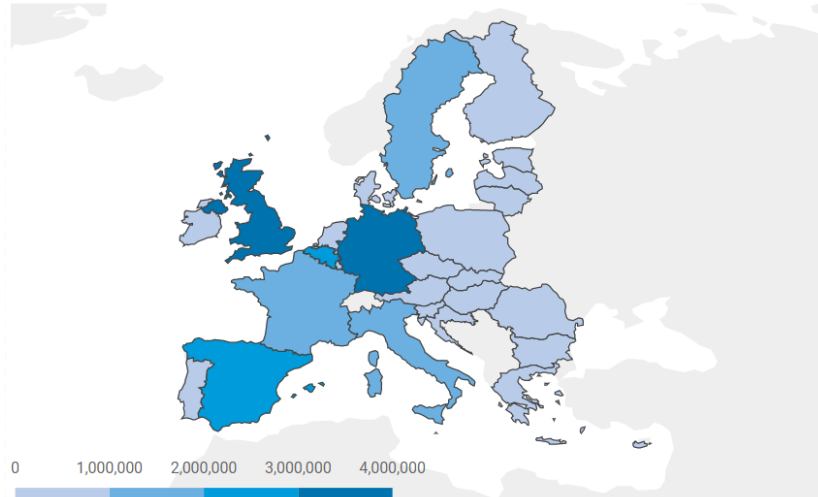
Source: Facebook via European Data Journalism

⁶ Barbiroglio, E., "Facebook has become political parties' main advertise"r. European Data Journalism Network, 8 June 2019. Available at: www.europeandatajournalism.eu/eng/News/Data-news/Facebook-has-become-political-parties-main-advertiser

Figure 3: Spending on Facebook per country (total) – targeted ads

Spending on Facebook advertising per country where the ads were targeted

From 1 March to the last election day, Sunday 26 May. In euro.



Source: Facebook via European Data Journalism

Table 1: Online political advertising by country (Google and Facebook combined)

Platform	N° of advertisers	Number of ads	Impressions	Spend (€)
Facebook	26,429	235,399	6,120,000,000	44,000,000
Google	117	15,715	367,000,000	785,000

The expenditure on online political advertising tends to be much higher in Western Europe and the Nordic countries. The electoral cycles are a core element driving the spending therefore, spending per Member State should be analysed in this context, but other variables such as the size of the population need to be considered.

Market characteristics of the advertising industry in Europe

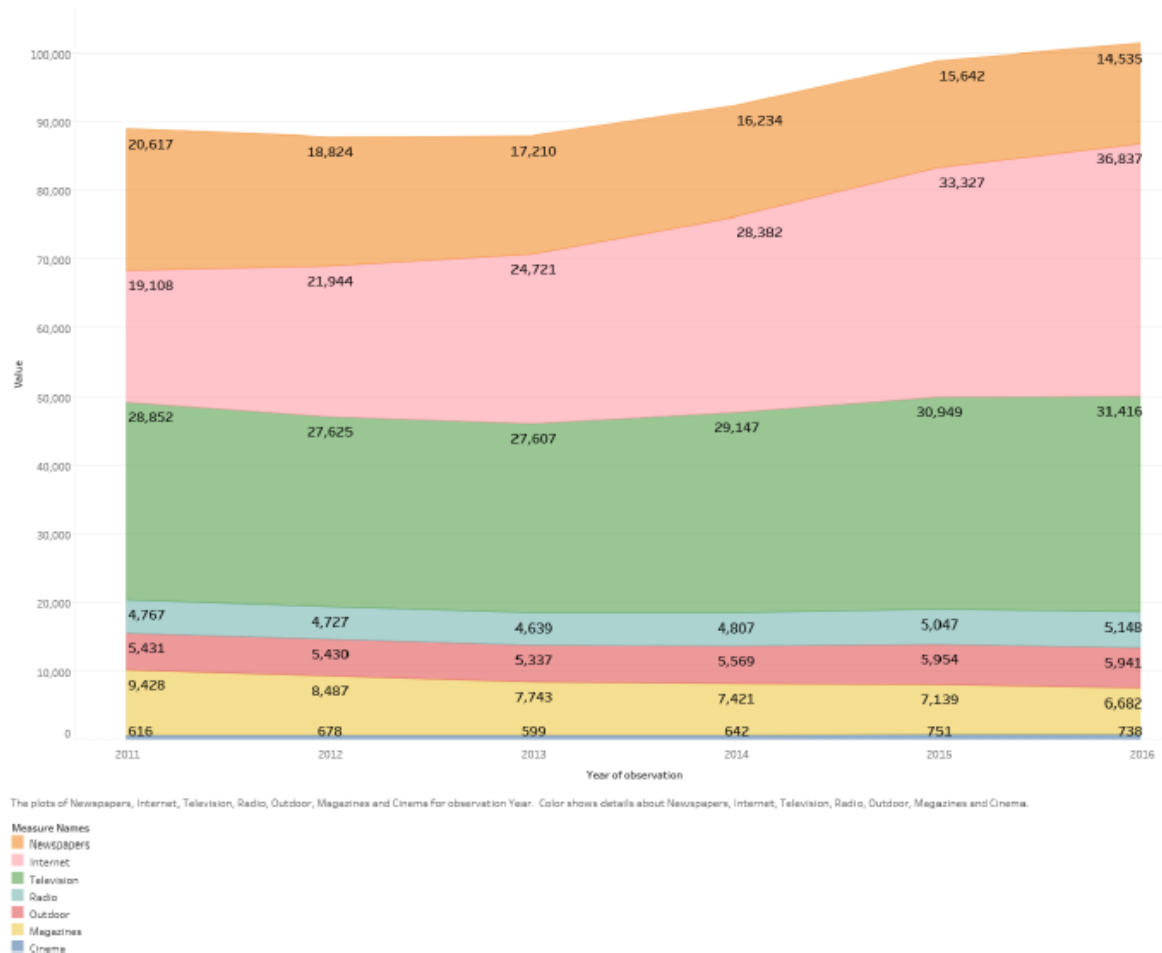
It is not possible to determine with precision the evolution of the online political advertising industry, due to the lack of statistics on the expenditure on online political advertising. This is due to, among other reasons, the lack of a common definition of online political advertising across Member States (see Section 2.5), the lack of a common definition of political advertising across online platforms signatories of the Code of Practice on Disinformation (see Section 2.1.2), and the lack of (sufficient) disclosure obligations on parties and candidates at the national level (see Section 2.1.3 and Section 2.4). Furthermore, industry representatives consulted indicate that the provision of online advertising services is often part of a bundle of services provided to candidates and parties, and that disaggregating the expenditure on online political advertising from other political campaigning services would be business sensitive for the providers of services.

However, while it is not possible to quantitatively determine the growth of the online political advertisement (in absolute terms and vis-à-vis offline political advertisement), there is available data on the online advertising market in the EU that clearly indicates that the online advertising market overall is growing fast, both in absolute terms and relative to offline advertisement, as presented in the in the tables below.⁷ The figure below shows the evolution of the advertising media market in Europe from 2010 to 2016 per type of media. Online advertising went over this

⁷ European Audiovisual Media Observatory (2017) The online advertising market in the EU - Update 2016

period from being the third greatest advertisement market in Europe – representing EUR 19.108 million annually, behind newspapers (EUR 20.617 million) and television (EUR 28.852 million) – to lead the sector, as the value of online advertising services provided in Europe accounted for EUR 36.837. Online advertising grew in Europe 92% between 2010 and 2016 to represent more than 34% of the advertising market.

Figure 4: Advertising market per media type in Europe 2010 - 2016 (in EUR M)

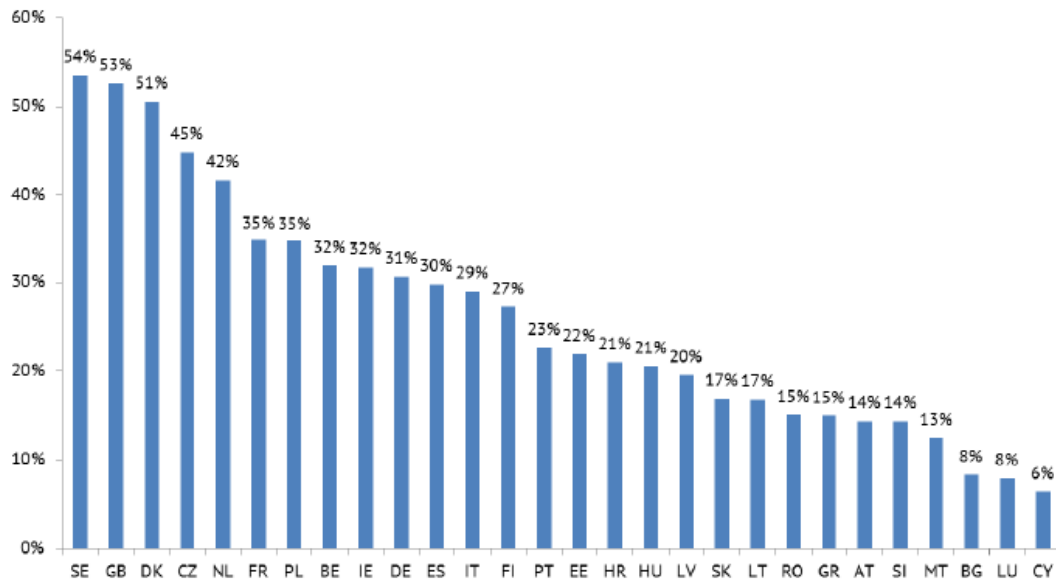


European Audiovisual Media Observatory⁸

Although the market is growing across the EU, the overall greater prominence of online advertising over other advertising media, including broadcasting services and newspapers, is not even across the Member States. The table below shows the share of online advertising out of total advertising by country. Whereas in two EU-27 Member States online advertising represented more than half of the total expenditure in advertising in 2016 (Sweden and Denmark) and more than a third of the total expenditure in advertising in four of them (Czechia, the Netherlands, France, and Poland), online advertising represented less than a sixth of the total advertising in eight Member States (Romania, Greece, Austria, Slovenia, Malta, Bulgaria, Luxembourg and Cyprus).

⁸ European Audiovisual Media Observatory (2017) The online advertising market in the EU - Update 2016

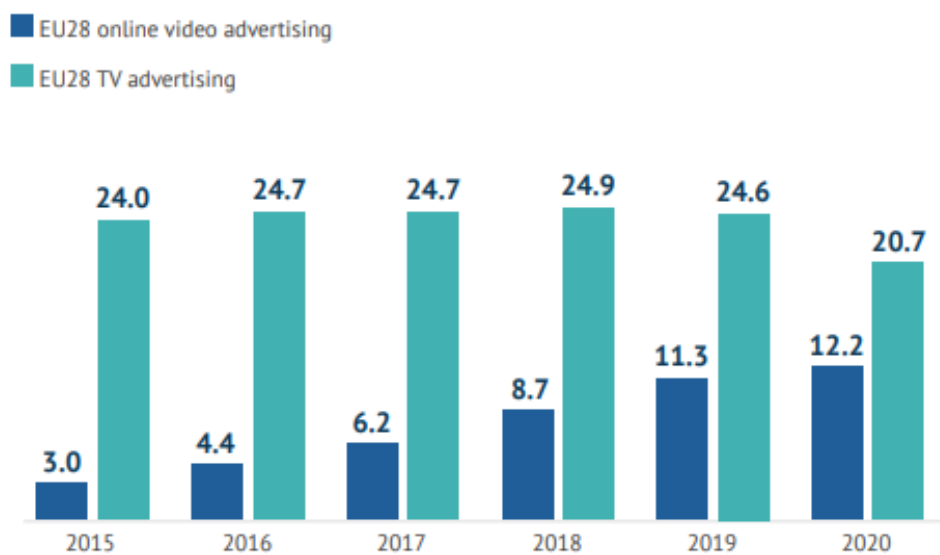
Figure 5: Share of online advertising out of total advertising by country in 2016, in percentage



Source: European Audiovisual Media Observatory⁹

More recent data is available on video advertising. Consulted stakeholders and the review of the advertisement repositories of Facebook and Google indicate that (online) video advertising is a commonly and frequently means of advertising used by political parties and candidates in Europe. The graph below shows how in the period between 2015 and 2020 online video advertising grew fourfold from EUR 3 billion to 12.2, while TV advertising declined from EUR 24 billion to 20.7. Even throughout the COVID pandemic, the revenues of the online video advertising industry grew by EUR 0.9 billion EUR.

Figure 6: Online and TV video advertising expenditure in EU 28 (EU 27 plus the UK for 2020) 2015-2020 (in EUR billion)



Source: European Audiovisual Media Observatory¹⁰

⁹ European Audiovisual Media Observatory (2017) The online advertising market in the EU - Update 2016

The same report¹¹ argues that the data-centric nature of online advertising and the possibility to target viewers will mean that the current trends will be sustained over the next years, which is parallel to the trend for press and broadcasting media to increasingly develop their online services merging with them.

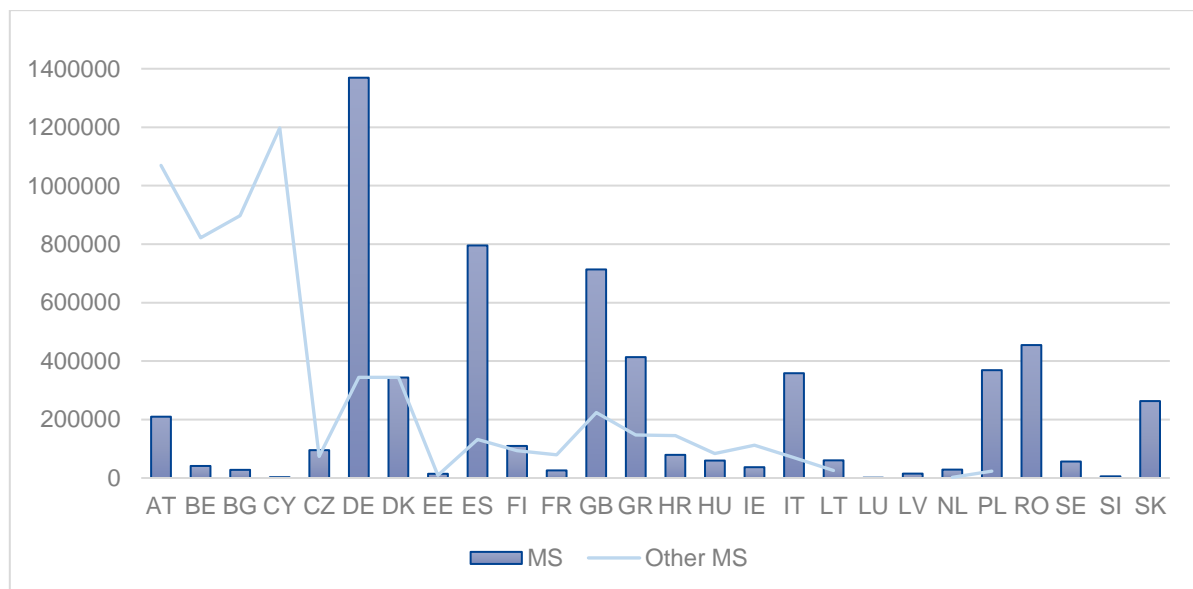
Stakeholders consulted, including political parties and international organisations, verify that the rate of **growth of online advertisement** over the last decade is not substantially different from the **growth of online political advertising** vis-à-vis offline political advertising. Over a very short period, coinciding with the time span between first order elections in most European countries, the landscape of the advertising industry had substantially changed and online political advertising had become either dominant or on par with offline political advertising. The **high cost-effectiveness of online political advertising and the possibility to target viewers are crucial to political parties**, regardless of their budget and size. Stakeholders including political parties, public state authorities, and international organisations indicate that most political parties across Europe are preparing for the upcoming electoral cycle assuming that the share online political advertising of the total advertising services will increase substantially, with few exceptions for parties whose electoral base is significantly less digitalised than the European average.¹²

1.2.1. Cross-border political advertising

Cross-border advertising is defined as a service in which the actor on behalf of which the service is provided is extraterritorial to the jurisdiction where the advert is posted.

The figure below illustrates the expenditure on political advertising within the Member States and political advertising with a cross-border component between 19 March 2019 to 19 April 2021.¹³ The total amount of cross-border online political advertising reached EUR 6,193,950.¹⁴

Figure 7: Cross-border political advertising¹⁵ 19 March 2019 to 19 April 2021



Source: author's elaboration based on Google Transparency

¹⁰ European Audiovisual Media Observatory (2017) Yearbook 2020/2021 Key Trends

¹¹ European Audiovisual Media Observatory (2017) Yearbook 2020/2021 Key Trends

¹² Stakeholder interviews

¹³ The analysis is based on the data extracted from Google. The data can be divided into political ads posted in a MS (e.g., AT), and political ads that seem to be posted from a different MS (e.g., AT, DE). In many cases the political ad seems to be simultaneously available in various MS (e.g., AT, HU, SK) and its origin is difficult to track.

¹⁴ This figure excludes pan-European political parties, the European Parliament, and other sources which MS could not be clearly identified.

¹⁵ NB: "MS" represents the expenditure within the MS, while "other MS" indicates the expenditure coming from other MS.

The cross-border activity is conducted by political parties, political candidates, civil society organisations and companies. Among the later, there are communication agencies, advertising and marketing agencies, consultancies and other businesses.

The most prominent bilateral cross-border activity in terms of expenditure can be found in the Table below.

Table 2: Bilateral cross-border expenditure in the 2019 EP elections

Direction of the expenditure	Total	Direction of the expenditure	Total
Germany to Austria	€ 190,500	Ireland to United Kingdom	€ 145,600
The Netherlands to Belgium	€ 348,300	Slovakia to United Kingdom	€ 145,150
Poland to Germany	€ 135,800	Slovenia to Croatia	€ 130,300
Sweden to Denmark	€ 239,400	The Netherlands to Ireland	€ 112,350

Source: author's elaboration based on Transparency Report Google

As it can be observed, most cross-border flows of money occur between neighbouring countries. The only exception is the flows going from the Netherlands to Ireland and from Slovakia to the UK, likely due to the presence of nationals the Member State where the political actor requested the advertisement service in the Member State where the advertisement was displayed.

In total volume of bilateral expenditure, the Netherlands tops the list with EUR 462,000 spent in Belgium and Ireland. Slovakia follows with EUR 259,850 spent in Czechia, Greece, Hungary, and Poland. Sweden ranks third with EUR 239,400, all spent in Denmark.

More information on cross-border political advertising and the political advertising industry is provided in Annex 7.

Conclusions

The fact that cross-border advertising has been identified (and to an extent quantified) in 26 Member States, that it is present in national as well as European elections, and that online political advertising in general is continuing to replace its offline equivalent, indicates that the phenomenon will continue to develop. In a context of rapid technological substitution in the advertisement industry, the flows of cross-border online political advertising continue to grow as the online share of the advertising industry grows and the COVID-19 pandemic accelerates the transition towards greater use of online services in detriment of offline services.

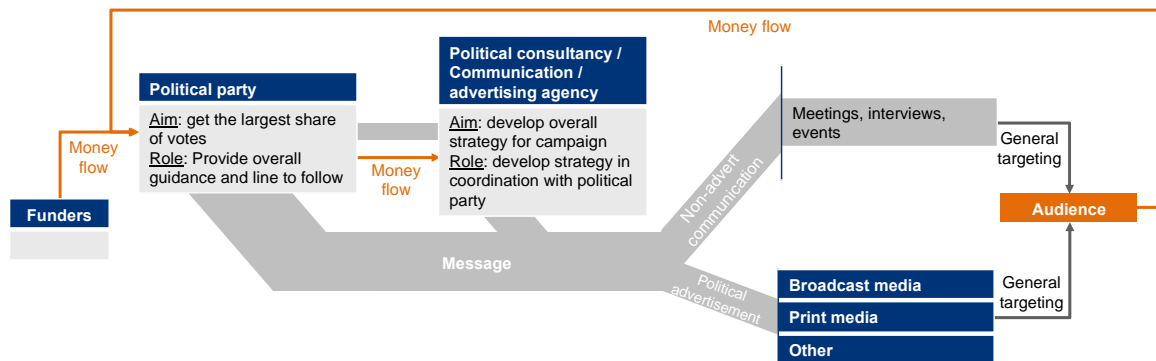
1.2.2. Key actors and processes

The process of advertising political messages through political adverts has been revolutionised in the digital age. Traditionally, political advertising was a fairly straightforward process, involving a political party, a message, a medium and an audience. Political parties had clear channels to deliver their message to the audience, directly (door to door canvassing, political meetings, leafleting etc.) or via the medium of broadcasting or print media. Within the specific field of political advertising (i.e. paying the medium on which the message is delivered), costs could be relatively high, as the advertising space to purchase was in direct competition with other advertising actors.

The message could be targeted at certain audiences on the basis of the type of publication or channel the advert was placed on or the time of day at which it was broadcast. This relatively simple process allowed for a level of transparency in identifying source of funding (bearing in mind, a substantial part of political funding comes from the electorate, either in the form of public financing or membership of parties and other donations).

The diagram below provides a simplified view of the actors and processes traditionally in play in political advertising.

Figure 8: Processes and actors in traditional political advertising



To a large extent, the regulatory framework reflects this model and often fails to take into account the evolution over the past few years. A recent study¹⁶ showed that the following factors impact the political communication and advertising process creating gaps in the regulatory framework.

- An increased number of groups (non-party organisation such as lobbies, associations, etc.) seeking to promote specific ideas;
- Increased granularity of topics; while before, political parties tended to communicate on their manifesto as a package, support and political advertising from non-party organisation can now target specific causes;
- Increased variety of platforms; whereas political advertising was limited to broadcast (radio and television) and print journalism (as well as billboards), paid messages can now appear on web search results, social media applications, streaming services etc.;
- Increased ability to target the audience due to the exponential increase in the availability of data on users (both personal data and information that can be inferred from data).

This evolving situation means that the political advertising market, and the type of actors involved in the process of designing, preparing, procuring, funding and broadcasting a political advert is much more complex than it used to be. The existing regulatory framework thus, faces challenges in regulating the evolving situation.

¹⁶ Dr Julian Jaursch, Defining Online Political Advertising – How difficulties in delineating paid political communication can be addressed, (Stiftung Neue Verantwortung), 2020.

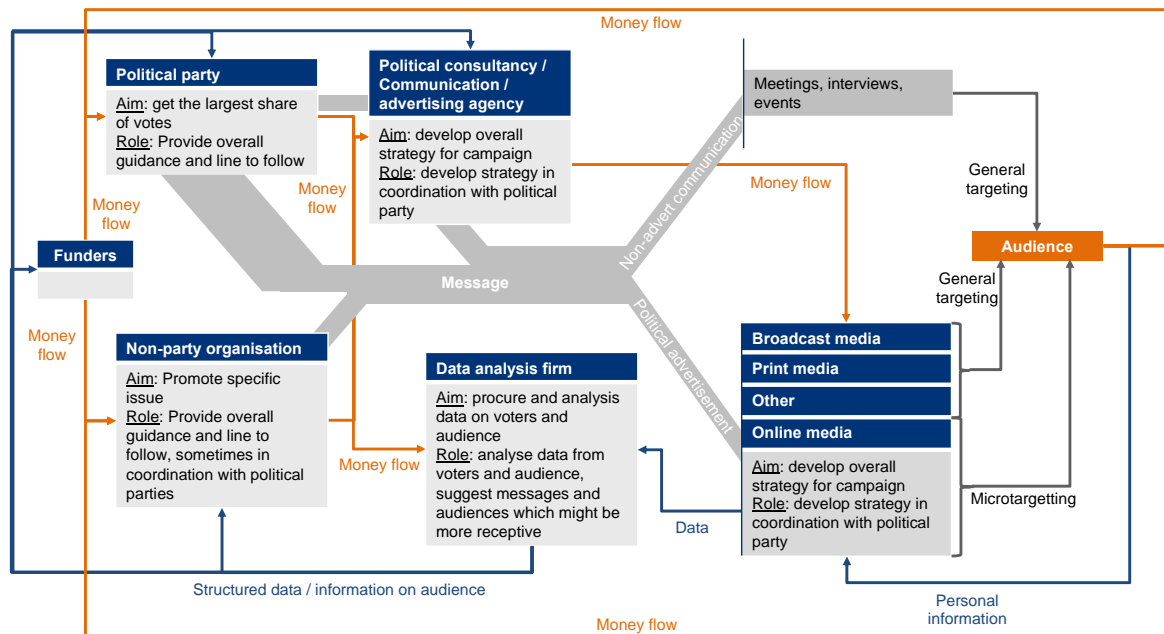


Figure 9: Processes and actors in modern political advertising

The figure above provides an overview of the increase complexity in political advertising, showing the money flows as well as the data flows, which can be used to target and refine the electorate aimed at.

The figures below illustrate the whole market of online political advertising services. The tables below provide a simplified overview of the actors involved and the flows of data and money in the case of the provision of ad banners, ad videos, and posts on social media respectively.

Figure 10: Processes and actors in the market of ad banners

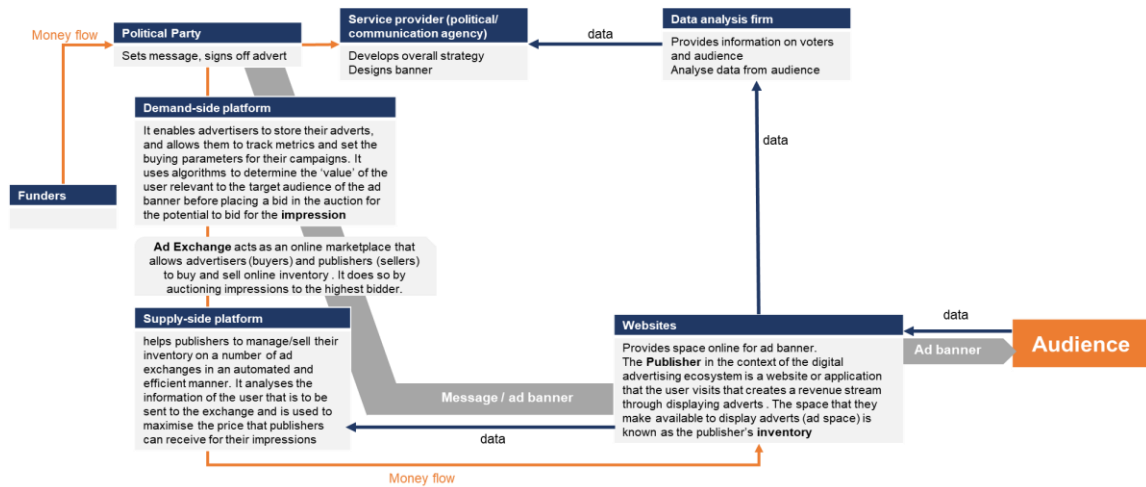


Figure 11: Processes and actors in the market of ad videos

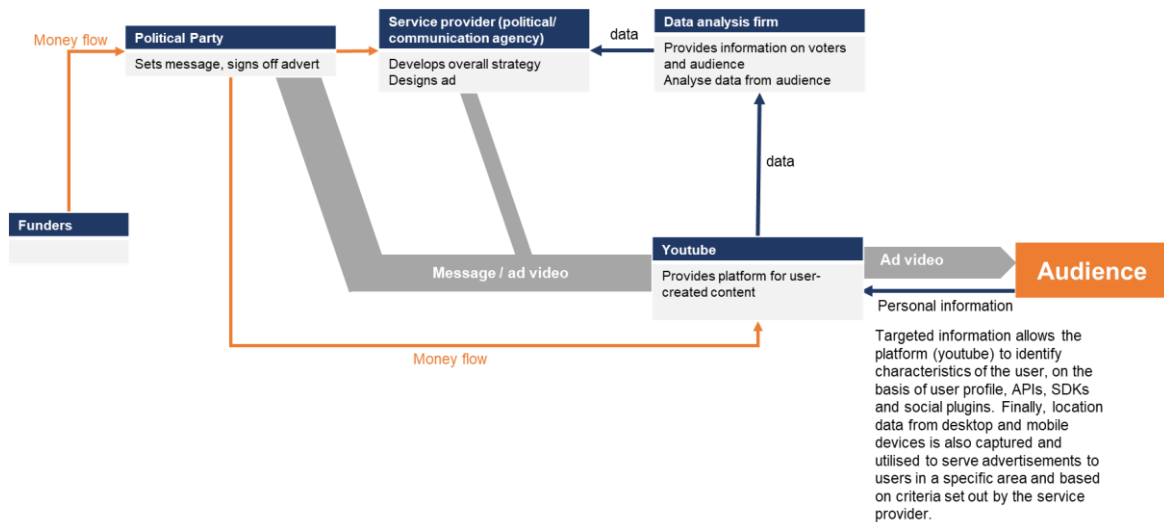
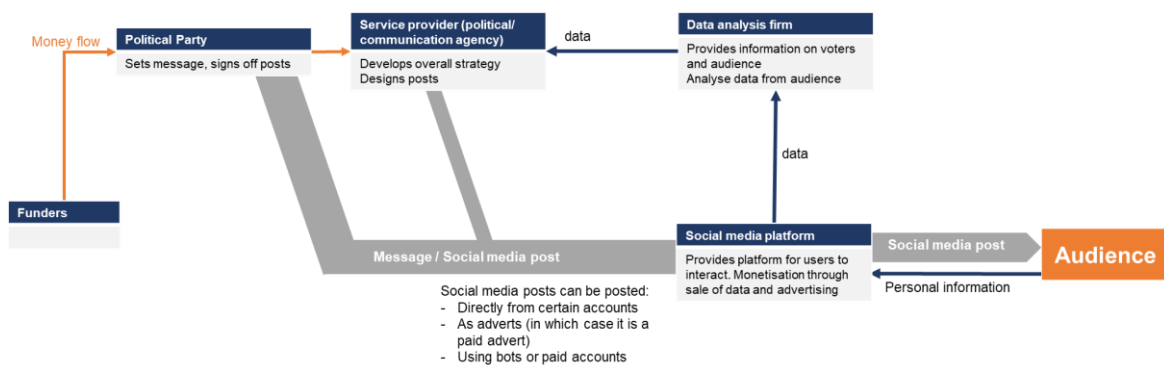


Figure 12: Processes and actors in the market of social media sponsored posts



The mapping of stakeholders involved in preparing, procuring and funding a political advert starts with a typology of these actors, setting out a definition of their role in the political advertising process, examples and their relative importance in the process.

The table below provides an overview of the actors involved and their role in the political advertising process. These are developed in greater detail in the problem definition below.

Table 3: Type of actors in online political advertising

Type of actor	Definition	Role
Political party and candidates	According to the Venice Commission, a political party is defined as a “free association of individuals, one of the aims of which is to express the political will of the people, by seeking to participate in and influence the governing of a country, inter alia, through the presentation of candidates in elections” ¹⁷ .	These are the starting point of any election campaign. During elections, the essence of their aims is to gain the largest share of the vote, although there are some different goals described above (such as pushing their agenda etc.).
Non-party organization	The UK Electoral Commission defines non-party campaigners as individuals and organisations who campaign without standing candidates.	Non-party organisations campaign on issues which can range from local to global ones.
Very large online platforms (VLOPs)	Online platforms which provide their services to a number of average monthly active recipients of the service in the Union equal to or higher than 45 million	They are hosting services which store and disseminate public information. Political advertising on these platforms is targeted either through services offered by these platforms directly or via an intermediary (and on the basis of data they provide or via an intermediary), and it is also subject to recommender algorithms. They are signatories of the Code of Practice on disinformation, and will be addressed in their advertising activity by the Digital Services Act. VLOPS have various policies with respect to political ads (based on various definitions) and some maintain ad repositories.
Other online platforms	Hosting service which stores and disseminates public information, such as news websites, alternative media platforms, forums, etc.	They are hosting services which store and disseminate public information. They publish and host ads directly to users, offer targeting and hosting ad network content.
Other online advertisement services	Includes intermediary services which do not involve the hosting and serving of advertisements.	They handle personal data but do not host content. Nominally, they are required to comply with the GDPR, but it is hard to monitor if this is the case.
Advertisement services	Includes services which are not	Political consulting covers a

¹⁷ Venice Commission, Guidelines on political party Regulation 2nd Edition, December 2020 (CDL-AD(2020)032).

Type of actor	Definition	Role
(political consultancies, advertisement agencies, design agencies, campaign management, etc.).	specific to the online environment	wider scope of activities, which at its simplest can be defined as a private organisation (or individual) providing advice to political parties. Wollmann defines it as the “delivery of information and recommendations for political actor and decision makers through scientists as well as economic and societal experts” ¹⁸ . Other advertisement services are involved in the value chain without handling personal data or hosting advertisements.
Traditional media	By traditional media, we mean broadcast and print media.	Beyond the general role of the media to convey messages, broadcasters play a specific role during election cycles with the obligation to cover them in a fair, balanced and impartial manner. Candidates and parties are allocated airtime based on different aspects (share of the vote in previous elections, expected share of the vote etc.). ¹⁹

¹⁸ Wollmann, H. (2001). Politikberatung. In N. Dieter (Hrsg.), Kleines Lexikon der Politik (pp. 376–380). München: Beck.

¹⁹ Ernesto Apa et al., “Media coverage of elections: the legal framework in Europe” (Strasbourg: European Audiovisual Observatory (Council of Europe), 2017), pp 30-34 and pp 48-52 and

2. What is the problem and why is it a problem?

Chapter 2 constitutes the problem definition of this impact assessment study. It outlines the size, scale and causes of the problem identified. The problem definition also explores the role of the EU in addressing the problem.

Five different sets of policy problems have been identified in this study in relation to online political advertising in Europe:

1. Insufficient transparency in online political advertising;
2. European political parties' online political advertising is not sufficiently regulated;
3. Challenges posed by the use of micro-targeting and other techniques;
4. Difficulties to enforce the legal framework; and
5. Additional costs in the cross-border provision of services.

The following problems further expand on the consequences of the insufficient transparency. These are more specific, ranging from the challenges linked to main techniques used in online political advertising to the difficulties of enforcing the legal framework and the additional costs in the provision of cross-border services.

Each problem is discussed in the sub-sections below.

2.1. Problem 1: Insufficient transparency

Problem 1 is concerned with insufficient transparency and is structured into three dimensions which all relate to a lack of transparency in the online political advertising market for different actors. These dimensions cover:

- The limitations in the ability of EU citizens to recognise an online political advert as such and identify key information about the online political advertisements that they receive (problem 1.1).
- Challenges around how interested actors (journalists, civil society organisations, and political actors, including parties, candidates and campaigns) do not have sufficient information on online political advertising activities of other political actors to ensure accountability (problem 1.2.).
- Challenges around how a lack of transparency requirements of market actors towards public authorities in Member States in turn affects the ability of public authorities to hold these actors accountable within the legal framework in a binding manner (problem 1.3.).

2.1.1. Problem 1.1: Insufficient transparency to the viewer of online political advertisements

In relation to viewers of online political advertising, the question of transparency presents two interconnected issues. The first of these relates to the dissemination of advertisements that are not easily recognisable as such, often because they masquerade as journalistic or so-called 'organic' content shared or created by other users. The image below is an example of a political advert which is topic-based but does not disclose any information. The image, which could be interpreted as emotive, depicts a bull and bull fighter with the text implying that it is a topic-based advert on

animal rights. However, the advert was used by the Vote Leave Campaign during the 2016 Brexit referendum.^{20, 21}

Figure 13: Example of an opaque political advert



Source: BBC

The second is that key information to the viewer of the advertisements online is not provided alongside the ads, making it harder for the viewer of the political advertisement to understand by whom, for how much money, and why (or using which techniques) they have been targeted by that specific advertisement with a political purpose in a subliminal fashion.

Transparency in political advertisement, including online political advertising, is an essential principle of democratic processes. Voters can take more informed decisions if they can distinguish the type of content they receive (news, organic content, political advertising) and can better decide what party or candidate they want to support with their vote. The 2017 Citizenship Report acknowledges that representative democracy requires an informed and engaged electorate, which is in turn supported by transparency²².

Providing more information to viewers of political ads allows them to critically assess the ads targeted at them. Providing information to viewers of political ads does not coerce or steer them in any direction, but instead boosts their ability to identify that they are being targeted and the reasons why they are receiving a specific message²³.

Drivers

The regulation of political advertising varies greatly across Member States. Most do not have sufficient provisions for online political advertising in the current scenario (see Annexes 4 and 5). In the specific case of providing transparent information on the face of political advertisements, the results of the legal mapping show that only Spain includes the specific obligation for an online political advertisement to indicate what it is²⁴.

The Code of Practice on Disinformation establishes the importance of transparent online political advertisements, and advertisements in VLOPs are typically labelled as political advertisements,

²⁰ <https://www.bbc.com/news/uk-politics-eu-referendum-36270209>

²¹ <https://www.bbc.com/news/uk-politics-eu-referendum-36270209>

²² European Commission (2017) Strengthening Citizen's Rights in a Union of Democratic Change

²³ Hertwig R, Grüne-Yanoff T. Nudging and Boosting: Steering or Empowering Good Decisions. *Perspectives on Psychological Science*. 2017;12(6):973-986. doi:10.1177/1745691617702496

²⁴ Ley Orgánica 5/1985, de 19 de junio, del Régimen Electoral General. Available at: <https://www.boe.es/buscar/pdf/1985/BOE-A-1985-11672-consolidado.pdf>

and the actor on behalf of which it is conducted is clearly shown²⁵. However, reports indicate that transparency is missing from political advertisements frequently, as illustrated by case studies in the Netherlands and Czechia²⁶.

Due to its self-regulatory nature, the Code of Practice's enforcement and monitoring are not sufficient to ensure high levels of transparency²⁷. Indeed, the code addresses political advertising as one of five pillars of action, but the code only applies to those service providers that have signed up to the code as part of self-regulatory actions. In this context, the VLOP Twitter decided to stop providing any political advertising service over its platform, including not only sponsored content referencing a political party or candidate, but also references to a regulation, legislation, directive, and judicial outcome and solicitations of financial support among others.²⁸

As a result, the political adverts published online are sometimes designed to resemble news or organic content, similar to the example provided above, with the intention – or at least the effect – of manipulating viewers. How an advertisement is designed, and the measures taken to mark it as an advertisement play an important role in viewers' ability to recognise (misleading) advertising and distinguish it from journalistic or organically-shared content.

Even where citizens are able to recognise political advertising, a lack of transparency can occur where ads fail to provide key information that would enable the viewer to identify, for instance, their sponsor, the criteria used in targeting and the amount spent.²⁹ This can sow doubt and confusion among viewers and risks undermining democratic discourse across the EU.

Size and scale of the problem

The literature reviewed as part of this study suggests that viewers often find it difficult to distinguish between organic information on political topics and political advertising in the online space³⁰. NGO and academic experts interviewed for this study agreed that the question of transparency between paid advertisements and news is closely linked with how online platforms and political parties present advertisements to viewers. Whereas in traditional media, there is a clear distinction between paid political advertising and news according to the information provided by stakeholders, as the former is clearly labelled and carries an advertising disclaimer, recent Eurobarometer data shown in the figure below suggest that in the online environment it is often difficult for viewers to recognise paid-for political material and to distinguish it from other political content., such as organically shared content that is not sponsored or from journalistic content³¹.

²⁵ Code of Practice on Disinformation. Available at: <https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation>.

²⁶ European Partnership for Democracy (2020) Virtual Insanity? The need to guarantee transparency in digital political advertising. Available at: <https://epd.eu/wp-content/uploads/2020/04/Virtual-Insanity-synthesis-of-findings-on-digital-political-advertising-EPD-03-2020.pdf>

²⁷ VVA, DisinfoLab (2020) Study for the "Assessment of the implementation of the Code of Practice on Disinformation" SMART 2019/0041.

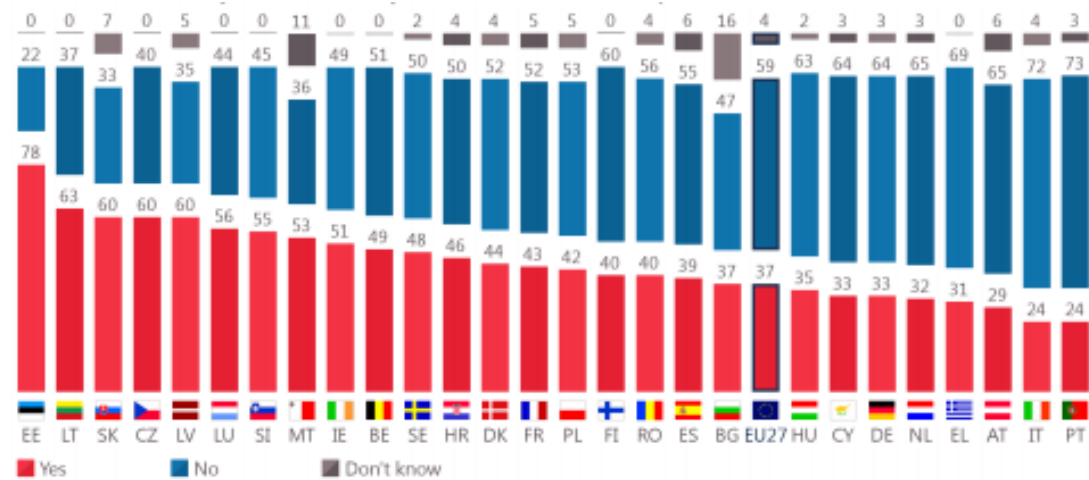
²⁸ Twitter – Political content: <https://business.twitter.com/en/help/ads-policies/ads-content-policies/political-content.html>

²⁹ See, for example, Fool me once: Regulating "fake news" and other online advertising (2018) Wood, A. K., Ravel, A. M. Available at: https://southerncalifornialawreview.com/wp-content/uploads/2018/10/91_6_1223.pdf

³⁰ See, for example, Fool me once: Regulating "fake news" and other online advertising (2018) Wood, A. K., Ravel, A. M. Available at: https://southerncalifornialawreview.com/wp-content/uploads/2018/10/91_6_1223.pdf

³¹ Special Eurobarometer 507

Figure 14: Have you been exposed to content you could not easily determine whether it was a political advertisement or not? Response per Member State and EU average



Source: Special Eurobarometer 507

A (large) minority of respondents consider that they have been exposed online to content where they could not easily determine whether it was a political advertisement or not (37%)³². This data suggest a gap in the awareness of exposure to online political advertising.³³

The data also shows wide divergence among nationals of different Member States. For instance, in 18 Member States only a minority of respondents reported that they have been exposed to online content where they could not easily determine whether it was a political advertisement³⁴. There are no immediate factors to explain these differences. The regulatory framework, civic education, media influence and other variables are likely to play a role. It is also possible that majorities of the population in these countries did not even consider the possibility that political advertisements they saw disguised as other type of content were political advertisements.

The EU's recent public consultation on the topic³⁵ also suggests that respondents across the EU encounter political advertising where they are unable to identify key elements including the entities sponsoring the ad, the amount spent on placing the ad and the use of targeting.

While consulted respondents were unable to identify information about the sponsor of political advertising they had encountered, a large majority would favour the disclosure of this information in the ad itself (see Annex 2).

In terms of the problem's temporal scope, and thus the scale of the problem, the shift to the online environment means that political advertising occurs throughout the entire legislative cycle and is

³² 59% believe not to have been exposed to such content and 4% answered 'don't know'.

³³ An analysis of the socio-demographic data shows that this minority is larger among men (40%), respondents between the ages of 15-24 (43%) and 25-39 (43%), those who continued their education up to the age of 20 or beyond (42%), students (46%), managers (45%) and Europeans who consider themselves upper middle class (43%), while a majority of respondents who consider themselves upper class (53%) believe they have experienced content where they could not easily determine whether it was an online political advertisement.

On the other hand, the proportion was lowest among women (35%), respondents aged 55 and over (31%), those who finished their education aged 15 or earlier (24%), retired people (30%), Europeans who consider themselves working class (35%) and those who use the Internet often/sometimes (24%). It may well be the case that people's perceptions diverge from reality when it comes to being able to identify political ads online.

³⁴ The lowest proportions reporting this were respondents in Portugal (24%), Italy (24%) and Austria (29%). At the other extreme, in nine Member States a majority of respondents believe that they have been exposed to such content. The highest proportion was in Estonia (78%), followed by Lithuania (63%) and Czechia, Latvia and Slovakia (60% in all three countries).

³⁵ European Commission, Political Advertising – Increasing Transparency. Available at: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12826-Political-advertising-improving-transparency>

not restricted to election campaigns³⁶. This presents new challenges for policymakers and regulators compared to the traditional journalistic media space.

Consequences

As previously stated in this section, lack of transparency is contrary to democratic principles. In the absence of guarantees of transparency, citizens might progressively lose trust in democratic processes and disengage with them.

In a context where online political advertising is likely to continue to become more prominent vis-à-vis offline forms of political advertising, the effects of the lack of transparency on online political advertising are likely to increase over time. The larger the number of ads to which viewers are exposed, the more complicated it will be for them to process the information critically, and therefore distinguish whether the content of the ad is political³⁷.

2.1.2. Problem 1.2: Societal and political actors lack information to hold political actors accountable regarding their online political advertising activities

Citizens and civil society at large are the main actors that are influenced by political advertising. This makes enhanced transparency a necessary tool to raise their awareness of political advertisement and its effects. This has been noted widely, for example by the Recommendation of the European Commission on election cooperation networks, online transparency, protection against cybersecurity, incidents and fighting disinformation campaigns in the context of election to the European Parliament. This document refers to Commission Report 2017/03038 and the Communication from the “Tackling online disinformation: A European Approach”³⁸ of September 2018 and the Action plan against disinformation, the European Parliament’s resolution on foreign electoral interference and disinformation and Joint Research Centre’s technical report.

However, this study’s primary data collection, including interviews and discussions in stakeholder’s fora, indicate that current transparency measures fall short of providing meaningful information on the use of advertising for political influencing. For example, civil society organisations, with an important role as a watchdog, indicate that greater transparency and access to information is needed in order to sufficiently hold political actors accountable and assess their spending. Journalists also encounter difficulties in obtaining all the data they need, and political actors have the same experience regarding data on online political advertising conducted by other political actors. The potential benefits for public actors are hence related both to increasing the awareness of political ads and their effects, and supporting the possibility to better scrutinise spending on political adverts.

To address this, objectives of the additional transparency specifically aim to enable interested parties in EU, including journalists, civil society organisations and political actors, to have access to information on online advertising by political actors so that they can inform citizens about the online paid political ads by political actors⁴⁰.

³⁶ How Difficulties in Delineating Paid Political Communication Can Be Addressed. Available at: https://www.stiftung-nv.de/sites/default/files/snv_definingpoliticalads.pdf

³⁷ EPD: A comprehensive plan to innovate democracy in Europe: Available at: <https://epd.eu/wp-content/uploads/2020/09/a-civil-society-vision-for-the-european-democracy-action-plan-input-paper.pdf>

³⁸ Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Strengthening Citizen’s Right in a Union of Democratic Change. EU Citizenship Report 2017

³⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions

⁴⁰ Additional information currently available in online advertisement repositories is almost exclusively accessed by interested parties and not by private citizens, as this is time-consuming and requires in depth analysis to yield meaningful findings. However, the data would be available and accessible to everyone in the public.

This supports, in particular, the use of advertising data for civil society organisations that operate as watchdogs and investigative journalists. This was highlighted by the interviewed NGOs and scholars, who were specifically using and analysing the available transparency data. A number of organisations working on democracy and transparency in the digital sphere has issued a joint statement supporting greater transparency of internet platforms⁴¹.

Drivers

The lack of information discussed above is preventing civil society organisations (CSOs) and journalists from holding political actors to account.

According to the civil society entities that use political advertising data, the service providers that allow for online political advertising on their platforms do not have sufficient transparency obligations, such as the disclosure of specific elements of the political campaigns. This is not always due to the lack of an adequate regulatory framework. It is also due to the insufficient cooperation by platforms to provide information. This means that limited data are publicly available for monitoring and analyses.⁴²

The lack of regulation prohibiting or regulating micro-targeted advertising in the Member States is also a driver of the discussed problem. This relates namely to the lack of set obligations on which information about political advertising needs to be published. The general findings of interviews, public consultations, policy papers and literature reviews show that generally NGO actors express their concerns on the lack of transparency regarding online advertisement. The NGOs that are particularly active in the area have also produced a joint statement on the topic highlighting the key concerns.⁴³

The overlapping issues mostly focus on potential for public scrutiny of political advertising, better access to information to fully understand the landscape of political advertising, and protecting the recipients of the advertising from discriminating and potentially illegal advertising practices. According to the CSOs, while there are some industry initiatives to provide additional transparency on advertisement spending, these initiatives fall short of providing reliable, comprehensive information.

Additionally, civil society respondents considered that a narrow definition of the political advertising as advertising conducted on behalf of a political actor was not sufficient to meaningfully capture political advertising that aims to influence the public, as it would leave significant loopholes for actors that aim to influence elections, for example. The actors acknowledged that, if the scope of political advertising is wider, transparency requirements will also impact civil society organisations that are active in issue-based advertising, namely NGOs. Nonetheless, the necessity for the clarification of the scope was heavily echoed by the interviewed NGOs without contradicting views being expressed.

Size and scale of the problem, affected stakeholders

Industry self-regulation on political advertising comes short of the needs of civil society.

The public already has several tools that showcase how additional transparency would affect them. Despite the lack of obligations, there are several existing industry initiatives from the platforms to enhance the transparency including the advertisement libraries provided by the platforms themselves^{44,45}. These initiatives aim to allow analysis of the political advertisement data by providing more transparency on the spending. There are also notable industry initiatives that

⁴¹ Governing Platforms Project, Putting Meaningful Transparency at the Heart of the Digital Services Act Why Data Access for Research Matters & How we can Make it Happen, https://algorithmwatch.org/en/wp-content/uploads/2020/10/Governing-Platforms_DSA-Recommendations.pdf

⁴² Interview programme

⁴³ 8 September 2020, Joint Call for Universal Ads Transparency, <https://epd.eu/wp-content/uploads/2020/09/joint-call-for-universal-ads-transparency.pdf>

⁴⁴ Facebook, ad library:

https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=

⁴⁵ Google, Transparency report: <https://transparencyreport.google.com/political-ads/home>

range from making advertisement more transparent for the users seeing it⁴⁶ to verifying the client behind the advertisement.⁴⁷

The transparency measures include providing information for the users that explains why they are seeing the advertising, how they are being identified as a target for the advertisement and who is behind the advertisement. The measures are similar through most of the Member States, as the business model of the platform remains similar in different jurisdictions. The platforms' own initiatives support this further by providing information on political spending, which may as well vary from country to country due to the differences in national regulation.

However, in interviews, written EDAP public consultation responses, and previously mentioned public statements,⁴⁸ the NGOs did not find the platforms self-regulatory measures sufficient to provide reliable data.⁴⁹ Almost all NGOs that responded to the EDAP public consultation considered that ensuring transparency of platforms with a third-party verification was necessary. Further discussions with civil society organisations elucidated that these commitments to transparency under self-regulatory regimes in place were not met, either because the information provided was not provided in a timely way, or in a complete fashion, or it was not coherent. Therefore, in the absence of complete data on online advertising that can be processed and analysed during and not after the election periods, these organisations cannot effectively monitor the activity of political actors.⁵⁰

One of the key issues is not limited on the political advertising itself. Nearly all the civil society actors highlighted their concerns of other political influencing that takes place through the social media platforms via non-advertising forms. Focusing on advertisement alone was not considered sufficient to capture all influencing methods used within the platforms. These techniques, that did not use advertising space, focused on manipulating the algorithms by, for example, using bots and networks of trolls to manipulate the online space for additional visibility. Some of the interviewed civil society actors highlighted the need to understand the underlying mechanisms of the platforms, namely via algorithmic transparency, which is further explored in Section 2.3.2. This would allow them to further address different methods for spreading disinformation. The need for stronger transparency requirements was also highlighted by a group of civil society organisations specialised on the topic.⁵¹

Issue-based advertising and impact of advertising regulation on civil society actors

The civil society respondents considered that a narrow definition of political advertising as advertising conducted on behalf of a political actor was not sufficient to meaningfully capture political advertising that aims to influence the public, as it would leave significant loopholes for actors that aim to influence elections, for example. The stakeholders acknowledged that, if the scope of political advertising is wider, transparency requirements will also impact civil society organisations that are active in issue-based advertising, namely NGOs. Nonetheless, the necessity for the clarification of the scope was heavily echoed by the interviewed NGOs without contradicting views being expressed.

⁴⁶ <https://about.fb.com/news/2018/04/transparent-ads-and-pages/>

⁴⁷ <https://blog.google/products/ads/advertiser-identity-verification-for-transparency/>

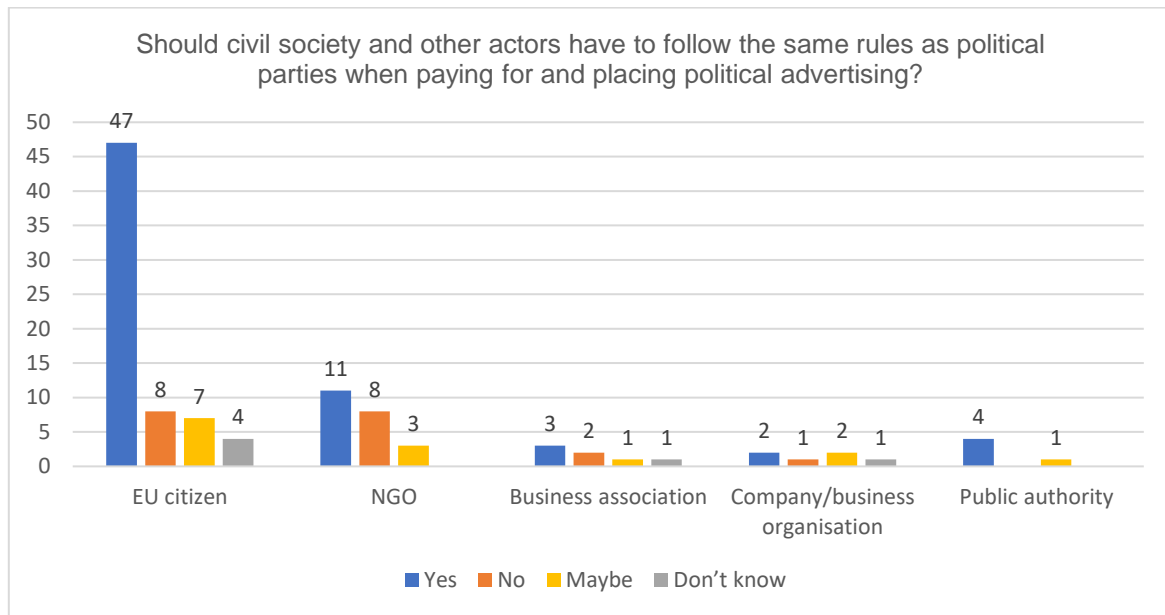
⁴⁸ Including (1) Governing Platforms Project, Putting Meaningful Transparency at the Heart of the Digital Services Act Why Data Access for Research Matters & How we can Make it Happen, https://algorithmwatch.org/en/wp-content/uploads/2020/10/Governing-Platforms_DSA-Recommendations.pdf and (2) Joint Call for Universal Ads Transparency, <https://epd.eu/wp-content/uploads/2020/09/joint-call-for-universal-ads-transparency.pdf>

⁴⁹ See **Error! Reference source not found.**

⁵⁰ Interview programme

⁵¹ Governing Platforms Project, Putting Meaningful Transparency at the Heart of the Digital Services Act Why Data Access for Research Matters & How we can Make it Happen, https://algorithmwatch.org/en/wp-content/uploads/2020/10/Governing-Platforms_DSA-Recommendations.pdf

Figure 15: Open public consultation on online political advertisement, responses



Source: EC Public Consultation

Another stakeholder group affected by the current state of play in relation to transparency and political advertising are **journalists**. Among the responsibilities that journalists take on is their scrutinising role of political advertising and campaigns figures, which is currently limited, especially in the online space. Due to the lack of sufficient access to information, carrying out investigative research and holding political parties accountable for their activities within this area is significantly restricted.

Limited access to public data on political campaigns and comparability of data

The problem of limited access to information by journalists was also confirmed by the study team through conducting literature review, desk research and stakeholder interviews. One overarching conclusion was a substantial lack of quantitative and comparable data in relation to online political advertising for electoral campaigns. The data that is available to the general public originates mostly from online platforms' ad libraries (such as Google and Facebook) and not from government or other civil society scrutiny organisations. The consequences of this self-regulatory approach with regards to data availability poses a significant limit on data cross-checking, where journalists' role is crucial for ensuring that political actors are accountable for their actions.

These findings are consistent with the opinions collected with stakeholders during the interviews. The current self-regulatory measures applied to the online platforms are not sufficient to allow for effective implementation of investigative journalism.⁵² One reason for this is that definitions of political advertising remain unclear and therefore the data gathered in ad libraries does not provide the full scope of the issue. Also, the obligation to provide more transparent data about political advertising is limited to the large online platforms as signatures of the Code of Practice on Disinformation⁵³ and does not include online political advertising channelled via other online means such as smaller online platforms, online newspapers, blogs, etc.

As reflected by the civil society's findings, issue-based advertisement is challenging also for journalists. Similarly, the interviewed European institutions' official pointed out that online political ads are not always tagged as such by their sponsors. This means that in such cases, advertising

⁵² Based on the feedback both from the European institutions and stakeholders representing civil society organisations (including journalists)

⁵³ EC (2021), Code of Practice on Disinformation, available at: <https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation>

of a political nature is not included in ad libraries containing political and issue-based ads. This constitutes a problem as it prevents the general public from being presented with the complete scope of the online political advertising data as journalists cannot successfully conduct their investigations.

Limited skills and resources

Findings from the scoping interviews and stakeholders' interviews indeed acknowledge that the recent setting up of ad libraries by large online platforms was a significant step towards increasing the transparency of political campaigns and advertising. However, as pointed out by nearly all the interviewed stakeholders that use the data, journalists' limited capacity does not allow them to take full advantage of the available data. Therefore, mandating a set of minimum transparency requirements for service providers would enable journalists to hold both political actors and service providers to account.

From the point of view of political parties, there is limited information on campaigns available in a format that is easy to process in real-time, limiting the ability of political parties to monitor the activities of other political parties and organisations. Based on the feedback collected from the Member States, there are very limited means for parties to flag breaches in the electoral rules committed by other parties to the general public. Such inter-party control and checking mechanisms would be beneficial in the electoral discourse and could have a positive impact on the democratic process overall by:

- Discouraging political parties from circumventing electoral rules and thus ensuring a democratic electoral process.
- Increasing the citizen's awareness and political ability to scrutinise parties through sharing information about breaching electoral rules by other parties and raising awareness of the general public about political advertisings and democracy. This view was expressed by a stakeholder from the European institutions in a bilateral interview.

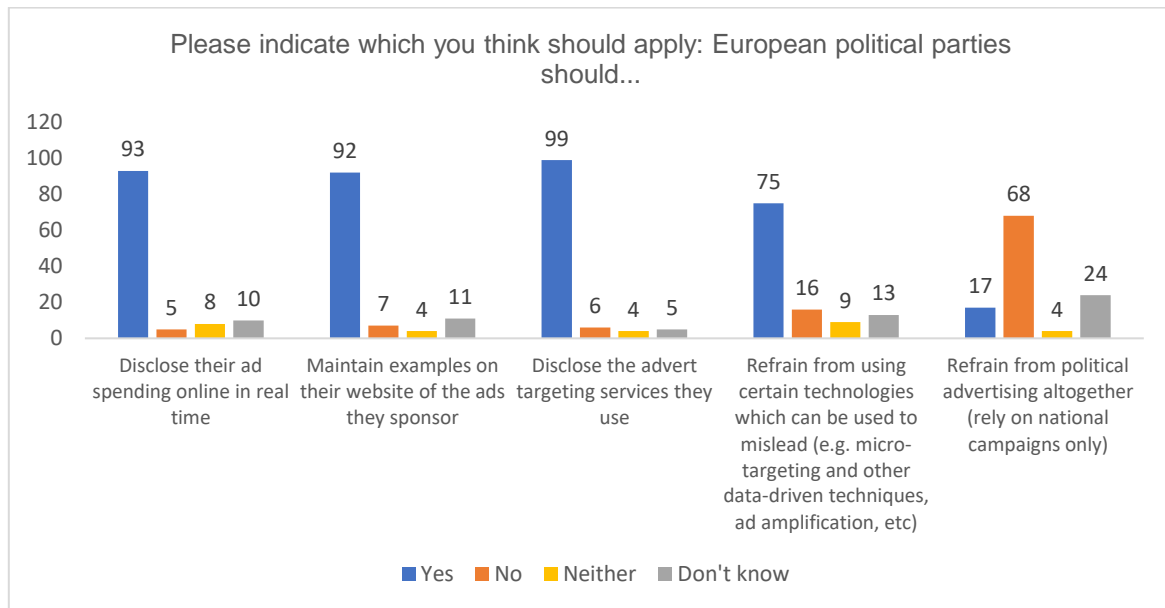
The literature review also established that this was a discussion point within the Dutch Code of Conduct (COC), being the first national Code of Conduct on online political advertising in the EU signed by national political parties and global online platforms⁵⁴. Previously, the Italian Communications Authority (AGCOM) led a self-regulation initiative involving online platforms to self-regulate online political advertising⁵⁵. Precisely because there is no formal enforcement, the strength of the increased transparency is that political parties can report negative behaviour within the political debates.

Nonetheless, the demand for increased advertisement transparency for political parties remains high. For example, the open public consultation on online political advertisement showed that a strong majority of the respondents considered various transparency mechanisms necessary for the European political parties.

⁵⁴ IDEA (2021), First national Code of Conduct on online political advertising in the European Union signed by Dutch political parties and global online platforms, available at: <https://www.idea.int/news-media/news/first-national-code-conduct-online-political-advertising-european-union-signed-dutch>

⁵⁵ <http://www.medialaws.eu/italy-first-attempt-to-self-regulate-the-online-political-propaganda/>

Figure 16: Open public consultation on online political advertisement, responses



Source: EC Public Consultation

Tracing and investigating online political advertising expenditure of political parties

The limited sources of data about political advertising and campaigns that were identified through the literature review, desk research and interview programme point towards the assumption about the limited availability of data to the general public.

Additionally, approximately half of the interviewed political parties were aware of the efforts of academia or NGOs to provide data on scrutiny of expenditures in online political advertisement. However, as previously mentioned, it is challenging for the civil society organisations to compare these figures with the platforms' data due to a lack of common definitions, a lack of resources and insufficient information provided on the platforms.

The platforms' initiatives were also found inadequate. Civil society actors consulted during the study underlined the insufficient transparency on the targeting criteria in Facebook's ad library. Data on the use of targeting is geographically distributed; however, the general public does not have the details if the targeting is indeed based on location or whether other criteria are used for this.

There is also no transparency if the targeting is deliberate or carried out by the Facebook algorithm. This problem is discussed in the recent literature and the research findings indicate that during the ad delivery phase, online platforms play a crucial role in generating skewed and potentially discriminatory results, for instance by altering the audience of the ad compared to the advertiser's intention⁵⁶. The data gaps and lack of transparency in terms of spending devoted by campaigns to Facebook advertising were also discussed in relation the UK electoral trends⁵⁷. There have been national initiatives to bring more transparency, such as the "Netherlands Code of Conduct Transparency Online Political Advertisements", on which the political parties acting as signatories agree to be transparent about the sender, costs and reach of advertisements during the election campaign. However, despite of this initiative resulting in enhanced access to information by interested parties, consulted stakeholders who attempted to map online political advertising in real time for the Legislative election in the Netherlands in 2021 indicate that the

⁵⁶ M. Ali, P. Sapiezynski, M. Bogen, A. Korolova, A. Mislove, and A. Rieke. Discrimination through optimization: How Facebook's ad delivery can lead to biased outcomes. Proceedings of the ACM on Human-Computer Interaction, 3:1–30, 2019, available at: <https://dl.acm.org/doi/pdf/10.1145/3359301>

⁵⁷ Dommett, K., & Power, S. (2019). The political economy of Facebook advertising: Election spending, regulation and targeting online. The Political Quarterly, available at: <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1467-923X.12687>

amount and quality of data gathered was not sufficient to adequately monitor political parties' advertising activities.

The literature review indicates a limited control mechanism from the general public towards the political advertising. One of the issues identified is the extension of traditional election periods due to year-round activity in the online space. The difference in regulation between traditional journalistic media and online platforms is that political advertising occurs throughout the entire legislative cycle and not just during election campaigns.⁵⁸ Existing safeguards that serve to ensure transparency and parity of resources and airtime during election campaigns are not designed for the digital environment.⁵⁹ It is noted that currently, online platforms do not publicly acknowledge sponsors of political ads in the same way that traditional journalistic media does. Likewise, pre-electoral rules (e.g. silence period) have not been extended to social networks and relevant internet platforms.⁶⁰

Another issue discussed in the previous chapter that limits the transparency on political advertising is the lack of mandatory ad libraries for all online platforms, which prevents the public from accurate national or EU-level information (*the DSA includes a mandatory provision in this regard*)⁶¹. Joint control mechanisms, both from the side of users and social media providers, are considered as necessary to provide greater accountability. Given that the use of online media significantly increased during the COVID-19 pandemic, and the greater reliance of the general public on online sources, its full transparency should be ensured⁶².

Consequences

The lack of access to information affects the ability of the general public to scrutinise and hold political parties accountable for their actions. Moreover, manipulative advertising provided as a service on a cross-border basis can negatively affect electoral integrity in absence of the effective monitoring for the general public. Therefore, the EU-level intervention aims to, on a general level, enhance electoral integrity and specifically, ensure that citizens, civil society organisations and journalists have access to information on online political advertising campaigns. This will allow for a more effective enforcement of online political advertising rules.

The cross-border provision of services in the online space affects both the EU and national elections. The European political parties are subjected to a higher level of scrutiny in terms of funding compared to national ones. Therefore, some rules and good practices in terms of transparency of party funding, cyber security, information management, data privacy, and fair campaigning could be transferred from European political parties to the affiliated parties at national level.⁶³

2.1.3. Problem 1.3: Insufficient transparency obligations of market actors limits public authorities' ability enforce legislation

The competent authorities of Member States for monitoring and enforcing online political advertising regulations have a varying degree of access to information that they need to enforce relevant legislation. The degree of access to information depends to a large extent on the state of their legislation on transparency requirements of market actors (e.g., political actors and companies providing political advertising services) towards public authorities in Member States,

⁵⁸ How Difficulties in Delineating Paid Political Communication Can Be Addressed? Available at: https://www.stiftung-nv.de/sites/default/files/snv_definingpoliticalads.pdf

⁵⁹ EDAP

⁶⁰ Special Eurobarometer 477 Democracy and elections

⁶¹ A comprehensive plan to innovate democracy in Europe. Available at: www.youthforum.org/comprehensive-plan-innovate-democracy-europe

⁶² Global overview of COVID-19: Impact on elections. Available at: www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections

⁶³ EPD: A comprehensive plan to innovate democracy in Europe. Available at: <https://epd.eu/wp-content/uploads/2020/09/a-civil-society-vision-for-the-european-democracy-action-plan-input-paper.pdf>

and on the smoothness of cooperation of public authorities with online platforms to obtain information, which is elusive due to the cross-border and extraterritorial nature of online political advertising.

Drivers

The drivers for the lack of information are twofold. First, as identified in the previous sub-section (Section 2.1.2.), publicly available information on online advertising conducted by political parties is often insufficient to conduct effective oversight, as it is often published with a certain delay, incomplete and not precise enough to evaluate if online political advertising expenditure is compliant with funding and financing legal provisions. Occasionally, information provided over these platforms is regarded as inconsistent.

Public authorities at the Member States could potentially cooperate with online platforms to a greater extent than journalists or civil society organisations to obtain data on online political advertising during election periods. However, national electoral authorities emphasised during a meeting of the European Election Network that even when rules apply to political advertising on all types of media, including social media and platforms, **online platforms fail to collaborate and share relevant information to allow electoral authorities and bodies to further investigate online political advertising and political campaign financing.**

Some national electoral commissions reported that there is no cooperation with online platforms during the usual 'reserve period' or 'silence period' preceding polling day. There is an overall **lack of accessibility and transparency about online political content**, which includes the difficulty to access the content of the advertisements and their archives and the difficulty to access who financed these advertisements. As a consequence, it is difficult for national authorities to intervene in a timely manner and monitor online political advertising effectively. Hence, it is tremendously important that online platforms work more closely with national electoral authorities or any other competent body on this matter.

Bulgaria, Croatia, Czechia, Finland, France, Germany, Hungary, Ireland, Lithuania, Malta, the Netherlands, Poland, Romania, Slovakia, Slovenia and Spain have specific rules on transparency of online political advertising and impose obligations to market actors towards public authorities, which apply online. For instance, in France the Law of 22 December 2018 to counter information manipulation introduced a duty of cooperation of online platforms with relevant authorities against the dissemination of false information, especially during the election period. As a result, online platforms must provide the Higher Audio-visual Council (CSA), which is responsible for regulating broadcasting in France, with an annual declaration of the methods of implementation of each of the measures taken to counter the spread of false information. Online platforms also have the obligation to provide clear and transparent information about the nature, origin and methods of disseminating content as well as the identity of persons paying remuneration in return for the promotion of information content.⁶⁴

However, due to the extraterritorial and cross-border nature of online political advertising activities, guaranteeing that Member States' competent public authorities have access to the information they need, **common minimum standards of transparency would be necessary to ensure that the different actors involved in the value chain provide the relevant information to authorities**, regardless of whether a service is provided on a cross-border basis or not.

Consequences

The consequences of insufficient information to public authorities are twofold. The first consequence overlaps with those identified in Section 2.2.1.3. – i.e., citizens are ultimately not sufficiently informed about the online political advertising activities carried out by political parties, candidates and campaigns. In this case, information provided in online ad libraries and voluntarily disclosed by market actors, including political actors, is not sufficient to conduct oversight.

⁶⁴ See Article 11 of French Law of 22 December 2018 to counter information manipulation

The second consequence is that the public authorities responsible for overseeing and enforcing the legal framework⁶⁵ face increased difficulties to apply relevant rules that apply to online political advertising, as they lack evidence on breaches of the legal framework and they often receive information once the elections have been conducted. Interviewed authorities indicate that they do not perceive that they have a sufficiently clear overview of the market of online political advertising in elections in their Member State and funding or provision of services coming from third countries, including other Member States. The case studies on the European Parliament elections in Latvia and the elections in Spain and Ireland show that the ability of national public authorities to obtain information relies on access to information on the provision of services beyond their jurisdictions.

As the insufficient transparency obligations of market actors towards public authorities in Member States is a factor among other factors causing difficulties to enforce the relevant legal framework, this is discussed in detail in Section 2.4.

2.2. Problem 2: Regulation covering European political parties does not sufficiently address online political advertising

The insufficient regulation by Member States of transparency in online political advertising and the insufficient regulation of micro-targeting, discussed in the previous and next sections (Sections 2.1 and 2.3) are not the only factors that affect the transparency of online political advertising across the EU. **The lack of specific provisions to guarantee transparency of European political parties in online political advertising, in the current regulations governing their activities, also fails to provide adequate standards of transparency in online political advertising.** Although problems 1 and 3 also address transparency and micro-targeting, problem 2 refers to them in connection to the regulation of European political parties specifically.

The EU has competence to regulate political parties at the European level by virtue of Article 224 of the TFEU.⁶⁶ The activities of European political parties and European political foundations are regulated by Regulation 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations⁶⁷. The Regulation covers activities at large, including funding and advertising. However, the Regulation is not adequate to monitor in real time the online political advertising activities conducted by or on behalf of European political parties according to the views of stakeholders, comprising both European institutions and European political parties. The absence in the Regulation of concrete provisions to address the specific issues arising from online political advertising means that the Regulation is increasingly becoming outdated over time, as the trends described in Section 1.2 show how online political advertising is quickly taking over a larger share of political advertising to the detriment of offline political advertising.

Drivers

The insufficient regulation of European political parties is a result of the lack of specific rules on online political advertising in the Regulation. This section describes the obligations laid down by Regulation 1141/2014 in relation to advertising by European political parties and foundations.

The Regulation does not permit **European political foundations** to conduct online political advertising or buy online political advertising services. European political foundations may only use

⁶⁵ Public authorities responsible for enforcement and oversight of relevant rules to online political advertising in the Member States tend to be different institutions and their coordination is typically insufficient. This is further presented and discussed in Section 2.3

⁶⁶ Article 224 TFEU. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E224&from=EN>

⁶⁷ Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations. Available over: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32014R1141>

their resources to conduct a set of tasks listed in point 4 of Article 2 of the Regulation⁶⁸. None of the tasks that European political foundations can perform include conducting political advertising⁶⁹. Since the list of tasks European political foundations may perform is exhaustive and does not include conducting online advertising or contributing to electoral or referenda campaigns in any way, European political foundations may not conduct online political advertising. Consulted stakeholders, including European political foundations and European institutions further indicate that European political foundations are aware of this and observe this restriction strictly.

Regulation 1141/2014 includes obligations relevant for online political advertising conducted by **European political parties**. These include transparency obligations in relation to donations and contributions (Art. 20) and transparency in the financing on electoral campaigns in annual financial statements (Art.21), which are made available to the general public by the European Parliament (Art. 32).

These obligations guarantee that the funding of European political parties is transparent and that the public can know about the funding of European political parties. However, it does not guarantee that the public can identify how are the resources spent in the campaign, and interested actors and public authorities cannot hold European political parties accountable in real time for the expenditure in online political advertising during elections.

In the lack of provisions in Regulation 1141/2014 on online political advertising, additional obligations would be necessary in relation to the techniques used in only online political paid-for campaigns and the amounts paid for each advert to ensure that relevant public authorities, interested actors, and the general public are sufficiently informed about the activities of European political parties.

Although there is no EU obligation for European political parties to be transparent in their online political advertising expenditure, there is national legislation that applies to the activities of European political parties. European political parties are in the scope of national legislation on online political advertising as:

- a) in the case of Cyprus, the definition of the scope of political advertising explicitly includes advertising on behalf of candidates to the European Parliament; or
- b) the relevant national laws refer to political parties or candidates, such as in the case of Belgium, Croatia, Finland, Hungary, Latvia, Lithuania, Portugal, Slovakia, Slovenia and Spain; or
- c) the relevant national laws define the scope of political advertising as advertising containing certain elements deemed as political, such as in Bulgaria, Czechia, France, Germany, Greece, Ireland (within currently proposed legislation), Italy, Malta.
- d) In the rest of Member States, general rules on (online) advertising apply to European political parties.

More detailed information on the national legislation is available in Annex 5.

⁶⁸ The list of tasks that European political foundations are allowed to conduct are listed in a comprehensive list in Article 2(4) of Regulation 1141/2014:

'European political foundation' means an entity which is formally affiliated with a European political party, which is registered with the authority in accordance with the conditions and procedures laid down in this regulation, and which through its activities, within the aims and fundamental values pursued by the Union, underpins and complements the objectives of the European political party by performing one or more of the following tasks:

- (a) observing, analysing and contributing to the debate on European public policy issues and on the process of European integration;
- (b) developing activities linked to European public policy issues, such as organising and supporting seminars, training, conferences and studies on such issues between relevant stakeholders, including youth organisations and other representatives of civil society;
- (c) developing cooperation in order to promote democracy, including in third countries;
- (d) serving as a framework for national political foundations, academics, and other relevant actors to work together at European level;

⁶⁹ Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations. Available over: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32014R1141>

Therefore, European political parties are not allowed, for instance, to conduct 'electoral propaganda' in France six months prior to an election by virtue of Article 52(1) of the Electoral Code, and must provide information to large online platforms – those with more than 5 million unique users per month – to indicate that they paid for any promoted content related to a 'debate of general interest', according to Article 163(1) of the Electoral Code⁷⁰. In the case of Spain, they must highlight on the face of the online advertisement that this ad is not commercial and has electoral purposes, as per Article 58(4) of the Organic Law of the General Electoral Regime⁷¹. However, national legal frameworks, as discussed in detail in Section 2.1, are regarded as not adequate to guarantee sufficient levels of transparency in the online political advertising conducted on behalf of any political actor, be it a European political party or any other.

Size and scale of the problem

In order to guarantee that meaningful and sufficient information relative to European political parties' online advertising is available to interested parties, the general public and relevant authorities, it would be necessary that European political parties have increased obligations to provide more information in a more timely manner:

First, effective oversight of online political advertising activities requires **timely reporting** by the service provider hosting the advertisement and/or the political actor on behalf of which the advertisement is displayed. Annual financial statements are not sufficient for scrutinising the activities of European political parties because, as it has been discussed under Problem 1.2, interested parties' effectiveness at scrutinising political actors' online political advertising activity relies on the timely provision of information (See Section 2.1.2). Therefore, European political parties' information in relation to online political advertising around European Parliament elections should be disclosed in real time, not only in periodic reports.

Second, the type of information provided is insufficient. While information on donors and contributors is relevant for reporting requirements, real-time oversight requires timely information on **expenditure** on online political advertisement to be reported promptly. Additionally, information on the face of the ad would be necessary so that viewers of the advertisements are sufficiently informed about the nature of the ad and the key information about it, as mentioned in Section 2.1.1. on lack of transparency to the viewers of political advertisements. Consulted stakeholders, including European political parties, civil society organisations and international organisations indicate that an obligation for political parties to provide this information to viewers and to interested parties would have positive effects. This information should include the identity of the party paying for the service and on whose behalf, the amount paid and whether the advertisement is a political advertisement. Additionally, information on the targeting criteria used should be disclosed so that interested parties and any relevant European institution can verify the ethical and legal targeting practices, particularly if any limitation on the granularity of targeting would be envisaged in this initiative. The problems associated with the use of certain targeting are discussed in detail below (See Section 2.3).

The negative consequences of the lack of provisions in Regulation 1141/2014 on transparency and targeting techniques are further discussed, in general terms, in Sections 2.1 and 2.3. The reason for them being discussed in these sections is that the negative effects of insufficient regulation of transparency and targeting techniques are the same in the case of European political parties and any other national political actor, with the exception that failing to regulate European political parties affects the electoral process in European elections specifically, while insufficient regulation of transparency and targeting techniques of political actors in general or nation, be they European political parties, national political parties, or any other political actor, affects not only elections to the European Parliament, but also national elections and referenda. The European Parliament acknowledged the need to ensure greater transparency in the financing and campaign expenditure of European political parties in a report *on the application of Regulation (EU, Euratom)*

⁷⁰ Code Électoral. Available at: <https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006070239/>

⁷¹ Ley Orgánica 5/1985, de 19 de junio, del Régimen Electoral General. Available at: <https://www.boe.es/buscar/pdf/1985/BOE-A-1985-11672-consolidado.pdf>

No 1141/2014 on the statute and funding of European political parties and European political foundations (2021/2018(INI))⁷² in the light of the experience of the European Parliament 2019 election.

European political parties spent remarkable amounts of resources on online political advertisements in the European Parliament 2019 elections. The European Popular Party spent EUR 20,650 in advertisements, and the Party of European Socialists EUR 30,080⁷³ on Google Platforms alone. These figures are likely to increase in the next political cycle for the reasons outlined in the subsection on consequences below.

Despite the relative small role played by European Political Parties and European Political Foundations in online political advertising in comparison to national political parties in the 2019 European Parliament election (See Section 2.1), the possible adoption of a joint constituency with transnational lists for the next European Parliament election would increase the prominence of European political parties, also in the area of campaigning. The European Parliament has initiated a legislative initiative procedure (2020/220 INL)⁷⁴ that “considers (...) the introduction of a joint constituency from which forty-six members of the European Parliament shall be elected and in which lists are headed by each political family’s candidate for the post of President of the Commission”. Furthermore, the Political Guidelines for the Next European Commission 2019–2024⁷⁵ foresees the Commission acting as an honest broker if the European Parliament decides to reform the electoral law by virtue of Article 223 of the TFEU .

Should transnational lists be a feature of future European Parliament elections, the role of European political parties in campaigning and online political advertising is likely to increase, as a list of candidates for each different European political party would be candidates in all Member States simultaneously. Therefore, it is foreseen that transnational candidates will run coordinated (online) political advertising campaigns across the EU. Hence, political advertising conducted by European political parties would represent a larger share of the online political advertising market in the 2024 European Parliament election compared to the 2019 European Parliament election. Consequently, the importance of ensuring adequate supervision of the financing and placement of political advertising by European political parties and European political foundations is likely to increase in the near future.

This problem affects European citizens, as the low regulation of European Political Parties leads to decreased trust in the democratic process, given that it is not as transparent as it could be. The problem also affects European political parties, as it diminishes their trust in each other’s behaviour in relation to online political advertising. As mentioned in the beginning on this subsection, the negative consequences of the lack of regulation of the European political parties’ online advertising activities in relation to the lack of transparency and the use of targeting techniques are further discussed in Sections 2.1 and 2.3.

As the problem affects the activities of European political parties across all Member States, it can be considered EU wide.

Consequences

In a context where online political advertising is on the rise, both in absolute terms and in relation to offline political advertising, Regulation 1141/2014 does not include obligations to provide

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DRAFT REPORT on the application of Regulation (EU, Euratom) No 1141/2014 on the statute and funding of European political parties and European political foundations (2021/2018(INI)): Available at: https://www.europarl.europa.eu/doceo/document/AFCO-PR-692733_EN.pdf

⁷³ Mozilla Foundation: Ad Transparency Report: European Union. Available at: <https://adtransparency.mozilla.org/eu/>

⁷⁴ Modification of the Act concerning the election of the Members of the European Parliament by direct universal suffrage pursuant to Article 223(1) of the Treaty on the Functioning of the European Union [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2220\(INL\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2220(INL)&l=en)

⁷⁵ European Commission (2019) A Union that strives for more: My agenda for Europe. By candidate for President of the European Commission Ursula von der Leyen
Political Guidelines for the Next European Commission 2019 – 2024. Available at https://ec.europa.eu/info/sites/info/files/political-guidelines-next-commission_en_0.pdf

information on a real-time basis on the techniques used when conducting online political advertising, the spending on online political advertising, the criteria of targeting, or the amounts spent in different services such as data brokering or targeting. This lack of EU-specific provisions results in data on online political advertising not being easily disclosed in real time. The consequence of this is that the relevant European authorities, interested parties and the public cannot access accurate information on the online political advertising activity of European political parties timely, and they cannot hold European political parties to account during electoral campaigns leading to elections to the European Parliament. The abovementioned possible introduction of transnational lists in the 2024 Election to the European Parliament would likely lead to a significant increase in expenditure by European political parties in online advertising, as European political parties would buy online advertising services as part of the campaign on behalf of these transnational lists.

The problem identified in Section 2.4 on the difficulties to enforce and monitor the activity of political actors by Member States' authorities suggests that the mere introduction of obligations to provide information in a timely fashion would not be sufficient to ensure the integrity of electoral processes in the EU and trust in them by political actors and citizens, but that a specific authority endowed with sufficient resources and with authority would be needed to monitor and enforce any obligations in relation to online political advertising by European political parties.

2.3. Problem 3: Challenges posed by the use of micro-targeting

The technological developments over the last years have increasingly moved the public debate to the online sphere, with significant consequences for democracy. Online platforms have enhanced accessibility to information, facilitating the participation in the political debate and a more informed decision-making⁷⁶. However, events such as the Cambridge Analytica scandal in 2017 have drawn attention to the misuse and potential negative effects of micro-targeting, online algorithms and other dissemination and amplification techniques in online political advertising.

Micro-targeting is defined as a widespread marketing strategy that uses consumer data and demographics to identify the interests of specific individuals or very small groups of like-minded individuals and influence their thoughts or actions⁷⁷. It consists of two main steps:

1. Collection and analysis of data to identify target groups; and
2. Formulation of the messages that will be shared with each of the identified target groups.

The objective of micro-targeting is to persuade, inform or mobilise (or alternatively, to dissuade, confuse or demobilise) voters⁷⁸. Unlike regular targeting, it considers the heterogeneity of the audience, which allows for tailoring the messages to one or several characteristic(s) of the said audience, perceived by the political advertiser as instrumental in making the audience member susceptible to the message⁷⁹.

A distinction can be made between licit and illicit micro-targeting. While the former refers to a technique that is used transparently, fairly and in compliance with the law, the latter refers to the misuse of micro-targeting, which poses serious risks to individuals, political parties, and the public opinion as it seeks to dissuade, confuse or demobilise voters⁸⁰.

⁷⁶ Lewandowsky, S., Smilie, L., Garcia, D., Hertwig, R., et al. (2020) Technology and Democracy: Understanding the influence of online technologies on political behaviour and decision-making. European Commission, JRC Science for policy report.

⁷⁷ Ibid.

⁷⁸ Dobber, T. & Ó Fathaigh, R. & Zuiderveen Borgesius, F. J. (2019). The regulation of online political micro-targeting in Europe. Internet Policy Review, 8(4). DOI: 10.14763/2019.4.1440

⁷⁹ Ibid

⁸⁰ Ibid

1. Collection and analysis of data to identify target groups

A first issue is related to the data collection and processing. Massive amounts of personal data are often gathered without the knowledge and consent of the individuals. The information feeds into methods such as psychographic profiling, which predicts personality traits using big data on people's digital footprint. Political and religious views, sexual orientation, ethnicity, intelligence, happiness, use of addictive substances, parental separation, age, and gender are some of the personal attributes inferred by psychographic profiling⁸¹.

It is important to note the importance of algorithms in this process. Algorithms govern the access to online information, filtering, classifying, recommending or ranking data. While this helps people to receive information that caters to their needs, it also opens the door to manipulation. Algorithm content curation, as defined by JRC: "automated selection of what content should be displayed by users, what should be hidden, and how it should be presented",⁸² is particularly relevant.

The opportunity for online platforms to unilaterally shape information and influence political outcomes is being facilitated by sophisticated algorithms and technologies⁸³. These can be misused by some political and non-political actors for effectively targeting, manipulating and exploiting individuals' vulnerabilities in their favour, irrespective of their consent to data sharing and processing.⁸⁴

Algorithms operate with limited public oversight, regulation or a widespread understanding of the mechanisms underlying the resulting recommendations. In fact, the opacity and complexity are such that even creators or owners of algorithms may not be aware of their functioning, nor have strict control over their actions or the ability to foresee its future behaviour, making the assignment of responsibility for the outcomes very complicated. Nonetheless, algorithms are considered proprietary trade secrets and, therefore, protected by the corresponding regulation⁸⁵.

2. Formulation of the messages that will be shared with each of the identified target groups.

A second issue pertains to the tailoring of the micro-targeted messages, which are deployed onto the individuals' digital interfaces. The messages often seek to exploit people's lack of awareness of the use of micro-targeting, their psychological and emotional vulnerabilities and behavioural biases to push on political messages that carry the risk of causing great harm to society and democracy⁸⁶ ⁸⁷. For example, Leave.EU targeted individuals identified as particularly racist with aggressive and entirely deceptive anti-immigration messages on social media.⁸⁸

The use of micro-targeting in online political advertising is associated with the mobilisation of the electorate⁸⁹, particularly in a context of decreased participation in elections and low attachment to political parties. The technique allows new and small political parties, as well as other actors in a democracy that may not have the resources to outsource nor engage in overarching

⁸¹ Bakir, V. (2020) Psychological Operations in Digital Political Campaigns: Assessing Cambridge Analytica's Psychographic Profiling and Targeting. *Front. Commun.* 5:67. doi: 10.3389/fcomm.2020.00067

⁸² Lewandowsky, S., Smilie, L., Garcia, D., Hertwig, R., et al. (2020) Technology and Democracy: Understanding the influence of online technologies on political behaviour and decision-making. European Commission, JRC Science for policy report.

⁸³ Jaeho Cho, Saifuddin Ahmed, Martin Hilbert, Billy Liu & Jonathan Luu (2020) Do Search Algorithms Endanger Democracy? An Experimental Investigation of Algorithm Effects on Political Polarization, *Journal of Broadcasting & Electronic Media*, 64:2, 150-172, DOI: 10.1080/08838151.2020.1757365

⁸⁴ Brahim Zarouali, B., Dobber1, T., De Pauw, G., de Vreese, C. (2020) "Using a Personality-Profiling Algorithm to Investigate Political Micro-targeting: Assessing the Persuasion Effects of Personality-Tailored Ads on Social Media" *Sage Journal*, <https://doi.org/10.1177/0093650220961965>

⁸⁵ European Parliament (2019) "A governance framework for algorithmic accountability and transparency". Available at: [www.europarl.europa.eu/RegData/etudes/STUD/2019/624262/EPRS_STU\(2019\)624262_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2019/624262/EPRS_STU(2019)624262_EN.pdf)

⁸⁶ Bakir, V. (2020) Psychological Operations in Digital Political Campaigns: Assessing Cambridge Analytica's Psychographic Profiling and Targeting. *Front. Commun.* 5:67. doi: 10.3389/fcomm.2020.00067

⁸⁷ Lewandowsky, S., Smilie, L., Garcia, D., Hertwig, R., et al. (2020) Technology and Democracy: Understanding the influence of online technologies on political behaviour and decision-making. European Commission, JRC Science for policy report.

⁸⁸ Shipman, T. (2017). *All OutWar: The Full Story of Brexit*. London:WilliamCollins

⁸⁹ Ibid.

communication strategies, to amplify their voice (see Section 6.3 for an analysis of impacts in this regard). Potential voters and niche audiences can be easily, inexpensively and directly reached.

Additionally, micro-targeting can be used to discourage voting, discriminate against minorities or other groups and distort the public debate with inaccurate or misleading information. It reaches specific groups of people by means of tailored messages that cater to their views, limiting their ability to take informed decisions by fragmenting the information presented to them. It typically focuses on groups that may be less educated or those citizens who are already susceptible to views considered to be outside of the mainstream, as these are more prone to be influenced due to the lack of critical resources and the tendency to trust certain ideas according to information provided by a civil society organisation regarding elections in the USA. The messages lack real facts and relevant evidence to form an opinion, tend to be misleading, ambiguous and false, triggering negative emotions, and they are unsolicited. Individuals gradually cease to be exposed to different information, only receiving data that confirms their previous stance.⁹⁰ Thus, micro-targeting can qualify as a form of coercive communication that can incite polarisation and violence or fuel extreme beliefs and conspiracy thinking, even with unfounded arguments and false information presented as facts, by instilling more fear and hatred among the more vulnerable groups of individuals⁹¹.

Micro-targeting may jeopardise the rights of individuals to privacy and data protection when the collection of personal data in the first phase of micro-targeting is not GDPR-compliant, allegations made in targeted messages cannot be subjected to public scrutiny or refuted by third parties, and it is actively contributing to the fragmentation of the public space and the polarisation of the public opinion, replacing the shared conversation in which democracy is built ⁹². More broadly, micro-targeting raises the issue of racial and social discrimination when it profiles individuals based on their race, ethnicity and socio-economic status⁹³.

Drivers

The main drivers underlying the problems identified in relation to micro-targeting are the lack and/or insufficient regulation on the matter, the fast development of new technologies which are being used to enhance the impact of micro-targeting, and the consequent difficulty of overseeing and enforcing the existing measures.

Insufficient regulation for micro-targeting

The General Data Protection Regulation (GDPR), the right of freedom of expression (Article 11 of the EU Charter of Fundamental Rights) and the sector-specific rules for political advertising come into play in the regulation of micro-targeting in Europe⁹⁴. However, since 2019, the rapid spread of micro-targeting and its potential to undermine democratic discourse have prompted additional actions such as the Code of Practice on Disinformation, the Digital Services Act (DSA), and the Artificial Intelligence Act.

The GDPR sets specific rules for the processing and use of personal data, which are applicable to micro-targeting.

Accountability, lawfulness and transparency obligations laid down by the GDPR are particularly relevant in this context⁹⁵. The relevance of Articles 21 and 22 of the GDPR is also underlined by

90 Bayer, J., Bitiukova, N., Bard, P., Szakacs, J., Alemanno, A., Uszkiewicz, E., et al (2019) "Disinformation and propaganda – impact on the functioning of the rule of law in the EU and its Member States". European Parliament [www.europarl.europa.eu/RegData/etudes/STUD/2019/608864/IPOL_STU\(2019\)608864_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2019/608864/IPOL_STU(2019)608864_EN.pdf)

91 Bakir, V. (2020) Psychological Operations in Digital Political Campaigns: Assessing Cambridge Analytica's Psychographic Profiling and Targeting. *Front. Commun.* 5:67. doi: 10.3389/fcomm.2020.00067

92 Ibid

93 Chester, J., and Montgomery, K. (2017). The role of digital marketing in political campaigns. *Internet Policy Rev.* 6:4. doi: 10.14763/2017.4.773

94 Dobber, T. & Ó Fathaigh, R. & Zuiderveen Borgesius, F. J. (2019). The regulation of online political micro-targeting in Europe. *Internet Policy Review*, 8(4). DOI: 10.14763/2019.4.1440

95 European Commission Guidance on the application of Union data protection law in the electoral context. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52018DC0638>

experts in the field of micro-targeting, as they set the foundations to address profiling and automated-decisions. Specifically, Article 21 guarantees individuals the right to object to profiling, when this is for direct marketing purposes. Since most profiling in political campaigns is understood to fall under this category, it can be objected. However, if profiling is done for a different purpose – for example, creating data models of a certain audience – the application of the right to object is not straightforward.⁹⁶

In turn, Article 22 limits the circumstances in which solely automated decisions are made, including those based on profiling and micro-targeting carried out by political parties and campaign groups. Particularly intrusive methods of profiling or outcomes of a decision about whether to target an individual with a political campaigning message could theoretically fall under this Article.⁹⁷ The compound effect of the underlying profiling; the methods and techniques used to target an individual; the individual's expectations and lack of knowledge about how their data is being used; and the nature of the message could also be addressed on this basis⁹⁸.

Nevertheless, micro-targeting is not directly addressed in the GDPR. Thus, the interpretations regarding to what extent the GDPR provisions, particularly the automated decisions and the profiling of individuals, can be applied in micro-targeting vary greatly. This was confirmed by the stakeholders consulted for the study. In addition to the GDPR, the DSA⁹⁹ sets clear requirements on the types of information that online platforms need to provide for all paid-for advertisements. VLOPs displaying advertisements must compile and make available a repository via API of details such as ad content, on whose behalf it was displayed, the period when it was displayed, its target demographic, the number of recipients of all advertisements available on their platforms for which they received remuneration.

Moreover, the Artificial Intelligence Act (2021) proposes a harmonised legislative framework on AI. The aim is to “ensure that AI systems placed on the Union market and used are safe and respect existing law on fundamental rights and Union values and to enhance governance and effective enforcement of existing law on fundamental rights and safety requirements applicable to AI system” are particularly relevant in this context. The biometric categorisation system, as defined in the Act, can potentially address the issues identified in relation to profiling.¹⁰⁰ Since the Act was just announced, it will need to be assessed in-depth to understand how it could help to solve the problems linked to micro-targeting.

The Code of Practice on Disinformation also tackles online advertising and advertisers. Unlike the other instruments, the Code is a self-regulatory tool. While its first assessment in 2020 showed that “it provided a valuable framework for a structured dialogue between online platforms, ensured greater transparency and accountability of their policies on disinformation, and resulted in concrete actions and policy changes by relevant stakeholders to help counter disinformation”¹⁰¹, there were many shortcomings. In response, the Commission announced in May 2021 that the Code would be revamped to become a co-regulatory instrument, as foreseen under the DSA¹⁰².

In addition to the instruments mentioned above, micro-targeting is addressed in case law. The European Court of Human Rights established a legal precedent in 2008, ruling that the blanket ban set by Norway to political advertising on television restricted the Pensioners Party's freedom

⁹⁶ Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN>

⁹⁷ <https://ico.org.uk/for-organisations/guidance-for-the-use-of-personal-data-in-political-campaigning/profiling-in-political-campaigning/>

⁹⁸ <https://ico.org.uk/for-organisations/guidance-for-the-use-of-personal-data-in-political-campaigning/profiling-in-political-campaigning/>

⁹⁹ Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC DSA. Available at: https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment_en

¹⁰⁰ European Commission “Proposal for a Regulation laying down harmonised rules on artificial intelligence” April 2021. Available at: <https://ec.europa.eu/newsroom/dae/items/709090>

¹⁰¹ <https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation>.

¹⁰² <https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation>

of expression in violation of Article 10 of the European Convention on Human Rights (ECHR)¹⁰³. By extension, micro-targeting is considered a form of political advertising protected by both Article 11 of the EU Charter of Fundamental Rights, and Article 10 of the ECHR¹⁰⁴. Even though, such a right is not absolute and can be limited under certain circumstances, the regulation on micro-targeting preserving the balance between the freedom of expression and the protection of personal data poses some challenges¹⁰⁵. The case law across Member States in this regard is not unanimous and is evolving over time.

At national level, an in-depth analysis of the national legislative frameworks shows that micro-targeting is largely unregulated across Member States¹⁰⁶. Except for Ireland, Member States are very hesitant to regulate micro-targeting due to the easiness to circumvent national rules, as indicated by the national authorities interviewed for the study.

The General Scheme of the Electoral Reform Bill 2020 formulated by Ireland includes the establishment of an Electoral Commission and the regulation of online political advertising¹⁰⁷. In this respect, public information requirements for online political advertisements provides “a transparency notice shall be a notice that displays in a clear and conspicuous manner: confirmation of whether micro-targeting was applied in the placement, display and promotion of the online political advertisement and, where applicable, a description of the criteria used for any such micro-targeting;” (article 2.b)¹⁰⁸. The bill is still going through the approval process and therefore, the assessment on whether it is successful cannot be provided at this stage.

The Netherlands pioneered the implementation of a Code of Conduct on Transparency in Online Political Advertising, which addressed micro-targeting. The code included specific provisions for political parties to “maintain ethical limits to linking different data sets and uploading them to online platforms for the purpose of micro-targeting” and “refrain from psychological profiling for targeting purposes in online political advertising”. Online platforms agreed to “provide relevant advertiser and advertisement details in publicly available libraries with easily downloadable and comparable data”¹⁰⁹. The lack of definitions of key concepts such as micro-targeting or psychological profiling, and the limited information provided about micro-targeting criteria (i.e. Dutch Observatory Dashboard) were significantly criticised. The evidence gathered through desk research and stakeholder consultation shows that both signatories, political parties and online platforms, fell short of meeting their commitment to transparency.

Countries such as Sweden¹¹⁰, France¹¹¹ and Germany¹¹² have also introduced new measures, although these do not address micro-targeting explicitly.

103 European Court of Human Rights (2008), *TV Vest AS & Rogaland Pensjonistparti V. Norway*. The blanket ban of political advertising on television in Norway aimed to preserve a fair democratic debate. It did so by preventing financially powerful groups from using television to market their opinions in detriment of smaller parties with lesser access. The Pensioners Party, however, “belonged to a category which the ban in principle had intended to protect”. In contrast to major parties, it had less funding and received less media coverage making paid advertising on television “the sole means to get its message across to the public through that type of medium”. Moreover, “the Court considered that the specific advertising at issue, namely a short description of the Pensioners Party and a call to vote, had not contained elements such as to lower the quality of political debate or offend various sensitivities”. Considering the specific circumstances, the Court argued for the unproportionally “between the legitimate aim pursued by the prohibition and the means deployed to achieve that aim”.

104 Dobber, T. & Ó Fathaigh, R. & Zuiderveen Borgesius, F. J. (2019). The regulation of online political micro-targeting in Europe. *Internet Policy Review*, 8(4). DOI: 10.14763/2019.4.1440

105 Dobber, T. & Ó Fathaigh, R. & Zuiderveen Borgesius, F. J. (2019). The regulation of online political micro-targeting in Europe. *Internet Policy Review*, 8(4). DOI: 10.14763/2019.4.1440

106 Results of the legal mapping

107 www.gov.ie/en/press-release/0dfe8-ministers-obrien-and-noonan-publish-the-general-scheme-of-the-electoral-reform-bill/

108 Ireland “General Scheme of the Electoral Reform Bill 2020”.

109 Ministry of Interior and Kingdom Relations, IDEA “Dutch Code of Conduct Transparency Online Political Advertisements”. Available at: www.idea.int/sites/default/files/news/news-pdfs/Dutch-Code-of-Conduct-transparency-online-political-advertisements-EN.pdf

110 How can the Swedish Government prevent Political Micro- Targeting from threatening the Electoral Process? Available at: [CYBER_SECURITY_How_can_the_Swedish_Government_prevent_Political_Micro_Targeting_from_threatening_the_Electoral_Process_A_Policy_Memo_Security_Policy_and_Strategy_in_Cyber_Space](https://cybersecuritypolicy.com/wp-content/uploads/2018/05/CYBER_SECURITY_How_can_the_Swedish_Government_prevent_Political_Micro_Targeting_from_threatening_the_Electoral_Process_A_Policy_Memo_Security_Policy_and_Strategy_in_Cyber_Space.pdf)

111 <https://policyreview.info/articles/analysis/regulation-online-political-micro-targeting-europe>

Sweden identified several problems related to mass dissemination of information via social media and the protection of freedom of speech, while recognising the growing influence of the internet, which has been used more than TV and newspapers combined to influence Swedish politics since 2016. The threats include the risk of future mass dissemination of information and the increased use of fake and automated accounts related to elections. In the light of these events, the Swedish government is preparing new legislation and actions, namely: treatment of bots, criminal sanctions for dissemination of certain information, and an amended advertising legislation. Currently, Swedish legislation on advertisements (the Advertisement Act) does not include regulation of political, religious or opinion-based advertisements¹¹³.

France introduced new rules under Art. L. 163-1 of the Electoral Code that oblige online platforms in the three months prior to elections to provide users with information about who paid for the “promotion of content related to a debate of general interest”. Additionally, users must be provided with fair, clear and transparent information on the use of personal data in the context of the promotion of information content related to a debate of general interest. This led to online platforms to ban all political campaigning ads and topic-based ads¹¹⁴. A report by CAPS and IRSEM on the Law against manipulation of information, underlines “the increased precision with which the population is segmented and targeted (micro-targeting) – the most vulnerable targets are the youngest populations (17-25 years of age)” as one of the main threats¹¹⁵.

The German Network Enforcement Act (NetzDG law) focuses on hate speech and other illegal content. This law was introduced in recognition that self-regulatory initiatives of online platforms were insufficient to tackle fake news, foreign interference, and radicalisation of hate group online, particularly notable in electoral periods. It aims to ensure that existing law is observed and enforced. Research indicates that it “remains uncertain whether NetzDG has achieved significant results in reaching its stated goal of preventing hate speech”¹¹⁶. The law was also criticised for violating the freedom of the press and free speech¹¹⁷.

Further non-uniform legislation at the Member State level would result in additional costs for economic actors, results from increased administrative costs and legal uncertainty. It is expected that these costs are greater for SMEs, for the reasons outlined regarding costs of legal fragmentation and legal uncertainty in Section 2.5.

Technological development steering the effects of micro-targeting.

The sophistication of profiling and automated technology (i.e. machine learning, artificial intelligence, algorithms) is strengthening the impact of the technique, enabling to target individuals at any moment with increasing precision¹¹⁸. The use of psychographic analytics and psychometric profiling, where the personality attributes are deduced from both factual and inferred personal data, is especially worrying.

Citizens are largely unaware of how algorithms promote and filter content online. Reverse engineering of algorithms has consistently identified biases in algorithmic design based upon several socio-demographic variables, with gender and racial biases among the most disturbing. Evidence also shows that curated newsfeeds in social media and automated recommender systems tend to favour polarising, misleading and extremist content due to it yielding more user

¹¹² Network Enforcement Act, <https://germanlawarchive.iuscomp.org/?p=1245>

¹¹³ www.loc.gov/law/help/social-media-disinformation/sweden.php

¹¹⁴ Dobber, T. & Ó Fathaigh, R. & Zuiderveen Borgesius, F. J. (2019). The regulation of online political micro-targeting in Europe. Internet Policy Review, 8(4). DOI: 10.14763/2019.4.1440

¹¹⁵ J.-B. Jeangène Vilmer, A. Escorcía, M. Guillaume, J. Herrera, Information Manipulation: A Challenge for Our Democracies, report by the Policy Planning Staff (CAPS) of the Ministry for Europe and Foreign Affairs and the Institute for Strategic Research (IRSEM) of the Ministry for the Armed Forces, Paris, August 2018.

¹¹⁶ The Impact of the German NetzDG law, available at: www.ceps.eu/ceps-projects/the-impact-of-the-german-netzdg-law/

¹¹⁷ Human Rights Watch (2018) “Germany: Flawed Social Media Law”. Available at : www.hrw.org/news/2018/02/14/germany-flawed-social-media-law

¹¹⁸ Opinion 3/2018 EDPS Opinion on online manipulation and personal data. Available at: https://edps.europa.eu/sites/edp/files/publication/18-03-19_online_manipulation_en.pdf

engagement¹¹⁹. The overall understanding of algorithms' influence on democracy is still rather limited, thereby slowing down any intervention on the matter. The continuous upgrades of the online platform's algorithms only aggravate the situation¹²⁰. The dissemination of political advertising through networks of bots is noteworthy¹²¹. Much like most technologies, bots are neither good nor bad per se, but can be misused. For instance, bots are often used in customer service, whereas others are designed to cause harm. Since bots can support the rapid spread of information, some are designed with the purpose of misleading, exploiting and manipulating social media discourse. For example, bots can be used for campaigning to artificially boost support for a political party or candidate, tampering the outcome of elections¹²². Sophisticated bots can generate persons that appear as credible followers, and imitate human behaviour, and thus are more difficult for both people and filtering algorithms to detect. Allegations of acquisition of fake followers have affected several prominent political figures¹²³.

Moreover, new developments in AI, especially deepfakes, are being combined with micro-targeting, magnifying the issues mentioned and complicating its regulation¹²⁴. Even though it is early to assess the influence of deepfakes, these seem "capable of distorting democratic discourse; manipulating elections; eroding trust in institutions; weakening journalism; exacerbating social divisions; undermining public safety; and inflicting hard-to-repair damage on the reputation of prominent individuals, including elected officials and candidates for office"¹²⁵. In April 2021, a call between the Foreign Affairs Committee of the Dutch Parliament and Leonid Volkov, Alexi Navalny's chief of staff, was thought to be a deepfake version of Volkov¹²⁶. Detection systems are being developed, but at a slower pace than deepfakes are being created. As a result, counterarguing the messages disseminated by these means becomes even more challenging (when the messages are online, even though they are identified as fake, it is already too late to counterargue them, also because fake messages receive more attention as they tend to be more shocking, than any explanation). Brookings argues that in a context where truthful, organic content will be difficult to distinguish from false/misleading information, "voters will be more likely than ever before to remain within their partisan bubbles, believing only those politicians and media figures who share their political orientation"¹²⁷.

Some of these developments not only pose ethical questions but may constitute a violation of individual's fundamental rights to privacy and data protection (Articles 7 and 8 of the Charter on Fundamental Rights). Furthermore, their capacity to enhance the effects of micro-targeting to influence voting behaviour are broadly considered a threat.

Monitoring and enforcement

In addition to the causes described above, problems of implementation and enforcement of the existing measures should be considered. The regulatory gaps caused by a fragmented legislative framework, both at EU and Member State level, make it difficult to oversee and monitor micro-targeting activities. This is further aggravated by the reported lack of resources.

¹¹⁹ Lewandowsky, S., Smilie, L., Garcia, D., Hertwig, R., et al. (2020) Technology and Democracy: Understanding the influence of online technologies on political behaviour and decision-making. European Commission, JRC Science for policy report.

¹²⁰ Lewandowsky, S., Smilie, L., Garcia, D., Hertwig, R., et al. (2020) Technology and Democracy: Understanding the influence of online technologies on political behaviour and decision-making. European Commission, JRC Science for policy report.

¹²¹ Ferrara, E., Varol, O., Davis, C. Menczer, F., Flammini, A., "The Rise of Social Bots". Communications of the ACM, July 2016, Vol. 59 No. 7, Pages 96-104

¹²² Ratkiewicz, J., Conover, M., Meiss, M., Gonçalves, B., Flammini, A. and Menczer, F. Detecting and tracking political abuse in social media. In Proceedings of the 5th International AAAI Conference on Weblogs and Social Media (2011). 297304.

¹²³ Ferrara, E., Varol, O., Davis, C. Menczer, F., Flammini, A., "The Rise of Social Bots". Communications of the ACM, July 2016, Vol. 59 No. 7, Pages 96-104

¹²⁴ Dobber, T., Metoui, N., Trilling, D., Helberg, N., de Vreese, C. Do (Microtargeted) Deepfakes Have Real Effects on Political Attitudes? Safe Journal Vol 26, Issue 1, 2021

¹²⁵ Bobby Chesney and Danielle Citron, "Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security," forthcoming in California Law Review, December 2019.

¹²⁶ Meyer-Resende, M., Brady, M. "Deepfakes' - a political problem already hitting the EU" EU Observer, 26 May 2021, available at: <https://euobserver.com/opinion/151935>

¹²⁷ <https://www.brookings.edu/research/is-seeing-still-believing-the-deepfake-challenge-to-truth-in-politics/>

The compliance of micro-targeting with the informed consent and transparency obligations laid down in the GDPR is debated.¹²⁸ Some consulted stakeholders attribute this to caveats of the GDPR, while others point out that regulating micro-targeting is not the primary objective of the Regulation. Micro-targeting relies on massive amounts of personal data, whose collection, processing and use for political campaigning individuals are unaware of, as thoroughly documented in the literature. Furthermore, increasingly sophisticated technologies such as profiling techniques, such as lookalike modelling, where data of one person can be used to infer information about other people, irrespective of their consent to data sharing and processing, can be used to circumvent the current data protection rules¹²⁹.

The Code of Practice on Disinformation has proven to be “a framework for a structured dialogue between relevant stakeholders to ensure greater transparency of platforms' policies against disinformation within the EU”¹³⁰. On the other hand, the Code has also been found to have shortcomings with regards to 1) measuring progress (due to a lack of key performance indicators) and 2) monitoring and enforcement¹³¹. The absence of enforcement or sanction mechanisms in the Code¹³² has been significantly criticised by stakeholders. Likewise, there are also recognised weaknesses of the Code of Practice on Disinformation in providing greater transparency of digital services providers/online platforms such as information suppression, content curation and targeting mechanisms.¹³³

According to the European Court of Auditors, the Code of Practice on Disinformation did not devise adequate coordination arrangements to provide coherent and proportionate responses to the threats, there are no effective accountability mechanisms (no monitoring, evaluation and reporting framework), and the resources allocated were insufficient¹³⁴. Moreover, the economic benefits obtained depend on their algorithms (e.g. political micro-targeting) and therefore there are few incentives to disclose any information, even with the threat of sanctions.¹³⁵

Relevant authorities consulted in the different Member States have emphasised their lack of competences and capacity to monitor micro-targeting. The Polish National Electoral Commission (see the Polish case study in Annex 6) and the Romanian National Electoral Commission highlighted this factor.

The issues linked to monitoring and enforcement are discussed in more detail in section 2.4.

Size and scale of the problem

Micro-targeting can easily conceal its intent and nature, making it difficult to estimate the size and scale of the problem. The effectiveness of micro-targeting in the political context remains contested.¹³⁶ However, the abusive and sometimes unlawful practices incurred when using this technique are well documented in the literature.

Quantitative data on the phenomenon is scarce and breakdowns per type of political advertising rare. Political parties consulted for this study were hesitant to disclose the budget allocated to micro-targeting and even if the technique is used by their organisation. Thus, there is almost no

¹²⁸ Cf. on the evaluation of the GDPR COM (2020) 264 final and the Resolution of the European Parliament of 25.3.2021 P9_TA (2021)0111.

¹²⁹ Chester, J., and Montgomery, K. (2017). The role of digital marketing in political campaigns. *Internet Policy Rev.* 6:4. doi: 10.14763/2017. 4.773; Lewandowsky, S., Smilie, L., Garcia, D., Hertwig, R., et al. (2020) Technology and Democracy: Understanding the influence of online technologies on political behaviour and decision-making. European Commission, JRC Science for policy report.

¹³⁰ Disinformation: EU assesses the Code of Practice and publishes platform reports on coronavirus related disinformation. Available at : https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1568

¹³¹ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1568

¹³² European Partnership for Democracy. Available at: <https://epd.eu/virtual-insanity/>

¹³³ EPD: A comprehensive plan to innovate democracy in Europe.

¹³⁴ European Court of Auditors (2019), Disinformation affecting the EU: tackled but not tamed. Available at: www.eca.europa.eu/Lists/ECADocuments/SR21_09/SR_Disinformation_EN.pdf

¹³⁵ University of Namur, VVA (2020), “Online Platforms’ Moderation of Illegal Content Online.” European Parliament. Available at: [www.europarl.europa.eu/RegData/etudes/STUD/2020/652718/IPOL_STU\(2020\)652718_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2020/652718/IPOL_STU(2020)652718_EN.pdf)

¹³⁶ Krotzek, L.J. (2019). “Inside the Voter’s Mind: The Effect of Psychometric Micro-targeting on Feelings Toward and Propensity to Vote for a Candidate”, *International Journal of Communication* vol. 13.

information on how the budget allocated to online political advertising is specifically spent – i.e. micro-targeting or other techniques. Similarly, financial plays, such as channelling a part of the budget spent in online advertising through agencies, or the use of undeclared sources of money, were often mentioned by stakeholders interviewed for this study. Google and Facebook ad libraries also fall short in providing meaningful information on micro-targeting¹³⁷.

Micro-targeting is clearly gaining traction in the EU. For example, the technique was used for the first time on a large scale in the last national elections in the UK, the Netherlands, Germany, and France¹³⁸.

In the 2019 European Parliament elections, the expenditure in online political advertising reached in the order of EUR 23 million¹³⁹. Most were spent on Facebook ads, with a significant cross-border component. Since ads published in Facebook include some targeting criteria that optimise their impact, these figures give a general idea of the volume of micro-targeting. The Dutch Observatory Dashboard shows that political parties spent a total of EUR 3,394,261 in Google and Facebook ads during the electoral campaign (1 September 2020 – 21 March 2021). Facebook represented 81% (EUR 2,747,961) of the total expenditure, with Google accounting for the remaining 19% (EUR 646,300).

The Dashboard shows the targeted ads by gender, age and geographic location. It observed that Christien Unie was the only party that targeted ads by gender, while most parties targeted a share of their ads by age. This means that women and men, as well as people from different age ranges, saw different ads coming from the same political party. The ads contained features that were intended to appeal to the different audiences. Even though these targeting criteria are rather basic, political parties were able to tailor their message and image to attract voters, conveying a slightly different reality to each of them. As a result, potential voters no longer had the same information for assessing the political parties and their messages, nor were they in an equal position to exchange ideas¹⁴⁰. No party targeted ads by geolocation, but the share of the specific demographic that saw the ad varied significantly across regions¹⁴¹.

The higher the refinement of the targeted criteria used, the more expensive the adverts. This may allow well-funded parties to have an advantage during political campaigns, as they can afford more effective ads. Although micro-targeting is generally cheap and therefore a helpful technique for small parties to reach out to more people, the difference of resources can amplify inequalities. Research in UK has found clear differences in investment and strategy. The Conservative Party outspent the Labour Party, its nearest rival, nearly 3:1 (13 July and 11 August 2019)¹⁴².

Although there is a wide recognition of the dangers of targeted messages, experts argue that the effect of micro-targeting is not so influential in proportional systems, which are the more common electoral systems in the EU. The focus is on the power of algorithms to shape the public opinion¹⁴³. There is also a wide agreement among stakeholders interviewed on the significant risks associated to the use of micro-targeting in political advertising and the role of algorithms.

A recent series of experiments demonstrated that introducing ranking bias to election-related search engine results can have a strong and undetectable influence on the preferences of undecided voters. This phenomenon is called the Search Engine Manipulation Effect (SEME). In this regard, a study involving 3,600 subjects in 39 countries replicating SEME showed that

¹³⁷ European Partnership for Democracy (2020) "Virtual Insanity? The need to guarantee transparency in digital political advertising" Synthesis of findings from the Czech Republic, Italy and the Netherlands during the European Parliament elections 2019. Available at: <https://epd.eu/wp-content/uploads/2020/04/Virtual-Insanity-synthesis-of-findings-on-digital-political-advertising-EPD-03-2020.pdf>

¹³⁸ Dobber, T. & Ó Fathaigh, R. & Zuiderveen Borgesius, F. J. (2019). The regulation of online political micro-targeting in Europe. *Internet Policy Review*, 8(4). DOI: 10.14763/2019.4.1440

¹³⁹ <https://adtransparency.mozilla.org/eu/2019-05-17/eu/>

¹⁴⁰ Dutch Observatory Dashboard

¹⁴¹ <https://politieke-advertenties.nl/22-2/>

¹⁴² <https://medium.com/@WhoTargetsMe/what-do-facebook-ads-tell-us-about-parties-uk-general-election-strategy-af84dddb675>

¹⁴³ Petersen, M. "The Digital Election Campaign Industry" Robert Bosch Stiftung, June 2020. Available: www.bosch-stiftung.de/en/story/digital-election-campaign-industry

(simulated) search engine rankings that favour a particular political candidate can shift voting preferences of undecided voters by 20% or more. Even when participants are given very detailed warnings about possible ranking biases, the effects of the bias were reduced to 14%, but not eliminated¹⁴⁴.

Almost 70% of the Open Public Consultation (OPC) respondents for this study indicated that they were unable to find information regarding targeting – whether and why the ad was targeted at them. In this line, a YouGov survey conducted in 2019 as part of a study by the pro-privacy group Open Rights Group (ORG) in 2019 finds that almost a third of UK respondents (31%) were not aware at all, or not very aware of how political parties target or tailor adverts based on analysis of their personal data¹⁴⁵ (ORG, 2020). This general lack of awareness makes people more vulnerable to deception. The extraterritorial and cross-border nature of online political advertising activities, with online platforms operating at an international scale, compounded by the absence of liability concerning the information displayed and/or non-compliance with legal obligations, is therefore concerning. Additionally, the ability to operate in real-time makes it increasingly difficult to oversee the activity of online platforms. It is necessary to implement a set of European common standards that limit or prohibit certain micro-targeting practices. Ensuring that the different actors involved in the value chain, especially political parties, intermediaries and other service providers, supply the relevant information to authorities, regardless of whether a service is provided on a cross-border basis or not, is equally relevant.

Consequences

Micro-targeting is widely perceived as having the potential to be used in a non-transparent manner and, if abused, as lacking a legitimate basis for processing personal data, while targeted messages can be weaponised to subtly harm society and democracy¹⁴⁶. In particular, the content of the messages cannot be disputed and their customisation to specific audiences contributes to the fragmentation of the public space. Redlining of minorities and other vulnerable groups and eco-chambers are the most relevant example.

In combination with algorithms, micro-targeting is one of the main factors responsible for the proliferation of echo-chambers. Defined as online spaces where people are exposed to information from like-minded individuals, reinforcing existing beliefs and purposefully avoiding opposing views, echo-chambers are actively contributing to the fragmentation of the public space and the polarisation of the public opinion, replacing the shared conversation in which democracy is built¹⁴⁷.

These spaces tend to go unnoticed for a long time and the wardens responsible for steering the discussion and curating the content, as well as the participants, are anonymous. Online sites such as Reddit, with loose content moderation mechanisms and anonymised interventions, are well-known hosts of these echo-chambers¹⁴⁸. The nature of the sites prevents any timely intervention as the community supporting the message often acquires visibility when it is rather consolidated¹⁴⁹. For instance, many have only been addressed after the extremist views of participants had transcended the online space – i.e. the antivaxx or *incel* movements¹⁵⁰.

Disinformation and information manipulation are also associated with micro-targeting and similar political advertising practices. In this respect, there is a growing concern related to harmful topic-based advertising (e.g. climate change, LGBTIQ issues, migration or even the EU, as indicated by

¹⁴⁴ R. Epstein, R. E. Robertson, D. Lazer, and C. Wilson. Suppressing the search engine manipulation effect (SEME). *Proceedings ACM Human-Computer Interactions*, 1:42:1–42:22, 2017.

¹⁴⁵ Although 54% of respondents were aware, it is not a very high majority

¹⁴⁶ Bakir, V. (2020) Psychological Operations in Digital Political Campaigns: Assessing Cambridge Analytica's Psychographic Profiling and Targeting. *Front. Commun.* 5:67. doi: 10.3389/fcomm.2020.00067

¹⁴⁷ Lewandowsky, S., Smiliee, L., Garcia, D., Hertwig, R., et al. (2020) Technology and Democracy: Understanding the influence of online technologies on political behaviour and decision-making. European Commission, JRC Science for policy report.

¹⁴⁸ Stark, B., Stegmann, D., (2020) "Are Algorithms a Threat to Democracy? The Rise of Intermediaries: A Challenge for Public Discourse". Available at: <https://algorithmwatch.org/en/wp-content/uploads/2020/05/Governing-Platforms-communications-study-Stark-May-2020-AlgorithmWatch.pdf>

¹⁴⁹ Ibid

¹⁵⁰ BBC <https://www.bbc.com/news/world-us-canada-43892189>

some NGOs and academics consulted) being used to instigate hatred and manipulate citizens. There have been reports of social media platforms detailing ad targeting options featuring categories such as users who have expressed anti-Jewish sentiments, Flat Earth believers, etc..¹⁵¹

Online platforms have responded to critics by implementing some measures aimed at enhancing transparency – e.g. Facebook created an ad library while Twitter has banned all political advertising, as discussed in the study. However, even though it is too early to draw conclusions, the repercussions of such initiatives seem to be rather limited. For instance, the algorithm that delivers advertisements on Facebook, known as AdTech, is continuously being evolved, making it very difficult to trace the content shown in the ads and the sources of funding. The efficacy of self-regulating efforts and commitments by online platforms to provide transparency and combat abusive practices is highly disputed¹⁵².

The differences in the Member States' electoral legislation and the limited capacity of the EU to intervene on issues concerning electoral regulations constitute important obstacles to tackling micro-targeting. Likewise, in the absence of EU action, Member States are discussing different measures, which can lead to the creation of different national legislations. This would make it even easier to circumvent the rules, using the regulatory gaps to continue to engage in harmful practices – i.e. Member State A would have a more favourable legislative framework to micro-targeting than Member State B. Consequently, service providers offering online political advertising would probably channel their activities through the countries with less strict regulation, thereby impacting the integrity of the digital single market and likely violating the laws of those countries with stricter regulation. This scenario would also further hamper the capacity of authorities to oversee and enforce rules. The issue of divergence is further detailed in section 2.5.

2.4. Problem 4. Difficulties to enforce the legal framework

The public authorities of Member States experience problems in relation to the monitoring and enforcement of the relevant legislation on online political advertising, including national legislation (described in Section 2.1) and the European relevant framework. In a context of fast industry change from offline to online political advertisement (Section 1.2.1.) public authorities in the Member States often lack the necessary resources, competences, intra- and inter-state coordination to monitor and enforce the rules relevant to online political advertising, along with a sanction regime that is sufficiently dissuasive and adapted to these changes.

As shown in the mapping of the legal framework across Member States (Annex 5), the Member States have only implemented the Recommendation on election cooperation networks, online transparency, protection against cybersecurity incidents and fighting disinformation campaigns in the context of elections to the European Parliament¹⁵³ to a very limited extent, as only a few have taken action following the specific recommendation on introducing dissuasive sanctions (see epigraph on sanctions below). This Recommendation emphasised the relevance to introduce dissuasive sanctions and a greater degree of adoption of the recommendation would have resulted in a more dissuasive and effective enforcement regime across the EU.

European Commission, Joint Research Centre, The digital transformation of news media and the rise of disinformation and fake news, 2018, https://www.europarl.europa.eu/doceo/document/TA-9-2019-0031_EN.html

¹⁵² www.politico.eu/article/facebook-european-election-war-room-dublin-political-advertising-misinformation-mark-zuckerberg/

¹⁵³ European Commission (2018). Recommendation on election cooperation networks, online transparency, protection against cybersecurity incidents and fighting disinformation campaigns in the context of elections to the European Parliament. Available at: https://ec.europa.eu/info/sites/default/files/soteu2018-cybersecurity-elections-recommendation-5949_en.pdf

Enforcement of the applicable rules on online political advertising is expected to improve with the adoption of the Digital Service Act¹⁵⁴, which will provide a series of obligations and common definitions that are expected to result in swifter enforcement of the relevant national and European legislative framework in online advertising, including political advertising, as new obligations will be imposed on different actors to ensure greater transparency¹⁵⁵. The extent of the obligations will depend on the actor's role, size and impact in the online ecosystem¹⁵⁶. For example, intermediary services will be requested to provide transparency reports, cooperate with national authorities following orders and provide points of contact, and it will be a requirement that their terms of service have due account of fundamental rights. Hosting services will have an additional obligation to provide information to users. Online platforms will have mechanisms in place to cooperate with trusted flaggers and have additional obligations on top of those of service providers, including complaint and redress mechanisms and out-of-court dispute settlements, vetting credentials of third party suppliers (KYBC), user-facing transparency of online advertising and reporting criminal offences. Very large online platforms (VLOPs) must additionally undergo risk auditing, adhere to codes of conduct, cooperate in crisis responses, share data with authorities and researchers, implement transparency of recommender systems and user choice for access to information and provide risk management plans to minimise the risk of misuse of their platform. All of this will contribute to improving the ability of Member States to monitor the provision of services online and, therefore, to enforce national rules. The table below summarises the obligations to different service providers in the DSA as proposed:

Table 4: New obligations under the DSA per service provider type

Obligations	Intermediary services	Hosting services	Online platforms	Very large online platforms (VLOPs)
Transparency reporting	✓	✓	✓	✓
Requirements on terms of service due account of fundamental rights	✓	✓	✓	✓
Cooperation with national authorities following orders	✓	✓	✓	✓
Point of contact and, where necessary, legal representative	✓	✓	✓	✓
Notice and action and obligation to provide information to users		✓	✓	✓
Complaint and redress mechanism and out of court dispute settlement			✓	✓

¹⁵⁴ European Commission, Digital Services Act. Available at: https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment_en

¹⁵⁵ European Parliament Research Service, EU Legislation in Progress: Digital Services Act (2021) [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689357/EPRS_BRI\(2021\)689357_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689357/EPRS_BRI(2021)689357_EN.pdf)

¹⁵⁶ [Ibid.de](#)

Obligations	Intermediary services	Hosting services	Online platforms	Very large online platforms (VLOPs)
Trusted flaggers			✓	✓
Measures against abusive notices and counter-notices			✓	✓
Vetting credentials of third party suppliers ("KYBC")			✓	✓
User-facing transparency of online advertising			✓	✓
Reporting criminal offences			✓	✓
Risk management obligations and compliance officer			✓	✓
External risk auditing and public accountability				✓
Transparency of recommender systems and user choice for access to information				✓
Data sharing with authorities and researchers				✓
Codes of conduct				✓
Crisis response cooperation				✓

Also, under the DSA, national authorities will designate relevant digital service coordinators to coordinate the implementation of the obligations foreseen under the DSA and the European Board for Digital Services will be established, to coordinate the activities of the national authorities and of the Commission.

The DSA will also define advertisement in the online domain as "information designed to promote the message of a legal or natural person, irrespective of whether to achieve commercial or non-commercial purposes, and displayed by an online platform on its online interface against remuneration specifically for promoting that information", and introduce a new definition of advertisement as "information designed to promote the message of a legal or natural person, irrespective of whether to achieve commercial or non-commercial purposes, and displayed by an online platform on its online interface against remuneration."

Below, the main causes and consequences of the difficulties to monitor and enforce legislation are discussed, as well as the size and scale of the problem. However, a series of underlying causes will continue to affect the ability of public authorities to monitor online political advertising and to enforce relevant rules.

Drivers

Five separate drivers have been identified for this problem.

Lack of capacity, competences and resources of relevant national authorities

The first underlying driver explaining difficulties in monitoring and enforcing the relevant rules applying to online political advertising is the **lack of capacity of the relevant national authorities to ensure the monitoring and enforcement of the legal framework**. Both civil society organisations active in the area of transparency and electoral integrity and international organisations confirmed the under-capacity of relevant authorities and bodies to oversee practices and to ensure swift enforcement.

More specifically, the legal mapping conducted for the purpose of the study underlined that very few national authorities and bodies exist across Member States to control and monitor online political advertising, both during the election period and outside it. Additionally, the competences of the national authorities are generally limited to, and their control capacity is mainly targeted at, the issues of funding of political parties and candidates and their finance campaigns¹⁵⁷. On the contrary, as showcased by the mapping of the relevant national legal frameworks (see Annex 5), specific institutions exist to monitor and enforce relevant rules in the offline domain, particularly political advertisement on broadcasting media (television and radio).

A series of OSCE reports on elections that took place over the past five years in the EU Member States discussed below highlights a lack of capacity, resources, and sometimes know-how among the entities in charge of monitoring applicable rules. For example, in Italy the Regional Electoral Guarantee Boards reported a lack of capacity to verify candidates' campaign finance reports. Furthermore, competent bodies lack the power and resources to conduct efficient supervision, investigation and enforcement of the political finance regulation on political parties¹⁵⁸. Similar issues were reported in Bulgaria, Latvia, Portugal and Slovenia.¹⁵⁹

In Sweden, questions have been raised in the policy debate with regards to the current capacity of the oversight body to monitor online political sponsored content and to what extent its powers are sufficient to deal with the increased reporting following the new disclosure requirements on political parties introduced by new legislation.¹⁶⁰ Regarding the monitoring of online political paid-for content, insufficient financial and human resources were reported in Bulgaria, as well as a lack of methodology and training in this area¹⁶¹.

The table provided in Annex 5 contains detailed information on the powers to monitor electoral advertising and to enforce legislation in the area of political advertising in the different Member States.

Additionally, consulted stakeholders, including international organisations and civil society organisations, indicate that they often encounter cases in Member States where a lack of training and knowledge to address the issues persists, as officials are trained to deal with the challenges posed by offline advertising, and additional online-specific training would prepare them to address specific problems of online political advertising better.

¹⁵⁷ See for instance the mapping of national legislation in Czech Republic

¹⁵⁸ OSCE/ODIHR (2018), Italian Republic Parliamentary elections 4 March 2018 ODIHR Election Assessment Mission Final Report. Available at: https://www.osce.org/files/f/documents/9/5/383589_1.pdf

¹⁵⁹ OSCE/ODIHR (2020), Portugal Presidential Election 24 January 2021, ODIHR Needs Assessment Mission Report. Available at: https://www.osce.org/files/f/documents/c/a/473994_1.pdf; OSCE/ODIHR (2021), Republic of Bulgaria Parliamentary Elections 4 April 2021 ODIHR Needs Assessment Mission Report. Available at: https://www.osce.org/files/f/documents/6/0/476866_0.pdf; OSCE/ODIHR (2019), Republic of Latvia Parliamentary Elections 6 October 2018 ODIHR Election Assessment Mission Final Report. Available at: https://www.osce.org/files/Latvia%202018%20parliamentary_final%20report_17.01.2019.pdf; OSCE/ODIHR (2018), Republic of Slovenia Early parliamentary elections 3 June 2018 ODIHR Election Assessment Mission Final Report. Available at: <https://www.osce.org/files/f/documents/0/d/394106.pdf>.

¹⁶⁰ OSCE/ODIHR (2018), Sweden General Elections 9 September 2018 ODIHR Needs Assessment Report. Available at: <https://www.osce.org/files/f/documents/8/2/383934.pdf>

¹⁶¹ OSCE/ODIHR (2021), Republic of Bulgaria Parliamentary Elections 4 April 2021 ODIHR Needs Assessment Mission Report. Available at: https://www.osce.org/files/f/documents/6/0/476866_0.pdf

Lack of coordination among competent national authorities

A second core issue limiting the effectiveness in the application of electoral rules is the lack of coordination among competent national authorities and bodies in the area of political advertising, and especially online political advertising¹⁶². The legal mapping carried out for this study confirmed that the multiplicity and fragmentation of the existing authorities and bodies across Member States plays a role in the suboptimal monitoring and enforcement of online political advertising. Typically, more than four different national authorities within the same country have powers related to either monitor, enforce, or monitor and enforce relevant national rules related to political advertising in the online domain. For example, in Slovenia five different authorities share responsibility for supervising the relevant rules on political advertising, in particular rules on election and referendum campaigns, on monitoring of the mandatory “silence period”, on funding of the election campaigns, on supervision of electoral stations and finally, on monitoring any violation of political parties’ acts, adding difficulty to the supervision of the providers of political advertisement. In turn, these authorities are distributed across the national and local level of government. An overview of the different authorities that operate in each Member State, their powers, and their coordination is provided in Annex 5.

Many Member States (Austria, Belgium, Croatia, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal and Slovenia) have designated an authority that coordinates the participation of the different national authorities in the European Coordination Network on Elections (ECNE); in others (e.g. Estonia and Portugal), not a single unit, but various different organisations act as coordinators. Conversely, Bulgaria, Cyprus, Hungary, Romania, Spain, Slovakia and Sweden have not yet designated the authority responsible to coordinate the participation of national authorities in ECNE.

In line with the above findings, in the OSCE reports on Member States’ elections discussed below, multiple examples of poor coordination in this area were identified, of which some examples are provided.

In Italy, the law does not regulate cooperation among the relevant competent bodies and a practical working arrangement was said to be lacking¹⁶³. Another example was found in Bulgaria, where the Council for Electronic Media is in charge of monitoring content on some of the television and radio stations. However, the entity has no authority to sanction media for election-related violations but must forward the issue to the Central Election Commission (CEC), which in turn can decide whether to review the issue or impose sanctions¹⁶⁴. In France, the *Commission nationale des comptes de campagne et des financements politiques* (CNCCFP) is tasked with assessing the truthfulness, accuracy and completeness of presidential campaign accounts. However, the body lacks the power to undertake real-time campaign monitoring or to obtain information on donors and service providers and coordination mechanisms with the authorities overseeing funding of political parties.¹⁶⁵

Legal gaps and imbalances regarding offline/online political advertising rules

The legal mapping carried out for this study (see Annexes 4 and 5) also revealed that gaps in national legislations create significant imbalance between the national authorities and bodies responsible for monitoring compliance with relevant rules on political advertising offline in the traditional media (e.g. political advertising in broadcasting media, press media) and those in charge of monitoring online political advertising, as well as imbalances between the resources allocated to perform these tasks.

¹⁶² Results of the study interview programme

¹⁶³ OSCE/ODIHR (2018), Italian Republic Parliamentary elections 4 March 2018 ODIHR Election Assessment Mission Final Report. Available at: https://www.osce.org/files/f/documents/9/5/383589_1.pdf

¹⁶⁴ OSCE/ODIHR (2021), Republic of Bulgaria Parliamentary Elections 4 April 2021 ODIHR Needs Assessment Mission Report. Available at: https://www.osce.org/files/f/documents/6/0/476866_0.pdf

¹⁶⁵ OSCE/ODIHR (2017), Republic of France Presidential election 23 April and 7 May 2017 OSCE/ODIHR Election Expert Team Final Report. Available at: <https://www.osce.org/files/f/documents/c/8/337346.pdf>

Even where regulations exist regarding political advertising in offline traditional media (print media, television and radio), it has been identified that social media versions of these traditional media are not monitored because no specific regulation applies to them. This is the case in Denmark, where internet resources, including online editions of newspapers or broadcasters, are not regulated. Therefore, regulatory bodies established by legislation to monitor national rules on political advertising and media coverage in traditional media are not entitled to extend this control to the online digital versions of these media.¹⁶⁶ Such a legal gap is an underlying cause of the absence of monitoring and enforcement of relevant rules applicable to online political advertising. Member States' administrations interviewed expressed the need for more consistency between offline and online rules on political advertising in this regard.

Examples of such gaps and imbalances, contributing to making the enforcing and monitoring of online political advertising effective, were also identified in the OSCE reports on elections in the Member States discussed in this paragraph. In Romania, for instance, provisions applicable to private broadcasters, including constraints on news coverage, were said to appear as overly restrictive, while print and online media remain unregulated.¹⁶⁷ The example of Denmark was again highlighted here, indicating that internet platforms are unregulated, although they can voluntarily register to become subject to the Media Liability Act. In this context, it was also mentioned that the increased use of social networks and online media have led politicians using these channels to communicate with their voters at the expense of engagement through traditional media.¹⁶⁸ Likewise, in Bulgaria, the campaigning on social networks and in online media is not regulated by law. Broadcasters and audio-visual online content will only be reviewed in case of complaints, while other media are monitored¹⁶⁹. Also, in Czechia and Slovakia, online campaigning is not regulated¹⁷⁰.

The case studies (See Annex 6) further illustrate this issue. In Ireland, the need to regulate online political advertising and to establish an oversight mechanism was pointed out by public authorities. The emergence of online fundraising through GoFundMe, for example, was also mentioned as a potential issue of concern related to anonymous donations¹⁷¹ in Ireland and Spain. In Spain, there were also concerns related to the use of messaging applications (e.g. WhatsApp) for campaigning purposes due to difficulties in assessing the compliance of such campaign activities with the legislation. Whereas paid-for offline political communication is regulated, the use of online direct communication channels remains largely unregulated¹⁷².

Extraterritorial nature of the monitoring and enforcement of online political advertising

Another issue raised by Member States' administrations is linked to the extraterritorial nature and cross-border aspect of monitoring online platforms, which hinder the monitoring and enforcement of online political advertising rules. The fact that many services providers and platforms are based in third countries further complicates such monitoring and enforcement of rules on online political advertising, since enforcing relevant rules relies on cooperation with other Member States authorities and on the existence of a similar regulation in the Member State where the service is provided. The case study on the European Parliament Election in Latvia (See Annex 6) illustrates

¹⁶⁶ See mapping of national legislation in Denmark.

¹⁶⁷ OSCE/ODIHR (2020), Romania Presidential Election 10 and 24 November 2019 ODIHR Election Assessment Mission Final Report. Available at: https://www.osce.org/files/f/documents/8/a/449200_0.pdf

¹⁶⁸ OSCE/ODIHR (2019), Denmark General Elections 5 June 2019, ODIHR Needs Assessment Mission Report. Available at: https://www.osce.org/files/f/documents/4/d/419231_0.pdf

¹⁶⁹ OSCE/ODIHR (2021), Republic of Bulgaria Parliamentary Elections 4 April 2021 ODIHR Needs Assessment Mission Report. Available at: https://www.osce.org/files/f/documents/6/0/476866_0.pdf

¹⁷⁰ OSCE/ODIHR (2017), Czech Republic Parliamentary Elections 20-21 October 2017, Presidential Election January 2018 OSCE/ODIHR Needs Assessment Mission Report. Available at: <https://www.osce.org/files/f/documents/9/0/333691.pdf>; OSCE/ODIHR (2019) Slovak Republic Presidential Election 16 and 30 March 2019, ODIHR Election Assessment Mission Final Report. Available at: https://www.osce.org/files/f/documents/2/6/426149_0.pdf

¹⁷¹ OSCE/ODIHR (2020), Ireland Early Parliamentary Elections 8 February 2020 ODIHR Needs Assessment Mission Report. Available at: <https://www.osce.org/files/f/documents/a/b/445528.pdf>

¹⁷² OSCE/ODIHR (2019), Kingdom of Spain Early Parliamentary Elections 28 April 2019 ODIHR Election Expert Team Final Report. Available at: <https://www.osce.org/files/f/documents/0/5/425336.pdf>

the difficulties of monitoring online advertising activity by national competent authorities in general, while the Spanish and Irish case studies highlight the difficulties in enforcing rules related to funding and micro-targeting due to the extraterritorial dimension of the activities that competent authorities monitor and enforce.

The introduction of the DSA should result in a greater ability of Member States to enforce relevant legislation on services originating in third countries within the European Union. However, additional cooperation mechanisms might be needed to ensure that responses to violations of relevant rules in relation to political advertising are addressed in a timely manner, as the timeliness of the enforcement is key for the sanctions to be dissuasive in the area of political advertising.

Insufficiently dissuasive sanctions

Ten Member States (Belgium, Denmark, Estonia, France, Greece, Ireland, Luxembourg, Malta, Portugal and Spain) foresee imprisonment as a potential sanction for the violation of the national rules on political advertising. Out of these 10 Member States, only the French legislation explicitly encompass service providers, while the remaining legislations indicate that political parties bear responsibility. French and Spanish legislation also mentions the legal responsibility of political donors.

In Latvia the legislation foresees the possibility to dissolve a political party for campaign violations (See Annex 5). The remaining Member States foresee economic sanctions. However, few of the other 16 Member States have established dissuasive economic sanctions. For instance, in Germany and Slovakia, parties in violation of relevant rules regarding political advertising can face fines of up to EUR 500,000, while in other Member States the maximum fine foreseen is rather low – e.g. Luxembourg (EUR 1,250) and Cyprus (EUR 8,500).

Stakeholders consulted, including public authorities, European institutions and political parties, indicate that mild economic sanctions lack dissuasiveness as the economic costs of the sanctions can easily be offset by the positive electoral effect for those parties infringing the law. They also reported that sanctions are often imposed and made public only after the election, and therefore do not affect the public perception of candidates ahead of the election. Two of these stakeholders – a European institutions and a national public authority – argued that recurrent violation of rules on political advertising are proof of the lack of dissuasiveness of the sanction regime in place in most Member States.

The OSCE report on the elections in Romania in 2019 mentioned that sanctions for non-compliance with campaign finance provisions were revised in 2015; however, the new sanctions were said to remain too low to be effective or dissuasive¹⁷³, suggesting that sanctions alone are not sufficient to solve the issue of inadequate enforcement.

Size and scale of the problem

The results of the consultation activity and the review of reports on elections mentioned in the previous epigraph suggest that this problem affects all Member States. Consulted Member States authorities indicate that larger Member States generally manage to enforce the relevant rules more effectively as they can cooperate with VLOPs to a greater extent, which are seen by Member States' authorities as the key gateways to the necessary information on online political advertising activities. One consulted international organisation argued that differences in the resources dedicated to monitoring and enforcing online political advertising vary across Member States, but even those where public authorities are endowed with more resources, the investment is insufficient to guarantee a satisfactory monitoring and enforcement, and that more resources will be needed in a context where online political advertising is more prominent. Public authorities and civil society organisations consulted indicate that the difficulties of monitoring and enforcing online political advertising due to its extraterritoriality affect all Member States. While some public

¹⁷³ OSCE/ODIHR (2020), Romania Presidential Election 10 and 24 November 2019 ODIHR Election Assessment Mission Final Report. Available at: https://www.osce.org/files/f/documents/8/a/449200_0.pdf

authorities and civil society organisations hypothesise that public authorities in Member States where larger platforms are located are not as affected, public authorities from these Member States indicate that extraterritoriality affects them to a comparable extent.

Consequences

The overall consequence of the failure by Member State authorities to monitor online electoral advertising and enforce relevant rules is that electoral integrity can be harmed, as political parties and candidates might be able to run campaigns disregarding rules, and citizens might lose trust in electoral processes and democracy. Additionally, service providers might face legal uncertainty derived from the uneven implementation of national legislation and of obligations to service providers foreseen in this initiative (Section 6.1. and 6.3) More specific consequences are discussed below.

Fragmented control and enforcement of rules applicable to political advertising

Some of the issues highlighted in above sections lead to the fragmentation of control and enforcement rules applicable to political advertising. The lack of capacity, resources and know-how of national competent authorities to properly monitor and enforce legislation, as well as the lack of coordination between these entities constitute an important factor here, affecting in turn transparency. Furthermore, the issue of differences between applicable legislation online and offline leads to possible breaches of the integrity of electoral processes

In fact, in countries where paid political advertising is allowed, such as in Lithuania, the national regulatory body acknowledged difficulties in verifying and monitoring political campaign expenditures on advertising, thus jeopardising guarantees to fully legitimate election. In this case, the national body lacks a proper system for monitoring editorial coverage of broadcast, online and print media during the election campaign, and relies largely on complaints or notifications received from third parties to detect cases of possible hidden advertising or unequal access to media.¹⁷⁴

Discrepancy in the sanctions applicable at national level

With regards to the sanctions, penalties and remedy measures in violation of electoral rules and rules of financial transparency of political parties and candidates, the legal mapping carried out for this study, highlighted that a large number of fines is issued in almost all Member States in violation of these rules, including those on political advertising, and that the most used sanctions are fines. For example, in 2019 in Czechia, 68 administrative proceedings were launched during parliamentary elections, including those initiated in 2018, which resulted in a total of 36 fines. Although this constitutes a high number of sanctions for violations of electoral rules, it does not seem clear whether these sanctions were imposed in violation of political advertising rules as such¹⁷⁵. Apart from issuing fines, in more than a third of the Member States, prison sentences are also foreseen for the violation of these rules.

2.5. Problem 5: Costs of cross-border provision of services and legal uncertainty

With a few exceptions, the 27 Member States do not have a definition for online political advertising. The literature review, mapping of national legal frameworks and interview programme conclude that in most cases Member States¹⁷⁶ rely on definitions originally developed for offline advertising. Currently, only France, Latvia and Lithuania have specific definitions for online political

¹⁷⁴ OSCE/ODIHR (2019), Republic of Lithuania Presidential Election 12 and 26 May 2019 ODIHR Election Assessment Mission Final Report. Available at: <https://www.osce.org/files/f/documents/a/e/433352.pdf>

¹⁷⁵ See the mapping of national legislation in Czech Republic

¹⁷⁶ These Member States are AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, HR, HU, (IE - legislation to come), IT, LU, MT, (NL – legislation in development) PL, PT, SE, SI, SK.

advertisement, while Ireland, and the Netherlands are currently developing (IE)¹⁷⁷ or planning (NL)¹⁷⁸ legislation which would introduce a definition of online political advertising. In Germany, there is an emerging agreement among some political parties (the Greens, SDP, Die Linke) of a voluntary Code of Conduct with regards to political parties use of online political advertising.^{179, 180}

The lack of national definitions of online political advertising has several consequences:

- Unique national approaches mean barriers for cross-border trade since the scope of online political advertising differs across EU borders.
- National authorities in the EU-27 struggle to address issues around online political advertising (e.g. tackling micro-targeting) since there is no agreed scope (definition). A lack of scope makes it difficult to introduce interventions, including on ensuring high transparency standards.

Some Member States have begun to develop own legislation (e.g. IE and NL). The fact that national authorities have started to take action risks a divergent approach across the EU.¹⁸¹ The Member States are beginning to define 'online political advertising' in their own way, which will make an EU-wide intervention more challenging in the future.

The fact that there is an absence of legislation and a lack of defined scope is already creating costs and uncertainty in the growing market of online political advertising. This has several consequences.

A lack of provisions of online political advertising may open up risks to the transparency of the democratic process at national level across the EU-27. For example, during the 2018 Irish referendum on the repeal of the 8th Amendment to the constitution, Irish electoral laws dating from the 1990s left online spaces unregulated and open for both sides of the campaign. The 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. During the referendum campaign, foreign organisations not only sought to influence decision-making through political advertising, but also contributed financially to the pro-No and the pro-Yes organisations.¹⁸² The lack of oversight caused by outdated legislation not encompassing the online sphere contributed to new Irish legislation introducing a definition of online political advertising.¹⁸³ The rationale behind the Irish legislation is that obligations to improve transparency around online political advertising must include a common definition; otherwise, other interventions cannot be effective. A common definition is also necessary to define the scope of any EU-wide intervention under Article 114 TFEU¹⁸⁴ (see Section 3.1) to regulate the provision of online advertising services in the internal market, setting minimum transparency standards (Sections 2.1 and 6.1), regulating the use of targeting techniques (Sections 2.3 and 6.3) and coordinating the action of Member States authorities monitoring and enforcing these norms on market actors (Sections 2.4 and 6.4) to allow economic operators to provide their services on a cross-border basis facing less costs and less legal uncertainty.

¹⁷⁷ *The Irish Bill aims to set out the information which must be disclosed when such a political advertisement is published/promoted/distributed online and the format in which this type of information must be provided. The list of information required is comprehensive and, if fully complied with by each online political advertisement, would enable transparency and context of online political advertisements for the voting public, journalists, fact checkers and independent researchers.* How Ireland Proposes to Tackle the Thorny Issue of Online Political Advertising (24 March 2021). See <https://instinctif.com/insights/ireland-proposes-tackle-thorny-issue-online-political-advertising/>

¹⁷⁸ Interview with national and international stakeholders

¹⁷⁹ See RND 6 March 2021 <https://www.rnd.de/politik/wahlkampf-im-netz-selbstverpflichtung-der-parteien-zu-fairness-gefordert-UTINBQEYOJB5RGLL3NJ7OBOZNY.html>

¹⁸⁰ The German agreement is focused on conduct of political parties with regards to fulfilling obligations of full transparency in online advertising, the renouncement of controversial advertising practices and the dissemination of false information in the election campaign.

¹⁸¹ An example (precedent) of divergent approaches to online political advertising can be found described in the Case study on the USA. See Annex 6.

¹⁸² These included anti-abortion organisation based in the US (such as Let Them Live, U.S. Christian Right, Human Life International, Independent Funders in the U.S. and The Atlantic Philanthropies), as well as to a lesser extent pro-choice organisation (the Soros Foundation was associated with the campaign).

¹⁸³ See the Irish case study.

¹⁸⁴ Treaty on the Functioning of the EU, Article 114. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E114&from=EN>

The forthcoming legislation in Ireland and the Netherlands are indications that the Member States more broadly¹⁸⁵ consider the lack of a definition as a problem and contemplate action. This risks a divergence of approaches to tackling the problem if Member States continue to take action at national level. Increasing divergence at the Member State level would have a direct effect on cross-border trade, since different Member States would (continue to) apply different rules and obligations. In France, for example, online political advertising is not allowed¹⁸⁶ in order to prevent disinformation, information manipulation and interference. The French ban, which has been subject to debate with regards to its compatibility to the European Court of Human Rights' jurisprudence on freedom of expression¹⁸⁷, is equally an illustration of how Member State governments are weary of the ability of the online political advertising market to regulate itself.

The fragmented approach to defining online political advertising at national level is also a problem at the European level for two reasons.

1. **The issue of additional or asymmetric costs.** The consultations with stakeholders show that the lack of a common approach to defining online political advertising creates additional costs (compliance and staff costs) for political parties, for advertising firms and for service providers when trading cross borders.
2. **The issue of legal uncertainty.** The definition of an online political advert is not clear (unspecified) which creates uncertainty in the market for actors who operate in the sector of political advertising specifically and for the advertising industry generally. For example, political parties foresee reputational costs to cross-border trade and avoid using a consultancy for cross-border services through fear of being seen as avoiding national rules.¹⁸⁸ The lack of clarity also affects media companies not operating in the political advertising sector since they may produce adverts that are essentially not political but may be interpreted as such. An example of this is the 2019 advert paid for by the soft drink company Coca-Cola during Pride month.¹⁸⁹ Legal clarity would therefore be beneficial for the wider media sector. Thirdly, legal uncertainty has created a potential loophole for political parties to circumvent rules with regards to funding and other election rules.¹⁹⁰

Drivers

The key driver of this problem is that the industry around online political advertising has grown faster than national legislation. This trend is made evident when comparing the findings of the legal mapping (currently, only three Member States have a defined concept of online political advertising) with that of the growth of the market.

As outlined in section 1.2.1, data from the Audiovisual Observatory shows an increase in the share of online political advertising versus offline political advertising, which has drastically reduced the share of offline political advertising. The greater cost-effectiveness of online political advertising, partially due to the possibility to target very specific audiences (see Section 2.3), has had as a consequence that, over the period of an electoral cycle, online political advertising has grown from representing a small part of the total advertising conducted by political parties to taking over offline political advertising as the primary channel of sponsored communication for political parties. Consulted stakeholders, including political parties and international organisations, indicate that the trend will continue and that over the next four or five years, political parties will rely even more on online political advertising than they do now.

¹⁸⁵ As confirmed through this study's interview programme with national authorities.

¹⁸⁶ <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000037847559/>

¹⁸⁷ https://www.echr.coe.int/Documents/Research_report_expression_advertising_media_elections_ENG.pdf

¹⁸⁸ Interview programme (DE)

¹⁸⁹ Pro-LGBT Coca-Cola adverts spark boycott calls in Hungary. The Guardian 5 August 2019. <https://www.theguardian.com/world/2019/aug/05/pro-lgbt-coca-cola-ads-spark-boycott-calls-in-hungary>

¹⁹⁰ Interviews with international organisations provided concrete examples of a political party in the Netherlands whose members bought political advertising as individuals rather than through the party management. This resulted in adverts which i) risked circumventing funding rules, ii) were not clearly perceived as political advertising but appeared as 'organic' content.

Size and scale of the problem, affected stakeholders

The problem of additional or asymmetric costs and legal uncertainty is applicable to all cross-border trade. The size of the online political advertising market has been steadily growing in the past years in the EU. Estimates put the size of the online political advertising market in Europe at over EUR 100 million¹⁹¹.

Given that Member States electoral cycles are unique to the national context, fluctuations in spending on cross-border online political ads can be expected from year to year. In addition to the national election campaigns, there is also spending related to European elections. These elections also generate cross-border trade.¹⁹²

This study's calculations on cross-border trade in online political advertising suggest the market is worth several million euros, with more extensive trade occurring in the years when there are European elections. As concluded in section 1.2, the top eight cross-border trade countries (e.g. Germany to Austria) in terms of trade flows spent a total of EUR 1,355,500 during the 2019 European elections.

With regards to those affected by the problem, section 1.2.2 introduces the main actors involved in the political advertising process. Two of these stakeholder groups are particularly affected by the additional costs and legal uncertainty which stems from the current lack of a definition in the regulatory framework: (i) political actors (which covers NGOs that carry out issue-based campaigns, political parties, political candidates and consultancies who support the aforementioned actors), (ii) online platforms (which could also be described as a type of service provider).

The subsequent paragraphs will explain how and why they are affected.

Political parties, candidates and other political actors are key actors of a functioning democratic system, rules and legislation setting the rights and freedoms of parties are of paramount importance and political parties are therefore thoroughly regulated in terms of financing and communication¹⁹³.

During and between elections, political actors develop messages targeting voters either to increase the importance of an issue or to communicate their solutions and views on specific issues. Depending on the complexity of the issues, the resources available and other factors, the messages may be developed within the party (through consultations with members or party officials) or involve external actors. Anecdotal evidence collected from political parties in Europe suggest that increasingly parties co-design their messages with professional expertise. This is mainly a result of the increasing fragmentation of the media landscape and the increasing volatility of voter behaviour¹⁹⁴.

This increased professionalisation of political messaging may occur by involving more external expertise through the use of political consultancies/communication agencies and data analysis firms, the development of internal expertise in these areas, or a mixture of both.

¹⁹¹ According to analysis by the political tech firm, Worldacquire, political parties and organisations across Europe spent at least €100 million to advertise on Facebook and Google for their election campaigns in 2019 <https://worldacquire.com/2019/12/30/which-political-parties-in-europe-spent-the-most-on-online-political-advertising-in-2019/>

¹⁹³ A number of international instruments are in place setting out some of those rights and freedoms, including:

- The European Convention of Human Rights, in particular article 10 on the freedom of expression, article 11 of the freedom of association, article 14 on non-discrimination;
- The Charter of the Fundamental Rights of the EU, in particular article 12 on the right to freedom of assembly, and articles 21 and 23 on non-discrimination and gender equality; and
- The Council of Europe's European Commission for Democracy through Law (Venice Commission)'s Guidelines on political party Regulation created to assist members in formulating legal frameworks that comply with international standards in facilitating the proper establishment, development and functioning of political parties.

¹⁹⁴ Strömbäck (2007) Political Marketing and Professionalized Campaigning: A Conceptual Analysis

Political consulting firms vary in size, from single operators or small scale firms (often with links to the political parties or candidates which they advise) to large multinational firms able to develop complex messages through polling, focus groups etc. These include communication agencies such as HAVAS, Publicis, market research companies such as KANTAR, GfK Ipsos, or agencies focussed mainly on providing services to political parties and candidates (Kanto, eXplain). Their size and the variety of services they offer makes it difficult to assess the share of turnover relevant to political advertising. However since the market of online political advertising is growing (see section 1.2.1), it would be reasonable to assume that the relevant turnovers of these service providers will also increase in tandem with the market growth.

At least some of those organisations provide cross-border services, but it is generally on the basis of a clear understanding of the local legislation and particular context. In these cases, the companies operate as local organisations rather than firms providing cross border services. For example, eXplain, which was influential in Emmanuel Macron's presidential campaign,¹⁹⁵ operates in many Member States, but an assessment of the client base of eXplain shows that the political parties to which it provides services are located in Germany and France, the two countries where it has offices. This highlights the local nature of the industry.

Smaller service providers consulted as part of the study indicated that they refrain from providing their services on a cross-border basis. Evidence collected through interviews shows that this may reflect the fact that these small service providers are often expert in one country, region or constituency and have a low appetite for offering their services abroad. Furthermore, the administrative costs imposed by the requirements of larger platforms, or because they are uncertain about the legal requirements for the provision of these services in Member States different from those in which they are based. Therefore, stakeholders consulted highlight that the number of providers diminishes, as indicated by European institutions consulted, and competition is hindered. This, in turn, has a negative effect on innovation, growth, and employment¹⁹⁶.

Consulted stakeholders, including a European institution and a business organisation, indicate that smaller SMEs do not operate on a cross border basis if this involves conducting online political advertising in a large number of Member States. This is because of the costs of complying with the relevant legislation in each Member State are high and the administrative requirements require dedicated staff.

In relation to the **European Parliament** elections, the regulatory fragmentation has different negative results. On the one hand, European institutions that request political advertising services face additional administrative costs in order to identify relevant rules in different Member States. On the other hand, European political parties face additional costs for the provision of services, or in some cases are unable to secure political advertising at the European level, as the lack of a common regulatory framework underpinned by a common definition of online political advertising is a barrier to buying pan-European online political advertising services, such in the case of the 2019 European Parliament¹⁹⁷. The most noticeable example of this problem was the rules set up by Facebook during the EP elections in 2019, which resulted in seven European Political Parties co-signing a letter¹⁹⁸ asking for the company to drop its advertising policy on cross-border advertising¹⁹⁹.

European political actors, such as European political parties, European political foundations or civil society organisations that wish to conduct issue-based advertising are affected more widely

¹⁹⁵ <https://www.prospectmagazine.co.uk/politics/the-data-team-behind-macrons-astounding-victory>

¹⁹⁶ Whereas consulted stakeholders identify these effects, they have not provided a quantification of them. The targeted consultations to be conducted over the next weeks are aimed at obtaining quantitative data on costs that is necessary to estimate the size of this problem.

¹⁹⁷ Khan, M. (2019, 29 March). Facebook rules on political advertising criticised by EU parties. Financial Times. Retrieved from <https://www.ft.com/content/0dab95ba-5156-11e9-b401-8d9ef1626294>

¹⁹⁸ Accessible here: <https://europeangreens.eu/news/co-signed-letter-european-political-parties-addressed-facebook-new-advertising-rules>

¹⁹⁹ See for example Politico, Facebook to cave to EU pressure after row over political ad rules <https://www.politico.eu/article/facebook-european-elections-advertising-political-social-media-europe/> last accessed 20 April 2021.

too. For instance, organisations that advocate for environmental or certain trade policies, policy competences where the European Union legislates, face additional costs when conducting such campaigns at the EU level. This limits their ability to pursue their political aims and shape policy at the European level and hinder democratic engagement and active participation beyond elections at the EU level²⁰⁰.

Elections at the national level are not as affected by this problem as elections to the European Parliament, since the problems faced by political parties are smaller. However, national political parties may face additional costs when requesting services on a cross-border basis, and there is not a level playing field for companies to provide services across Member States in national elections.

At the other end of the value chain, the second group of affected stakeholders are the **online platforms**. Online platforms, including the very large online platforms, are key actors in the political advertising market since the value of the political adverts which they publish constitute the majority of the market.²⁰¹ Some small platforms operate mainly within the boundaries of a Member States (or a linguistic community) and are therefore not subject to some of the cross-border issues discussed here.²⁰²

In general, most of the online platforms operate on a cross-border basis, and in particular the social media platforms. These are also more relevant to the problem identified since they carry a significant part of the online political advertising market. Indeed, social media platforms have gained in importance in political advertising:

1. Social media platforms can help target less politicised people who may not be looking specifically for political information. As such, social media may be a forum where specific issues are promoted²⁰³.
2. Social media platforms allow for targeting or the micro-targeting of audiences. For example, during the UK parliamentary elections in 2015, GBP 1.6 million (roughly EUR (2015) 2.3 million) was spent on political advertising through Facebook and Google. This figure was double the amount spent on campaign broadcasts, and five times that spent on newspapers. A similar figure was spent by political parties and campaign groups on online political advertising during the UK's referendum on EU membership.²⁰⁴

Consequences

In the absence of EU intervention, the problem is likely to persist.

The issue of cross-border campaigning is expected to gain importance; the debates on the concept of transnational lists expected to take place in the Conference of the Future of Europe²⁰⁵, are likely to increase the demand for cross-border provision of (online) political advertising services. As a consequence, the EU dimension of this problem will become greater as the market grows.

²⁰⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European democracy action plan. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0790&from=EN>

²⁰¹ Online platforms are defined in the Digital Services Act as "a provider of a hosting service which, at the request of a recipient of the service, stores and disseminates to the public information, unless that activity is a minor and purely ancillary feature of another service and, for objective and technical reasons cannot be used without that other service. See Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC

²⁰² Platforms not engaged in cross-border trade include large platforms such as leboncoin.fr in France or Ebay-kleinanzeigen in Germany) as well as smaller sites such as participatory and information websites (mediapart.fr, affaritaliani.it).

²⁰³ Sebastian Stier, Arnim Bleier, Haiko Lietz, Markus Strohmaier, Election campaigning on social media: Politicians, audiences and the mediation of political communication on Facebook and Twitter.

²⁰⁴ Ernesto Apa et al., "Media coverage of elections: the legal framework in Europe" (Strasbourg: European Audiovisual Observatory (Council of Europe), 2017).

²⁰⁵ Shaping the Conference on the Future of Europe. Available at: https://ec.europa.eu/commission/presscorner/detail/cs/qanda_20_88 https://ec.europa.eu/commission/presscorner/detail/cs/qanda_20_88

The case study on the 2020 US Presidential Election (See Annex 6) shows that in the absence of a common definition established at the Federal level in the USA, different and increasingly heterogeneous definitions of online political advertising have recently been adopted across different states. Considering that the approaches taken in the regulation of traditional advertising across Member States in the EU are more heterogeneous than those in the USA, it is expected that in the absence of a common definition regulatory divergence in terms of definitions will increase over time.

A consequence of the lack of the existence of a common definition of **the regulation of online political advertising** is that Member States might erect barriers to online political advertising affecting cross-border trade. Consulted stakeholders²⁰⁶ indicate the Member States are interested in developing their own legislation for online political advertising.²⁰⁷ This is, according to the interviews conducted, an indication that national-specific approaches to ensuring transparency are being developed.

The development of different and divergent regulation across the Union at the Member State level risks increasing the costs of companies that trade cross borders and thereby creating an uneven playing field within the single market.

This situation contributes to the fragmentation of the European Parliament elections as the regulatory framework incentivises campaigns that are run at the national and not the European level. Should transnational lists be adopted for the 2024 election to the European Parliament as foreseen under the EDAP²⁰⁸, the demand for cross-border advertising is expected to increase²⁰⁹. Then, the current divergence across regulatory frameworks would have more negative effects on the advertising conducted on behalf of European political parties.

²⁰⁶ International organisations and academics consulted through the interview programme.

²⁰⁷ In particular, different aspects of online political adverts, such as the entity on behalf of which they are paid, their payer and the price of the advert are more difficult to trace when the service is provided on a cross border basis.

²⁰⁸ COM/2020/790 final

²⁰⁹ This assumption is based on the European Audiovisual Observatory data which show online political advertising (national and cross-border) is increasing vis-à-vis offline political ads. This trend is expected to continue.

3. Why should the EU act?

This chapter discusses the legal basis for EU action and the European Added Value of a policy intervention by the EU.

3.1. Does the EU have the right to act?

Online political advertising today in the EU has an inherent cross border nature (See Section 2.2.4.), as its financing and dissemination poses challenges that cannot be met by national authorities, which lack both the powers and means to address these challenges effectively (See Section 2.2.3.).

Under Article 114 TFEU²¹⁰, the EU has the competence to adopt measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their objective the establishment and functioning of the internal market. Therefore, the Union has the competence to harmonise the conditions for the provision of online political advertising services across the internal market.

Article 224 TFEU²¹¹ confers the Union with competence to lay down regulations governing political parties at the European level, and in particular the rules regarding their funding.

The EU also has competence to legislate to protect individuals with regard to the processing of their personal data by Union institutions, and by the Member States when carrying out activities which fall within the scope of Union law, and on the free movement of such data on the basis of Article 16 TFEU²¹². Personal data is collected and processed, such as personal data considered sensitive under the GDPR, for micro-targeting purposes in the context of online political advertising, by directing advertisements and tailoring the content towards individuals and groups with defined characteristics. Therefore, the EU has the competence to legislate to ensure a high protection of personal data as fundamental rights of individuals in the context of online political micro-targeting.

The European Union already regulates advertising in offline media under the Audiovisual Media Services Directive, although it does not specifically regulate online political advertising²¹³. The Union is taking action under the proposal for a Regulation on a Single Market for Digital Services (Digital Services Act), according to which very large online platforms should ensure public access to repositories of advertisements displayed on their online interfaces to facilitate supervision and research into emerging risks brought about by the distribution of advertising online, including illegal advertisements or manipulative techniques and disinformation with a real and foreseeable negative impact on health, public security, civil discourse, political participation and equality. The

²¹⁰ Article 114 of the Treaty on the Functioning of the European Union <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E114&from=EN>

²¹¹ Article 224 of the Treaty on the Functioning of the European Union: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E224>

²¹² Article 16 of the Treaty on the Functioning of the European Union: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012E/TXT>

²¹³ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities: Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018L1808&from=EN#d1e664-69-1>

proposal for a DSA foresees complementary measures under the European Democracy Action Plan²¹⁴.

3.2. Why is EU action needed and what is its added value?

The European added value of this initiative is multifaceted, according to the consultations and research conducted.

Member States authorities indicate that the extraterritorial and cross border dimension of the provision of services means that any European action is potentially more effective than national responses. Three of these authorities strongly welcome EU policy intervention, considering it proportionate and compatible with legislation in their Member State. One public authority indicates that reaching consensus on this area of policy at the national level poses more difficulties in its Member State than reaching the necessary consensus at the EU level, hence identifying added value in terms of political feasibility. Other Member States welcome the initiative but identified parts of it in its inception phase, such as setting limits to expenditure to be disproportionate and politically unfeasible.

Concerning the protection of personal data, some Member States have attempted or are considering intervention with respect to online political micro-targeting, but such measures have proved problematic. EU action would therefore be beneficial to ensure that the fundamental right of each individual whose personal data is processed within the EU is applied in a consistent manner.

Consulted European institutions indicate that the specific problem of foreign interference via funding, creation, or dissemination of online political adverts would require the harmonisation of certain aspects of the regulatory framework at the European level, as the different definitions and regulations facilitate interference. Substantially different regulatory approaches to online political advertising across Member States allows interference operation involving actors in different Member States to make use of provision of cross border services in a less transparent – and hence more effective – fashion. These institutions also identify added value to the initiative in synergy with the aims and objectives of the Code of Practice on Disinformation²¹⁵.

Consulted platforms and other stakeholders with expertise on the role of platforms indicate that large platforms would be willing to engage in more ambitious self-regulation if these would have the EU as its scope, as that would eliminate their costs of engaging with each Member State in an ad hoc basis. Two international organisations and a large number of civil society organisations and two Member States authorities expressed the view that EU regulation on obligations of large platforms would likely be more systematically and effectively monitored and enforced than national legislation.

Civil society organisations identify that action at the EU level will provide Member States where the legislation is less advanced with a more up to date legislative framework.

²¹⁴ Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2020/31/EC <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020PC0825&from=en>

²¹⁵ Code of Practice on Disinformation (European Commission). Available at: https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=54454

4. What should be achieved?

Chapter 4 presents the objectives of the EU policy intervention and establishing the logical chain between the identified problems and what the initiatives aims to achieve. The objectives outlined in this chapter differ somewhat from those presented in the Inception Impact Assessment since the objectives have been further refined during the course of the impact assessment process.

4.1. Overall objectives

The initiative has two general objectives, a democratic objective, that is providing for high transparency standards for political parties in the EU to promote free and fair elections and the economic objective, that is facilitating the provision of cross-border ads and related services for economic operators in the internal market while supporting fair democratic processes based on high transparency standards.

4.2. Specific objectives

The specific objectives are as follows:

- Promote stronger transparency and free and fair elections through compliance with relevant rules among political parties in the EU
- Reduce legal fragmentation, limit circumvention of regulation and remove obstacles and reduce costs for the provision of cross-border services
- Define high transparency standards for political ads (including issue ads)
- Address the use of targeting and manipulative techniques to support fair elections and democratic debate
- Ensure the satisfactory oversight of the envisaged obligations and strengthen regulatory outcomes

4.3. Intervention logic

The table below presents the intervention logic. The intervention logic links the problems identified with the objectives, the policy options and their impacts.

The five problems outlined in the intervention logic diagram, and their causes and expected outcomes, reflects the analysis presented in the problem definition section (chapter 2).

Two general objectives are to be considered when discussing the policy options to be assessed for solving the problems. These are to:

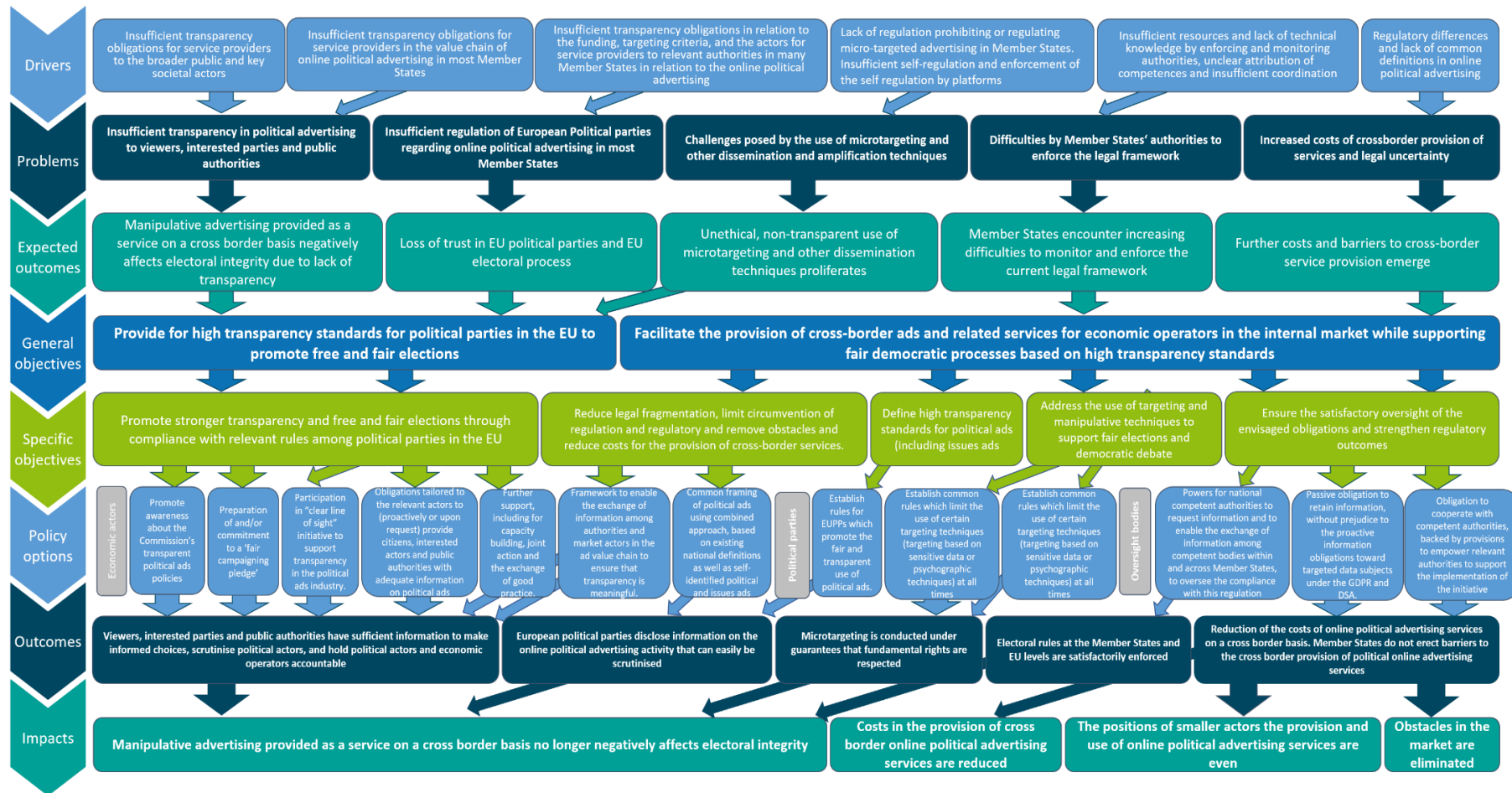
1. Provide for high transparency standards for political parties in the EU to promote free and fair elections
2. Facilitate the provision of cross-border ads and related services for economic operators in the internal market while supporting fair democratic processes based on high transparency standards.

The specific objectives aim to promote stronger transparency, targeting and awareness of political advertising, ensuring the satisfactory compliance of obligations, and to reduce legal fragmentation. It should be noted that with regards to the specific objectives that relate to transparency and targeting of political advertising, these are relevant not only to ensure electoral integrity but also

equally to ensure a harmonised single market by guaranteeing market transparency and high protection of personal data.

The specific objectives in the intervention logic are followed by the policy options presented and assessed in this study. These POs and their expected outcomes and impacts are discussed in Chapters 5 and 6.

Figure 17: Intervention logic



5. What are the various options to achieve the objectives?

This section presents the policy options that have been defined to achieve the specific objectives, as well as the status quo that is used as the baseline for the purpose of comparison. After a short background explaining the approach to selecting the policy options, the baseline scenario and five Policy Blocks are briefly introduced and then described. This is followed by a brief discussion of how elements of the different options could be combined to make the proposed intervention more effective, efficient, coherent or proportionate.

Background to selecting the policy options

The policy options were developed throughout the research process in close cooperation with DG JUST. Through this process, five thematic Policy Blocks corresponding to each of the five problem areas described in section 2 above were developed. These are:

1. Enhancing transparency through the introduction of enforceable minimum transparency standards tailored to economic actors
2. Further regulation of European Political Parties and European Political Foundations;
3. Regulation of micro-targeting
4. Measures oriented to enhancing enforcement of relevant rules through common standards to support oversight and audit, and the applications of sanctions
5. Reducing costs for economic actors and providing certainty through a common definition of online political advertising

Each Policy Block contains alternative policy options to achieve the objectives under the relevant theme. These options were developed and refined during the study, as the body of evidence grew. This allowed for the impact assessment to present sets of policies under each option that corresponded to the problem drivers and stakeholders involved and which were tailored to each problem area. To this end, during the course of the impact assessment study, a dedicated option to address regulation of European Political Parties and European Political Foundations was included. Without this Policy Block, the scope of the possible policy interventions would be incomplete (lack effective intervention of elections at European level).

In relation to themes 1 ('transparency') and 3 ('micro-targeting'), the strength of evidence from the literature, supported by subsequent interviews, led to the conclusion to rule out the possibility of deploying soft law measures as they were unlikely to prove effective in addressing the problems identified and achieving the desired objectives.

Given the above, the approach of grouping sets of policy options into Policy Blocks, is more appropriate than the (common) alternative of proposing policy options along the lines of no change, soft law changes and hard law changes. This is because a combination of measures is envisaged for each Policy Block.

Through this process, appropriate and proportional interventions were designed according to the nature and magnitude of each problem area. Each Policy Block combines different types of intervention, from soft law measures to promote and clarify the currently applicable EU and national frameworks, to targeted legislation to increase transparency and establish the same standard for economic operators across the Union and to support the oversight of this standard, to legislation harmonising specific conditions and criteria in the context of political advertising. These three types of intervention correspond to the main options presented in the Inception Impact Assessment²¹⁶ for

²¹⁶ Inception Impact Assessment - Political advertising – improving transparency. Available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12826-Political-advertising-improving-transparency_en

consideration against the baseline. The resulting analysis combines the benefits of a thematic approach in ensuring that each of the problem areas identified is adequately and fully addressed (as described in the remainder of this section) with the advantages of an intervention-based approach that enables packages of options to be directly and transparently compared to assess their impact (in section 6) to arrive at a preferred set of options (section 7).

5.1. Status quo (baseline)

The baseline serves as a benchmark against which the impacts of all other policy options are assessed. It measures future impacts if no (further) action at EU-level is taken as compared to the situation today (the 'no change' option)²¹⁷. Modelling this option is required by the Better Regulation Guidelines, as it forms the starting point for the assessment of any proposals for change. According to the Guidelines, the option of changing nothing (the 'baseline') should always be developed and used as the benchmark against which the alternative options should be compared²¹⁸.

Under the baseline scenario, current trends would be expected to continue as political activity will continue to move increasingly online and technology will be used ever more intensively to produce, disseminate, target and fund communications with a political purpose, making cross-border service provision an emerging market, including in the context of European elections. At the same time, the move online will cause relevant national rules to become increasingly difficult to monitor and enforce, and Member States will respond with diverging national solutions aiming to increase transparency and the possibility for oversight. Private actors will also continue their efforts to control their compliance risks in this context through practices which have the effect of partitioning the internal market in relevant services. Left unchecked, the regulatory environment will thus continue to fragment, the provision of services between Member States will be reduced, in particular for smaller businesses, and regulation, including private-sector self-regulation, will not maintain its effectiveness. The problems outlined above affecting political advertising will continue to evolve, including as regards the power of citizens to inform themselves regarding political advertising, and hold political actors to account.

In the baseline scenario, the evolution of the status quo will also be affected by a series of measures in the Digital Services Act, once adopted, notably with regard to broader transparency obligations on all types of online advertising on online platforms, as well as the risk management and auditing obligations on very large online platforms with regard to their advertising systems and their impacts and risks on electoral processes and fundamental rights. The baseline also includes positive effects from the implementation of the proposals set out in the European Democracy Action Plan, which includes the strengthening of the Code of Practice on Disinformation²¹⁹ and the new obligations to service providers under the DSA as proposed discussed in Section 2.4. Ongoing development of the monitoring and enforcement of EU data protection rules will continue, including following recent Guidelines of the European Data Protection Board on the targeting of social media users²²⁰.

In the baseline scenario, Member States would continue to regulate online political advertising, as some Member States are currently doing. Further regulation at the Member States level is expected to include further implementation of the Commission Recommendation of 12.9.2018 on election cooperation networks, online transparency, protection against cybersecurity incidents and fighting disinformation campaigns in the context of elections to the European Parliament. Member States

²¹⁷ Although note that the evolution of the status quo will also be affected by a series of measures in the Digital Services Act

²¹⁸ Guidelines on Impact Assessment: <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-impact-assessment.pdf>

²¹⁹ Under Pillar 3 of EDAP, the Commission will issue guidance to strengthen the Code of Practice on Disinformation in spring 2021 and will subsequently convene the signatories of the Code of Practice and relevant stakeholder groups to strengthen the code according to the guidance.

²²⁰ https://edpb.europa.eu/sites/edpb/files/consultation/edpb_guidelines_202008_onthetargetingofsocialmediausers_en.pdf

would also be expected to participate in the European Cooperation Network on Elections (ECNE), sharing best practices in the regulation and enforcement rules on online political advertising.

Under the EDAP, the Commission is expected to steer efforts to overhaul the Code of Practice on Disinformation into a co-regulatory framework of obligations and accountability of online platforms, in line with the Digital Services Acts, as well as to issue guidance to enhance the Code of Practice to set up a more robust framework for monitoring its implementation²²¹.

5.2. Combining elements from the different options

As shown chapter 6, Policy Blocks 1-5 address specific problems identified in Section 2 and regulate different aspects of online political advertising in the EU. It should be possible to identify a future intervention that combines elements of them to achieve the policy objectives in the most effective, efficient, coherent, and proportionate way.

Measures under Policy Block 5 would affect the definition of online political advertising, but would not be incompatible with any other measure. Measures under Policy Block 2 would impose specific obligations on European political parties and the EU administration, and measures under Policy Block 4 would impose obligations on national authorities and the EU administration. Measures under Policy Blocks 1 and 3 would impose obligations on service providers. The different obligations under Policy Blocks 1 and 3 do not overlap as they regulate separately the obligation to provide transparency and the conditions under which micro-targeting can or cannot be conducted.

In Section 6, the impacts of each policy option are considered separately, presented in five different Policy Blocks. In Section 7, the set of preferred policy options is presented as a single policy, and the synergies and possible trade-offs among the options are discussed.

²²¹ European Commission, European Democracy Action Plan: https://ec.europa.eu/info/strategy/priorities-2019-2024/new-push-european-democracy/european-democracy-action-plan_en

6. What are the impacts of the different policy options and who will be affected?

In this Section, the impacts of the different policy options are assessed separately against a baseline scenario of no EU intervention (See Section 5.1). Each subsection includes a summarised description of each block of policy options, and the general and specific objectives that each block of policy options addresses are presented at the beginning of each section. This chapter also presents tables reflecting the impacts of each sub-option; a summary of the main economic impacts, social impacts and impacts on fundamental rights; and a conclusion on the preferred sub-option.

Under each Policy Block, and under each policy option, the analysis presents the expected costs and benefits for each main stakeholder group affected. Tables assessing costs and benefits are presented using the following rationale:

++	Relatively significant benefits are expected (or economic savings) in terms of longer-term economic benefits. These may for example relate to better cross-border access to the Single market as conditions for the provision of political advertising services are harmonised.
+	Some benefits are foreseen however these are comparatively small and/or difficult to estimate if they are indirect in nature.
--	Relatively significant costs may be incurred for this stakeholder group, with the magnitude being dependent on the intervention in question. Significant costs relate to either one-off economic costs or on-going economic costs. For example, the need improve reporting on online political adverts is in on-going administrative costs (but which is expected to diminish overtime as administrative procedures are streamlined and become more efficient), whereas setting up internal procedures (e.g. in the VLOPS) to ensure monitoring data are collected in a one-off cost.
-	Some economic costs are foreseen however these are comparatively small and/or difficult to estimate if they are indirect in nature. For example, smaller costs may be incurred through the online political advertising value chain.

For some policy options, one stakeholder group may experience both costs and benefits. Whichever is the greater (+ or -) will summarise the outcome for that particular stakeholder group.

Throughout section 6, the estimations used for assessing costs and benefits are derived from interviews and evidence derived from secondary data, in particular market estimations.

6.1. Impacts of Policy Block 1: Enhancing transparency through the introduction of enforceable minimum transparency standards tailored to economic actors

Policy Block 1 includes three different policy options that are mutually independent. Hence, they are considered separately.

6.1.1. Impacts of Policy Option 1.1: Ensuring awareness among, and providing information to, citizens

The Table below shows the policy options concerning the provision of information to citizens and the specific objectives which have been proposed as part of these options.

Policy Block 1 includes three different policy options, all of them focused on increasing different dimensions of transparency. Each policy option includes two policy alternatives.

Under Policy Option 1.1, measures to increase awareness among citizens and viewers of ads are considered.

Under Policy Option 1.2, measures to provide information to interested actors are considered.

Under Policy Option 1.3, common transparency standards in political advertising to provide information to interested actors are considered.

In the context of Policy Option 1, a distinction is drawn between “**relevant**” and “**meaningful**” information. This reflects the evidence gathered during the study, both in the literature review presented in Section 2.1 and the consultation activities, suggesting that presenting some information on the face of an ad can effectively raise awareness among citizens – highlighting the campaign, issue or politician behind an ad, who paid for it and how much – but more detailed information (e.g. targeting criteria) is better made available or provided to those who seek it, and can be stored, for instance, in an online repository. To present excessive amounts of information on the face of an ad can overwhelm viewers and risks being counterproductive, so user-friendliness must be ensured to achieve optimal results.

Relevant information	Meaningful information
<i>Examples:</i>	<i>Examples:</i>
<ul style="list-style-type: none"> • The campaign, issue or person to which the political advert is connected to • Who paid for the advertisement and how much? • Targeting criteria 	<ul style="list-style-type: none"> • Relevant anonymised data about dissemination • Further information to ensure fairness in the context of political advertising, for instance duration of circulation, number of interactions and what support services or material assistance (e.g. behavioural profile targeting) were paid for.

Policy Option 1.1: Ensuring awareness among and providing information to citizens

Policy Option 1.1.1: Ad publishers present relevant information to viewers on the face of the ad (regardless of medium).

Ad publishers, which are VLOPS under the DSA, make available additional meaningful information in ad repositories.

Online ad publishers enable access to information regarding relevant elections (link to official site).

Policy Option 1.1.2: Actions foreseen under Policy Option 1.1.1, plus:

Ad publishers who publish (targeted) banner ads on their app, platform, website or other online service present on the face of an ad relevant information to viewers regarding the advertising brokers whose adverts they carry, with an indication of their use of personal data and links to an independent assessment of their compliance with relevant norms.

Policy Option 1.2: Providing interested actors²²² with additional meaningful information

²²² Journalists, civil society organisations, and political actors, including parties, candidates and campaigns

The limited availability of data related to online political advertising is significantly hindering the expected transparency on the matter. Policy option 1.2 foresees the disclosure of additional meaningful information to interested actors, particularly those within civil society such as researchers or journalists, on request.

Policy option 1.2.1:

Ad publishers, or very large online platforms (VLOPs),²²³ provide additional meaningful information in aggregated form.

Policy option 1.2.2

Obligations under Policy Option 1.2.1, plus:

All economic actors retain relevant meaningful information regarding transactions, including amounts, parties and the use of targeting, where relevant.

Economic actors provide extracted information through the value chain to the eventual ad publishers.

Ad publishers publish timely reports on the amounts spent on political advertising, including on its targeting, aggregated to campaign or candidate.

Ad publishers, who are VLOPs, provide meaningful information in ad repositories regarding the amounts spent linked to an ad, and suitably aggregated information by party, candidate or other relevant political actor.

Policy Option 1.3: Providing competent authorities with additional information

Policy Option 1.3.1:

Economic actors retain meaningful information regarding transactions, including amounts, parties and the use of targeting, where relevant.

Economic actors provide meaningful additional information, in a suitably aggregated form, to competent authorities, including information on:

- Expenditure;
- Financial or material political contributions;
- Equality between candidates (e.g. regarding parity of resources and airtime during election campaigns);
- Silence periods and the periods during which ads are permitted;
- The nature of participants (e.g. third-country corporate entities); and
- The profiling and targeting of voters, including through the use of personal data.

Policy Option 1.3.2:

Economic actors provide extracted relevant information through the value chain to the eventual ad publishers.

Ad publishers publish periodic reports on the amounts spent on political advertising, including on its targeting, aggregated to campaign or candidate.

Ad publishers, which are VLOPs, provide meaningful information in ad repositories regarding the amounts spent linked to an ad, and suitably aggregated information by party, candidate or other relevant political actor.

An important aspect of both policy options is the information obligations they would impose on economic actors. Based on the work carried out as part of this study, and for the purposes of

²²³ As defined under the DSA

assessing each option's impact, it is assumed that the information to be provided under each option would consist of:

- Relevant information: The campaign, issue or person the political advert is connected to, who paid and how much.
- Meaningful information: Targeting criteria (beyond GDPR); relevant anonymised data about dissemination; further information to ensure fairness in the context of political advertising, for instance duration of circulation, numbers of interactions, and what support services or material assistance (for instance behavioural profile targeting) were paid for.

The main distinction with regards to the policy options lies in the additional measures foreseen in the second option. Policy Option 1.1.1 envisages the provision of relevant information on the face of the ad (regardless of medium), the provision by ad publishers, which are VLOPS under the DSA, of additional relevant information in ad repositories, and foresees that online ad publishers will enable access to information regarding relevant elections. In addition, Policy Option 1.1.2 foresees that ad publishers, which publish banner ads on their app, platform, website or other online service, will make available *ex ante* (i.e. alongside the ad) information regarding the advertising brokers whose adverts they carry, with an indication of their use of personal data and the qualities of the data used for targeting (such as location, language, age, gender, and other relevant information used), and links to an independent assessment of their compliance with relevant norms.

The general objective of these options is to achieve stronger transparency and awareness of political advertising, in particular to ensure that citizens are sufficiently aware of the nature of online political advertising and can recognise online political adverts and distinguish them from other types of online content. The specific objectives relate to enabling citizens to recognise a political advert as such, to know the identity of the actors and interests which have sponsored the advert, and (where relevant) to know that the advert was targeted at them and to see meaningful information about how this was done.

Table 5: Policy Option 1.1

Description	Policy Option 1.1.1	Policy Option 1.1.2
	<p>Ad publishers provide additional relevant information on the face of the ad (regardless of medium)</p> <p>Ad publishers, which are VLOPS under DSA, provide additional relevant information in ad repositories.</p> <p>Online ad publishers enable access to information regarding relevant elections (link to official site).</p>	<p>Option 1 + ad publishers, which publish (targeted) banner ads on their app, platform, website or other online service, make available <i>ex ante</i> information regarding the advertising brokers whose adverts they carry, with an indication of their use of personal data and links to independent assessment by a non-associated entity which clarifies clearly their compliance with relevant norms, such as GDPR and national legislations related to political advertising.</p>
Relevant Criteria	<p><u>Proportionality</u>: Measures foreseen under PO 1.1.1 and PO 1.1.2 entail additional obligations to the obligations foreseen under the Digital Services Act. Both of them foresee the introduction of obligations that are <i>a priori</i> proportionate to the specific objectives.</p> <p><u>Effectiveness</u>: PO 1.1.1 and PO 1.1.2 envisage obligations for platforms that would increase information available on or accessible over the face of the advertisements that address the specific needs of information of viewers to identify an advertisement as such and to identify the use of personal data relative to them in the targeting of the ad.</p>	

	<p><u>Efficiency</u>: Costs for both policy options are expected to be similar to the baseline.</p> <p><u>Coherence</u>: PO 1.1.1 and 1.1.2 involve obligations to platforms that are additional to the obligations envisaged under the DSA and are coherent with them.</p>	
Overall indicators	<ul style="list-style-type: none"> Degree of compliance with the specific obligations introduced in online political adverts Number/ratio of clicks on links on advertisement to information about the advertisement 	
Overall objective	<ul style="list-style-type: none"> Provide for high transparency standards for political parties in the EU to promote free and fair elections Facilitate the provision of cross-border ads and related services for economic operators in the internal market while supporting fair democratic processes based on high transparency standards. 	
Specific objective	<p>Define high transparency standards for political ads (including issue ads)</p> <p>Address the use of targeting and manipulative techniques to support fair elections and democratic debate</p>	<p>Indicator(s)</p> <ul style="list-style-type: none"> Change in degree of awareness from citizens on their exposure to political adverts

Having defined the options and the information obligations for service providers that they would entail, the tables below summarise the impact of the two options, based on the data collection carried out through this study. Policy Option 1.1.1 is first outlined followed by Policy Option 1.1.2.

Table 6: Impacts of Policy Option 1.1.1

Policy option 1.1.1	Political actors		Service providers				Others		
	Political parties	Non-political parties	Online intermediaries	SMEs	Large companies	Traditional media	Citizens	MS	Civil society and journalists
Economic impacts			-	--	--	--			+
	Cost of compliance tempered by increased offer of political advertising services (due to service providers benefiting from a single, EU-wide regime to enter new markets)	Cost of compliance tempered by increased offer of political advertising services (due to service providers benefiting from a single, EU-wide regime to enter new markets)	Costs of compliance off set to an extent by better access to the Single Market as conditions for the provision of services are harmonised	Costs of compliance off set to an extent by better access to the Single Market as conditions for the provision of services are harmonised	Costs of compliance tempered by simplification of the engagement with Member States, more homogeneous provision of services	Costs of compliance tempered by simplification of the engagement with Member States, more homogeneous provision of services	Negligible impacts	Negligible impacts. One-off cost of adopting the regulation.	Easier (less resource intensive) to trace political ads
Social impacts	+	+	+	+	+	+	+		+
	Increased accountability of political actors encourages a culture of open and honest campaigning	Increased accountability of political actors encourages a culture of open and honest campaigning	Small positive corporate social responsibility reputational impact resulting from facilitating transparency	Small positive CSR/ reputational impact resulting from facilitating transparency	Small positive CSR/ reputational impact resulting from facilitating transparency	Small positive CSR/ reputational impact resulting from facilitating transparency	Easier to recognise a political ad, its source and (potentially) Small positive impact on ability to find information used in targeting	Negligible impacts, slightly better possible cooperation	Easier to monitor online political advertising in the EU
Fundamental rights	+	+					+		+
	Small positive impacts on freedom of expression	Small positive impacts on freedom of expression	Negligible impacts. Very small negative impact on right on the freedom to conduct a business	Negligible impacts. Very small negative impact on right on the freedom to conduct a business	Negligible impacts. Very small negative impact on right on the freedom to conduct a business	Negligible impacts. Very small negative impact on right on the freedom to conduct a business	Positive impact on freedom of information (Article 11 CFR)	Negligible impacts	Small positive impacts on freedom of expression. (Article 11 CFR)

Table 7: Impacts of Policy Option 1.1.2

Policy option 1.1.2	Political actors		Service providers				Others		
	Political parties	Non-political parties	Online intermediaries	SMEs	Large companies	Traditional media	Citizens	MS	Civil society and journalists
Economic impacts			--	--	--	--			++
	Cost of compliance tempered by increased offer of political advertising services (due to service providers benefiting from a single, EU-wide regime to enter new markets)	Cost of compliance tempered by increased offer of political advertising services (due to service providers benefiting from a single, EU-wide regime to enter new markets)	Costs of compliance tempered to an extent by better access to the Single Market as conditions for the provision of services are harmonised	Costs of compliance tempered to an extent by better access to the Single Market as conditions for the provision of services are harmonised	Costs of compliance tempered to an extent by simplification of the engagement with Member States, more homogeneous provision of services	Costs of compliance tempered to an extent by simplification of the engagement with Member States, more homogeneous provision of services	Negligible impacts	Negligible impacts. One-off cost of adopting the regulation.	Much easier (less resource intensive) to trace political ads
Social impacts	+	+	+	+	+	+	++		++
	Increased accountability of political actors encourages a culture of open and honest campaigning	Increased accountability of political actors encourages a culture of open and honest campaigning	Small positive CSR/reputational impact resulting from facilitating transparency	Small positive CSR/reputational impact resulting from facilitating transparency	Small positive CSR/reputational impact resulting from facilitating transparency	Small positive CSR/reputational impact resulting from facilitating transparency	Much easier to recognise a political ad, its source and (potentially) information used in targeting	Negligible impacts, slightly better possible cooperation	Much easier to monitor online political advertising in the EU
Fundamental rights	+	+					++		++
	Small positive impacts on freedom of expression	Small positive impacts on freedom of expression	Negligible impacts. Very small impact on right on the freedom to conduct a business	Negligible impacts. Very small impact on right on the freedom to conduct a business	Negligible impacts	Negligible impacts	Positive impact on freedom of information (Article 11 CFR) and protection of personal data (Article 8 CFR)	Negligible impacts	Positive impact on freedom of information (Article 11 CFR)

6.1.1.1. Economic impacts

- Economic operators can provide limited data on costs²²⁴, as it must be inferred from the costs of transparency obligations in jurisdictions other than EU Member States or regarding costs of self-regulation of *commercial* advertising in the EU. Whereas it is possible for economic operators to infer the costs of providing transparency to the viewer on certain types of information, the administrative burden posed by all the data types foreseen under policy option 1.1.1 are not possible to estimate, and quantitative data has not been made available by any stakeholder for the data types considered in policy option 1.1.2. One quantitative estimation provided by an industry stakeholder indicates that the costs would increase by more than 50% to account for the information needs under policy 1.1.2, rising still higher if the value chain involved is more complex;
- Yet the absolute costs involved are fairly moderate. Based on comparable costs faced by service providers in Canada and the US, the estimation is that the costs of providing information foreseen under Policy Option 1.1.1 during election periods would be a recurring cost of EUR 3,000 to EUR 5,000 every four years per service providers with an average turnover, plus an additional 10% to 30% (adding up to a range between EUR 3,300 to EUR 6,500) per service provider if the service provider providing the information acquired the data used in targeting instead of having it available internally. Significant one-off costs are not foreseen;
- Based on the costs faced by service providers that choose to self-regulate for the purpose of commercial advertising in the EU, the yearly cost for an average company is between EUR 10,000 and EUR 15,000 per year without significant one-off costs, to provide a similar package of information to the viewer as the one foreseen by policy option 1.1.1 and the likely costs of policy option 1.1.2 would be then between EUR 11,000 and EUR 19,500;
- The estimation of costs based on the US and Canada regulation of political advertisement is a better estimate if a narrow definition of political advertising is chosen (Policy Option 5.1), and the estimation based on the cost of commercial advertising in Europe is more reliable if the definition of political advertising includes issue-based advertising that is provided year-round (Policy Option 5.2);
- These costs are expected to be significantly smaller for larger platforms due to the fact that they do provide integrated services across the value chain, including ad brokering, data brokering and publishing of the ads. Therefore, their costs are merely of data processing, not data collecting, which can amount to 80-90% of the total administrative costs. Additionally, stakeholders indicate that VLOPs will not need to externalise this service due to their capacity to deal with this regulation internally, as they have specialised legal departments, but smaller platforms, ad brokers, and data brokers will likely externalise tasks related to compliance to the measure foreseen, to ensure greater efficiency and limit their liability. Therefore, there might be small effects favouring larger companies over SMEs and large companies that do not qualify as VLOPs in the DSA. However, the new requirements will also benefit SMEs by making it easier for small companies to scale up their political advertising services across borders in the internal market. Consequently, initial costs to comply will transform into savings thanks to more consistent rules across the EU;
- Ad brokers placing ads in platforms and VLOPs will formally bear the costs, which will nevertheless be passed on along the value chain to political parties and candidates. However, service providers indicate that this will result in an increase to the value of the product (political advertisement) for political parties and candidates, as they will avoid reputational

²²⁴ The study interview programme with industry was directly aimed at collecting economic data on costs and benefits. In addition to the general interview programme, individual follow-up calls with industry representatives were also arranged to enquire about costs and benefits and the underlying assumptions (e.g. description of these) for the purpose of filling information gaps still remaining.

risks derived from lack of transparency, and they might be more likely to request online political advertisement services in particular. Therefore, the impacts on the industry are not expected to be negative despite of the increase of costs, and regulation is welcomed to enhance standards.

6.1.1.2. Social impacts

- Political actors are held more accountable;
- Service providers have reputational gains deriving from facilitating transparency, compensating for the increase in costs mentioned above and neutralising impacts on jobs in the industry;
- Significant impacts on employment in the advertising industry are not foreseen, since a combination of positive and negative economic effects described above suggests that the measures foreseen will bring positive and negative effects on employment that will cancel each other out;
- Citizens become much more capable of identifying online political adverts (particularly under Policy Option 1.1.2.);
- Civil society and journalists are more capable of monitoring political and economic actors.

6.1.1.3. Impacts on Fundamental Rights

- Small, potential effects on freedom of information and freedom to conduct a business are identified, and opportunities to scrutinise the use of personal data are increased.

6.1.1.4. Conclusions

Option 1.1.2 seems to be preferable as it is better suited to achieving the specific objective related to transparency in an effective and efficient yet proportionate way. In particular, this option is better suited to ensure that citizens are sufficiently aware of the nature of online political advertising and can recognise online political adverts and distinguish them from other types of online content.

Both alternatives consist of the same interventions with regards to enabling citizens to recognise political advertising and to know the identity of the actors and interests that have sponsored an advert. As such, it can be concluded that their costs and benefits with regards to achieving these specific objectives would be identical.

However, the additional measures foreseen under option 1.1.2 (whereby online publishers of banner ads will make available *ex ante* information, including an indication of their use of personal data) are likely to prove more effective in enabling citizens to know that political advertising was targeted at them and to find meaningful information about how this was done. This conclusion is based on the assumption²²⁵ that providing such information *ex ante*²²⁶ is more likely, in comparison with *ex post* information²²⁷, to be effective in enabling citizens to know that the advert used targeting techniques to reach them and the nature of this targeting. There is a risk that information published *ex post* would be already obsolete for providing information to the citizens. Online viewers of ads identified as political would be far more likely to click on a link next to the ad at the time of viewing it. In comparison, it is likely that only a small proportion of viewers would be motivated to conduct an online search of a service provider's ad repository at some future date to try and identify advertising to which they may previously have been exposed.

The shortcoming of Option 1.1.2 is that its additional information obligations to be imposed on service providers would generate greater costs related to compliance with these rules, when compared with

²²⁵ An assumption that is supported, to an extent, by evidence from the literature review and interviews with academics and NGOs focused on media literacy and political advertising.

²²⁶ i.e. information provided alongside the advert at the time of its publication

²²⁷ i.e. information stored in a repository subsequent to the ad's publication

the basic Option 1.1.1. Yet, the costs need not be excessive to pose a threat to the profitability of the industry, as on an individual company level similar self-regulatory measures entail an approximate maximum cost of between EUR 3,000 and EUR 5,000 annually. Presumably, the information to be published under Option 1.1.2 would need to be collected by the service provider in any event when preparing and placing the ad, and the main extra cost would relate to the technical and administrative burden on providing this information when making it public. This is corroborated in an interview with a platform. The significant informational benefits for citizens and other actors, and more broadly, the societal advantages in effectively promoting a more open democratic discourse unfettered by untransparent targeting techniques, could be judged to outweigh the costs for service providers – estimated at EUR 3,000 to EUR 5,000 per company per year according to interview data obtained from industry – that are not significant for the profitability of the sector companies.

6.1.2. Impacts of Policy Option 1.2 Providing interested actors with additional information

The limited availability of data related to online political advertising is significantly hindering the expected transparency on the matter. Policy option 1.2 devises the disclosure of additional information to interested actors, particularly those within civil society such as researchers or journalists, upon request.

Policy option 1.2.1 is aimed at ad publishers, or very large online platforms (VLOPs) according to the DSA. It envisages the provision of specific additional information in aggregated form. Policy option 1.2.1 expands the provisions to economic actors and includes other types of information.

The table below illustrates policy option 1.2.

Table 8: Policy Option 1.2

	Policy option 1.2.1	Policy option 1.2.2
Description	<p>Ad publishers which are very large online platforms under the DSA provide access to interested actors to relevant additional information when requested.</p> <p>Ad publishers provide relevant additional information in a suitably aggregated form, to interested actors upon request, specifically:</p> <ul style="list-style-type: none"> • The full chain of actors involved; • The amounts of money spent on the advertising and its sources, and link this to any wider associated campaign or interest group; • Meaningful detail about the targeting used (where relevant), including the amounts spent on it, and the sources of data used; and • The scope and period of circulation of an advert, including meaningful information about variants and organic distribution. 	<p>Obligations under Policy Option 2.2.2, plus:</p> <ul style="list-style-type: none"> • All economic actors retain relevant information regarding transactions, including amounts, parties and the use of targeting, where relevant. • Economic actors provide extracted information forward through the value chain to the eventual ad publishers. • Ad publishers publish timely reports on the amounts spent on political advertising, including on its targeting, aggregated to campaign or candidate. • Ad publishers who are VLOPs provide meaningful information in ad repositories regarding the amounts spent linked to an ad, and suitably aggregated information by party, candidate or other relevant political actor.

Relevant criteria	<p><u>Proportionality</u>: policy option 1.2 constitutes an important step towards transparency in political advertising. It addresses the inability to obtain certain information related to online political advertising. By guaranteeing access to additional data to certain actors, online political advertising can be subjected to research and analysis, as well as enhancing the overall transparency of online political advertising.</p> <p><u>Effectiveness</u>: both policy options provide the basis for interested actors to request specific additional information. This addresses one of the main problems related to transparency of online political advertising identified during the study. Policy option 1.2.2 broadens the type of data that can be demanded and includes economic actors beyond VLOPs and thus, it is deemed to be more effective.</p> <p><u>Efficiency</u>: both policy options' benefits offset their costs. In fact, the expenses are argued to be rather low since the data is available to the actors and the means to access it (ad libraries) are in place. Although policy option 1.2.2. is expected to be slightly more costly, the benefits are broader than those linked to policy option 1.2.1 because of the greater scope of the measure.</p> <p><u>Coherence</u>: the policy options proposed are argued to be coherent with the provisions in the DSA as they constitute additional obligations to those foreseen in the DSA.</p> <p><u>European Added Value</u>: there are clear cross-border aspects which justify EU action. Firstly, the involvement of VLOPs. There is also a cross-border transparency perspective; ensuring that interested actors are able to request information from and about any Member State.</p>	
Overall indicators	<ul style="list-style-type: none"> • Number of times data is consulted to obtain additional information • Share of requests fulfilled vs total requests • Type of actors submitting requests • Type of data requested and purpose of its use 	
Overall objective	<p>Provide for high transparency standards for political parties in the EU to promote free and fair elections</p> <p>Facilitate the provision of cross-border ads and related services for economic operators in the internal market while supporting fair democratic processes based on high transparency standards.</p>	
Specific objective	<p>Define high transparency standards for political ads (including issue ads)</p> <p>Address the use of targeting and manipulative techniques to support fair elections and democratic debate</p>	<p>Indicator(s)</p> <ul style="list-style-type: none"> • Data consulted by interested parties per year; • Number of complains on data availability by interested actors

The tables below summarise the impact assessment of the policy option with data obtained through the literature review, surveys, interviews, and consultation in stakeholders fora carried out through this study.

Table 9: Impacts of Policy Option 1.2.1

Policy option 1.2.1	Political actors		Service providers				Others		
	Political parties	Non-political parties	Online intermediaries	SMEs	Very large online platforms	Traditional media	Citizens	MS	Civil society and journalists
Economic impacts					-				+
	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Costs related to transparency and accountability obligations	Negligible impacts	Negligible impacts	Negligible impacts	Decreased costs related to administrative procedure to acquire transparency information
Social impacts	+	+							+
	Increased transparency and accountability of political actors	Increased transparency and accountability of other actors	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Easier to monitor compliance of political ad publishers
Fundamental rights									+
	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Positive impact of transparency measures via better access to official factual information of public interest and access to financial data of political parties

Table 10: Impacts of Policy Option 1.2.2

Policy option 1.2.2	Political actors		Service providers				Others		
	Political parties	Non-political parties	Online intermediaries	SMEs	Very large online platforms	Traditional media	Citizens	MS	Civil society and journalists
Economic impacts			-	-	-				+
	Negligible impacts	Negligible impacts	Costs related to transparency and accountability obligations	Costs related to transparency and accountability obligations	Costs related to transparency and accountability obligations, potentially more extensive than in 2.2.1.	Negligible impacts	Negligible impacts	Negligible impacts	Decreased costs related to administrative procedure to acquire transparency information
Social impacts	+	+					++		++
	Increased transparency and accountability of political actors	Increased transparency and accountability of other actors	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Access to transparent information	Negligible impacts	Easier to monitor compliance of political ad publishers
Fundamental rights							+		++
	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Positive impact of transparency measures via better access to official factual information of public interest and access to financial data of political parties	Negligible impacts	Positive impact of transparency measures via better access to official factual information of public interest and access to financial data of political parties

6.1.2.1. Economic impacts

- The provision of information to advertisement repositories that is already provided to the viewers of the ads (Policy option 1.1) would have a one-off cost of developing the technology to automatically share the information to the repository that has already been shared to the viewers, but negligible one-off costs;
- Based on interview feedback, the provision of information concerning the value chain is expected to be the most expensive one, in particular for ad brokers, data brokers and platforms that are not VLOPs, as the value chains are increasingly complex, what makes the collection of data more expensive. It is expected that these costs will increase over time, as industry representatives explain that the value chain is becoming more and more complex with the appearance of more actors performing specific functions.
- The new transparency and accountability requirements will increase the compliance costs for the very large platforms to a lesser extent than to other economic actors in the second policy option more, as this option includes providing more information types that other type of operators will have to collect externally, whereas VLOPs can collect these internally;
- However, outbalancing these costs are the benefits of a harmonised and well-regulated single market, which will enable companies to scale up their operations across intra-EU borders. This will include opportunities for small companies (ad brokers, data brokers and platforms) to grow their services and turnover.
- As the information is provided as per request, there is a minor administrative cost also for the civil society actors considered as “interested actors”. These costs are associated with the acquisition of transparency information;
- In the second policy option, the compliance cost may potentially add some additional economic burden due to additional transparency obligations to political actors and service providers at large, although the actors usually have the data already for i.e. auditing purposes;
- The overall additional costs for an average national authority to monitor and enforce new rules in relation to transparency and micro-targeting would be approximately 3 FTE and an additional EUR 100,000 in training and infrastructure, according to data provided by Member States’ authorities consulted. The costs overlap with the additional costs for public administrations of PO 1.3 and 3 and should not be double or triple counted²²⁸.

6.1.2.2. Social impacts

- The transparency and accountability of political actors will be positively impacted. According to civil society actors and political parties, this will likely yield benefits in terms of trust and reputation;
- Under Policy 1.2.2 citizens will benefit of the additional transparency data and eased access to the information;
- Civil society will highly benefit from improved transparency. The access to data will be especially positive for those organisations with a “watchdog” role. CSOs will also be in a better position to inform citizens on the various aspects of online political advertising;
- In the second policy option, this ability of the civil society is further enhanced due to the additional material and ability to also scrutinise the economic actors;

²²⁸ Relevant authorities do not disaggregate the cost from monitoring and enforcing rules in relation to transparency and to micro-targeting. This responds to the fact that the same department is likely to oversee regulation in both areas and the tasks will overlap in practice. Since it is not possible to estimate the costs for each of the different aspects separately, the total combined costs is presented.

- The platforms and economic actors may also have social benefits due to gaining social licence to operate by providing additional information. However, this was not particularly highlighted in the data collection, as the platform already provide information under their ad libraries.

6.1.2.3. Fundamental rights

- The main positive effect relates to additional access to factual information and financial data on the online political advertisers. This provides more information for the civil society on both options, especially on the latter, and also for citizens directly under 1.2.2.
- Another potential aspect is regarding the personal data that may be involved to the information advertisers need to publish. However, there are no significant claims that this would be an issue.

6.1.2.4. Conclusions

In general, the costs of the reporting and obligations are mostly economic and asymmetrical between VLOPs and other companies, while the additional benefits are mostly social. While Policy Option 1.2.1 has limited benefits for the investigative civil society actors, Policy Option 1.2.2 does have potential benefits in larger extent especially for the citizens, as citizens will ultimately be presented with more data on the use of political advertising by parties. The costs of Policy Option 1.2.2 are similar to those of 1.2.1.

It should be taken into account that many very large platforms already provide partially similar aggregate data on their online ad libraries, but they do so in a manner that is regarded by most stakeholders consulted as incomplete, untimely, and insufficient. Policy Option 1.2.2 would also define the functions of these libraries more extensively in terms of content and required timeframe for updates. Much of the information is otherwise already internally available for the obliged entities in the latter policy option, limiting the costs related to the obligations.

6.1.3. Impacts of Policy Option 1.3: Providing competent authorities with additional information

Table 11: Policy Option 1.3

Description	Policy Option 1.3.1	Policy Option 1.3.2
	<p>Economic actors retain relevant information regarding transactions, including amounts, parties and the use of targeting.</p> <p>Economic actors provide relevant additional information in a suitably aggregated form, to competent authorities, including information on:</p> <ul style="list-style-type: none"> • Expenditure; • Financial or material political contributions; • Equality between candidates (e.g. regarding parity of resources and airtime during election campaigns); • Silence periods and the periods during which ads are permitted; 	<p>Economic actors provide extracted relevant information forward through the value chain to the eventual ad publishers</p> <p>Ad publishers publish periodic reports on the amounts spent on political advertising, including on its targeting, aggregated to campaign or candidate.</p> <p>Ad publishers which are VLOPs provide meaningful information in ad repositories regarding the amounts spent linked to an ad, and suitably aggregated information by party, candidate or other relevant political actor.</p>

	<ul style="list-style-type: none"> • The nature of participants (e.g. third-country corporate entities); • The profiling and targeting of voters, including through the use of personal data. 	
Relevant Criteria	<p><u>Proportionality</u>: policy option 1.3 addresses the lack of information available to public authorities concerning online political advertising. This is intended to enhance transparency and provide public authorities with the necessary data to facilitate their functions, particularly oversight of political advertising, and identify potential areas of intervention. The type of information is rather specified.</p> <p><u>Effectiveness</u>: both options are suited to meet the objective of enhance transparency in online political advertising, as the baseline situation is rather problematic for public authorities.</p> <p><u>Efficiency</u>: policy option 1.3.2 is understood to be more efficient since it involves all actors in the value chain, having VLPs as the ultimate responsible to provide periodic and meaningful information. Furthermore, the benefits of policy option 1.3.2 overweight its costs. This is unclear in the case of policy option 1.3.1.</p> <p><u>Coherence</u>: the policy options and the actions encompassed are aligned with initiatives such as the DSA and the GDPR, which advocate providing more transparency in very large online platforms and use of personal data, respectively.</p> <p><u>European Added Value</u>: the information is needed at national and European level to facilitate the monitoring of online political advertising. Moreover, this mainly happens through VLOPs, which are better addressed by the EU.</p>	
Overall indicators	<ul style="list-style-type: none"> • Number of requests to obtain additional information • Share of requests fulfilled vs total requests • Authorities that submitted requests and objective • Type of data requested 	
Overall objective	<ul style="list-style-type: none"> • Provide for high transparency standards for political parties in the EU to promote free and fair elections • Facilitate the provision of cross-border ads and related services for economic operators in the internal market while supporting fair democratic processes based on high transparency standards 	
Specific objective iv	<p>Promote stronger transparency and free and fair elections through compliance with relevant rules among political parties in the EU</p> <p>Reduce legal fragmentation, limit circumvention of regulation and remove obstacles and reduce costs for the provision of cross-border services</p> <p>Define high transparency standards</p>	<p>Indicator(s)</p> <ul style="list-style-type: none"> • Number of requests to obtain additional information • Share of requests fulfilled vs total requests • Authorities that submitted requests and objective • Type of data requested

	<p>for political ads (including issue ads)</p> <p>Address the use of targeting and manipulative techniques to support fair elections and democratic debate</p>	<ul style="list-style-type: none"> • Periodicity of the reports and level of detail
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The tables below summarise the assessment of their impact, based on the data collection carried out through this study. Policy Option 1.3.1 is first outlined, followed by Policy Option 1.3.2.

Table 12: Impacts of Policy Option 1.3.1

Policy option 1.3.1	Political actors		Service providers				Others		
	Political parties	Non-political parties	Online intermediaries	SMEs	Very large online platforms	Traditional media	Citizens	MS	Civil society and journalists
Economic impacts			-	-	-	-			
	Negligible impacts	Negligible impacts	Costs of compliance in relation to retaining relevant information and providing aggregated data to competent authorities	Costs of compliance in relation to retaining relevant information and providing aggregated data to competent authorities	Costs of compliance in relation to retaining relevant information and providing aggregated data to competent authorities	Costs of compliance in relation to retaining relevant information and providing aggregated data to competent authorities	Negligible impacts	Benefit of easier to monitor political advertising Costs for competent authorities related to enforcing economic actors' obligation to provide aggregated data	Negligible impacts
Social impacts								+	
	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts, slightly better possible cooperation with economic actors who are subject to an obligation to provide aggregated data	Negligible impacts
Fundamental rights							+		
	Negligible impacts	Negligible impacts	Negligible impacts. Very small negative impact on right on the freedom to conduct a business	Negligible impacts. Very small negative impact on right on the freedom to conduct a business	Negligible impacts. Very small negative impact on right on the freedom to conduct a business	Negligible impacts. Very small negative impact on right on the freedom to conduct a business	Benefits on adding additional safeguards on how citizens are targeted by political advertising.	Negligible impacts	Negligible impacts

Table 13: Impacts of Policy Option 1.3.2

Policy option 1.3.2	Political actors		Service providers				Others		
	Political parties	Non-political parties	Online intermediaries	SMEs	Very large online platforms	Traditional media	Citizens	MS	Civil society and journalists
Economic impacts			--	--	--	--		+	++
	Negligible impacts	Negligible impacts	Costs of compliance in relation to: - retaining relevant information and providing aggregated data to competent authorities and, where relevant, to the eventual ad publishers - publishing periodic reports	Costs of compliance in relation to retaining relevant information and providing aggregated data to competent authorities and, where relevant, to the eventual ad publishers	Costs of compliance in relation to retaining relevant information and providing aggregated data to competent authorities and, where relevant, to the eventual ad publishers - publishing periodic reports - (for VLOPs) providing meaningful information in ad repositories	Costs of compliance in relation to retaining relevant information and providing aggregated data to competent authorities - publishing periodic reports	Negligible impacts	Benefit of easier to monitor political advertising Costs for competent authorities related to enforcing economic actors' obligation to provide aggregated data	Benefits related to lower costs of investigating ad transparency (easier to examine published reports and VLOPs' ad repositories)
Social impacts								+	
	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts, slightly better possible cooperation with economic actors who are subject to an obligation to provide aggregated data	Negligible impacts
Fundamental rights							+		+
	Negligible impacts	Negligible impacts	Negligible impacts. Very small negative impact on right on the freedom to	Negligible impacts. Very small negative impact on right on the freedom to	Negligible impacts. Very small negative impact on right on the freedom to	Negligible impacts. Very small negative impact on	Small positive impact on right to information resulting from greater	Negligible impacts	Small positive impact on right to information resulting from greater

Policy option 1.3.2	Political actors		Service providers				Others		
	Political parties	Non-political parties	Online intermediaries	SMEs	Very large online platforms	Traditional media	Citizens	MS	Civil society and journalists
			conduct a business	conduct a business	conduct a business	right on the freedom to conduct a business	transparency		transparency

6.1.3.1. Economic impacts

- Under both policy options, service providers face similar costs of compliance in relation to retaining relevant information and providing aggregated data to competent authorities:
 - Compliance costs on economic actors who would need to provide relevant information forward through the value chain to the eventual ad publishers: the extent to which economic operators currently provide this information, as a matter of business as usual, is unclear (this was concluded by the interview programme and supported by the documentation review carried out for the problem definition);
 - Costs to ad publishers of periodic and public reporting on the amounts spent on political advertising, including on its targeting, aggregated to campaign or candidate. CSO stakeholders suggest that service providers would be unlikely to do this in the absence of binding legal requirements on them to do so and that the costs would be relatively low;
 - Costs for ad publishers which are VLOPs to provide meaningful information in ad repositories: existing repositories such as Google's Transparency Report and Facebook's Ad Library might offer a basic model for these repositories;
 - Costs for competent authorities related to enforcing economic actors' obligations to provide data (right to information).
- Under Policy Option 1.3.2, civil society organisations have smaller costs to conduct their oversight activities thanks to improved data transparency.
- Based on estimates derived from consultations with Member State authorities, the overall additional costs for an average national authority to monitor and enforce new rules in relation to transparency and micro-targeting would be approximately 3 FTE and an additional EUR 100,000 in training and infrastructure according to Member States' authorities consulted. The costs overlap with the additional costs for public administrations of PO 1.2 and 3 and should not be double or triple counted²²⁹.

6.1.3.2. Social impacts

- Member States can cooperate and enforce obligations more effectively as a result of better monitoring data;
- Benefits for citizens: while the direct benefits of Option 1.3.2's additional measures would mostly accrue to the authorities responsible for enforcing political advertising rules and the NGOs that monitor them, citizens would also benefit from the higher level of transparency and the resulting increase in the effective enforcement of electoral rules.

6.1.3.3. Impacts on Fundamental Rights

- Citizens, civil society and journalists have a small positive effect on the right to information and evaluation on how personal data is used in political advertising.

6.1.3.4. Conclusions

Option 1.3.2 seems to be preferable as it is better suited to be able to achieve all aspects of the specific objective in an effective and efficient yet proportionate way.

As both policy options consist of the same basic interventions in relation to economic actors retaining relevant information and providing it to the competent authorities, it can be concluded that their costs and benefits for different stakeholder groups with regard to these shared aspects would be almost identical.

²²⁹ See note in Section 6.1.2.4

Therefore, the key question is whether the costs resulting from the additional obligations imposed by Option 1.3.2 are outweighed by the benefits they generate.

The principal benefits of the additional measures foreseen under Option 1.3.2 are as follows.

- The provision of greater information by economic operators: this would be expected to render more effective the task of (national or EU-level) authorities responsible for monitoring and enforcing relevant rules as regards the financing, preparation, placement and dissemination of political advertising. By receiving this information periodically in reports, authorities could also meet their responsibilities more efficiently, in comparison with a situation where the onus was on them to seek relevant information from service providers.
- The public reporting requirements foreseen: putting this information into the public domain would also bolster the role of civil society organisations (CSOs) focused on media literacy and transparency and holding political actors to account. Having access to the relevant information would make it easier for CSOs to monitor the rules on political advertising more effectively and efficiently. Beyond this, having access to data on political advertising would enable researchers to analyse it and identify patterns in relation to, for example, spending on particular issues or linked with identified groups of (foreign) donors.
- In conclusion, while Option 1.3.2 would produce some increased administrative costs for economic actors on providing additional data according to the obligations, yet these are expected to be proportionate to the benefits that would be achieved in terms of greater transparency surrounding political ads and more effective enforcement of the rules that govern political advertising.

6.2. Impacts of Policy Block 2: Further regulation of European Political Parties and European Political Foundations

As presented in Problem 2, the Regulation 1141/2014 is currently not adequate to face the challenges that the growing use of online political advertising poses. This block includes a single Policy Option (PO 2) with three alternatives (Policy Option 2.1, Policy Option 2.2, and Policy Option 2.3). Under sub option 2.1, non-binding measures aimed at national and European political parties are considered. Under sub option 2.2, binding obligations for European political parties are considered. Under sub option 2.3, the creation of a dedicated EU instrument to is considered.

Table 14: Policy Option 2

Description	Policy Option 2.1	Policy Option 2.2	Policy Option 2.3
	<ul style="list-style-type: none"> • Invite European and national political parties in “clear line of sight” initiative to support transparency in 	<p>Establish rules for European political parties to:</p> <ul style="list-style-type: none"> • Provide real time and meaningful provision of information on expenditure over an advertisement 	<p>Policy Option 2.2, plus:</p> <p>Establish a dedicated instrument establishing an EU-level electoral advertising body responsible for supervising the financing and placement of political advertising by European Political Parties, foundations and groups, and the maintenance of an independent, platform and party neutral repository of information about political advertising activity in European elections, accessible in real time by all citizens.</p>

	<p>the political ads industry;</p> <ul style="list-style-type: none"> • Invite European and national political parties to prepare and commit to a 'fair campaigning pledge' 	<p>ent repository;</p> <ul style="list-style-type: none"> • Provide meaningful ad labelling and the provision of information about the use of targeting techniques; and • Limit to the use of certain characteristics or levels of granularity of targeting 	
Relevant criteria	<p><u>Proportionality:</u> PO 2.2 (and, by extension, to PO 2.3) impose additional transparency obligations to European political parties and specify the granularity of the targeting they can conduct, and PO 2.2 foresees the creation of an EU-level electoral advertising body. These measures are proportionate as the EU has competence to regulate European political parties (Art 224) and European political parties consulted corroborate the proportionality in general terms of the intervention and the foreseen additional measures are strictly necessary to meet the objectives.</p> <p>The non-binding nature of PO 2.1 makes it proportionate to the EU lack of competence to regulate national political parties.</p> <p><u>Effectiveness:</u> The combination of PO 2.2 and PO.3 is deemed as more effective than PO 2.2 for the general issues identified throughout the study in relation to the need of real-time monitoring of political parties' online advertising as the need for an authority with the resources to monitor and enforce relevant regulation.</p> <p>Wide participation by national and European political parties in non-binding initiatives by the EU to govern online advertising in European elections suggest a certain degree of effectiveness of non-binding options under PO 2.1.</p> <p><u>Efficiency:</u> The costs of PO 2.3 are higher than those of PO 2.2 for it envisages the created of an EU-level electoral advertising body. The costs of this instrument are discussed below. PO 2.3 is preferable as, despite of involving more costs for the public administration, it would provide more benefits in the longer run.</p> <p><u>Coherence:</u> No trade-offs or inconsistencies are identified between PO 2.1, PO 2.2 and PO 2.3, and between them and any other national or EU law or initiative, including other policy interventions included in this study. The creation of an EU instrument on online political advertising by the EU has synergies with the provisions under PO 2.2.</p> <p><u>European Added Value:</u> European political parties would benefit from a reform to Regulation 1141/2014 because increased transparency is expected to result in more trust in the democratic process by citizens and parties.</p>		

Overall indicators	<ul style="list-style-type: none"> Degree of compliance with the obligation to provide real time and meaningful provision of information on expenditure; Number/percentage of ads conducted on behalf of European political parties in which there is not meaningful ad labelling and/or the provision of information about the use of targeting techniques; Degree of compliance with the limits imposed to European political parties on the granularity of their targeting; Number of European and national political parties that participate in "clear line of sight" initiative; Number of European and national political parties that participate in the preparation of and commit to a "fair campaigning pledge" Number of stakeholders who consult disclosed information. 	
Overall objective	Provide for high transparency standards for political parties in the EU to promote free and fair elections	
Specific objective	<p>Promote stronger transparency and free and fair elections through compliance with relevant rules among political parties in the EU</p> <p>Define high transparency standards for political ads (including issue ads)</p> <p>Ensure the satisfactory oversight of the envisaged obligations and strengthen regulatory outcomes</p>	<ul style="list-style-type: none"> Degree of compliance with the introduced rules by European political parties; Number of national political parties that adopt as soft law measures the obligations imposed on European political parties. Extent to which the established rules are monitored and enforced

The tables below summarise the impact assessment on Political Parties, based on the research carried out through the study. The Impacts of Policy Option 2.1 are first outlined, followed by the impacts of Policy Option 2.2 and Policy Option 2.3.

Table 15: Impacts of Policy Option 2.1

Policy option 2.1	Political actors		Service providers				Others		
	European political parties	National political parties	Online intermediaries	SMEs	Large companies	Traditional media	Citizens	MS	Civil society
Economic impacts									
	Negligible impacts, minor costs voluntarily incurred in	Negligible impacts, minor costs voluntarily incurred in	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts
Social impacts	+	+					+	+	+
	Increased accountability of political actors	Increased accountability of political actors	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Improved transparency for citizens	Improved democratic process	Improved democratic process
Fundamental rights							+		
	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Improved democratic process	Negligible impacts	Negligible impacts

Table 15: Impacts of Policy Option 2.2

Policy option 2.1	Political actors		Service providers				Others		
	European political parties	National political parties	Online intermediaries	SMEs	Large companies	Traditional media	Citizens	MS	Civil society
Economic impacts	-								
	Compliance and reporting costs	No impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts
Social impacts	+	+					+	+	+
	Increased accountability of political actors	Increased accountability of political actors	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Improved transparency for citizens	Improved democratic process	Improved democratic process
Fundamental rights							+		
	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Improved democratic process	Negligible impacts	Negligible impacts

Table 16: Impacts of Policy Option 2.3

Policy option 2.2		Political actors		Service providers				Others		
		European political parties	National political parties	Online intermediaries	SMEs	Large companies	Traditional media	Citizens	MS	Civil society
Nº of affected stakeholders										
Economic impacts		-	-							
		Obligation to enforce rules (European Political Parties)	Obligation to enforce rules (European non-Political Parties)	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts
		Soft law measures to enforce standards (National Political Parties)								
Social impacts		+	+					+	+	++
		Increased accountability of political actors	Increased accountability of political actors	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Improved transparency for citizens thanks to availability of real time data	Improved democratic process	Improved transparency and opportunity for the collection and analysis of party political data
Fundamental rights								+		
		Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Improved transparency and democratic process	Negligible impacts	Negligible impacts

6.2.1. Economic Impacts

- European political parties, as well as national parties that may choose to participate in the initiatives foreseen under PO 2.1, are expected to face small additional recurring administrative costs related to complying with the obligations voluntarily acquired through the participation and respective one-off costs related to elaborating the fair campaigning pledge and familiarising themselves with the clear line of sight initiative. Recurring costs are expected to relate to elections to the European Parliament, which take place every five years. European political parties campaign for a period of around three months;
- European political parties, as well as national parties that may choose to participate in the initiatives foreseen under PO 2.1, are expected to face small additional recurring administrative costs related to complying with the obligations voluntarily acquired through the participation and respective one-off costs related to drawing up the fair campaigning pledge and familiarising themselves with the 'clear line of sight' initiative. Recurring costs are expected to relate to the elections to the European Parliament, which take place every five years. European political parties campaign for a period of around three months;
- Costs of Policy Option 2.1 overlap with the costs of Policy Option 4.1, as it would require a reinforcement of ECNE that would require a permanent secretariat, better online support, regular meetings and additional coordination efforts to support the preparation, agreement and monitoring of a clear line of sight initiative as well as a fair campaigning pledge. The costs, according to consultation with the relevant unit in the European Commission's Directorate General for justice and Consumers, would be one full-time equivalent worker.
- Costs of compliance with PO 2.2 for European political parties are estimated based on consultation with European political parties. It is indicated that the current recurring costs involved in the audit obligations for European political parties are around EUR 1.5 to EUR 3 million, and that complying with additional transparency obligations foreseen under PO 2.2 would pose similar costs for the duration of an electoral campaign to the European Parliament. On the basis that European political parties campaign for three months every five years, the average yearly additional compliance costs for European political parties is estimated to be 5% of the costs of auditing – i.e. EUR 75,000 to EUR 150,000. However, this amount would be concentrated in the year when elections to the European Parliament would take place, for which the costs would be of EUR 375,000 to EUR 750,000.
- The costs of providing real time and meaningful information on expenditure on an advertisements repository and of providing meaningful ad labelling and information about the use of targeting techniques cannot be disaggregated, since these involve collecting information on expenditure internally that is used for both purposes. Therefore, these costs are presented together.
- Additional costs for the EU's own resources of creating an advertisements repository are not estimated given that the creation of this repository is already foreseen in the Digital Services Act;
- Consulted European political parties indicate that they either refrain from micro-targeting due to political considerations or target broader groups of viewers, based on parameters such as age, gender or location. Therefore, limiting the granularity of targeting would not impose additional costs as these parties will not then buy less cost-effective services, and instead prevent European political parties from using these services in the future;
- The costs of PO 2.3, if the body is created as a new organisation, are preliminarily estimated by the Authority for European Political Parties and European Political Foundations as requiring a permanent core team of around three full-time equivalent (FTE) employees. The core team would need to be supported by an additional team for a peak period²³⁰ around the

²³⁰ The peak period would encompass the electoral campaign and the immediate aftermath of the European Parliament election and have an approximate duration of 4 months. The budget appropriations for the additional staff, would need to be available, at the latest, at the beginning of budget year 2023 in order to allow for timely recruitment and training of the staff necessary in view of the 2024 European Parliament elections. To allow for proper preparation, the budget appropriations for the core team should already be provided for in budget year 2022.

European Parliament elections of two to seven additional FTE in the event that a new EU body is created to supervise the financing and placement of political advertising by European political parties.

- Should the role of supervising the financing and placement of political advertising by European political parties, and the maintenance of an independent platform and party neutral repository of information about political advertising activity in European elections, accessible in real time by all citizens, be assigned to the Authority for European Political Parties and European Political Foundations, the additional personnel costs are estimated by an European institution consulted to be around two to three additional FTE during the peak period, instead of two to seven, since part of the staff at the authority works on tasks that are cyclical in nature and whose content and objectives partially overlap with the proposed supervision, but take place mostly during a different part of the European electoral cycle. The core, permanent team is not expected to be different, so it is estimated to be three FTE. The personnel at the authority are already familiar with the European political parties and their campaigning activity. Therefore, synergies would emerge at the human resources and logistical levels. Assigning the role of supervising online political advertising of European political parties to the Authority for European Political Parties and European Political Foundations is preferable in order to achieve greater efficiency.
- Irrespective of whether a new EU body is created or whether supervising online political advertising of European political parties is assigned to the Authority for European Political Parties and European Political Foundations, it is crucial that budget appropriations be provided in a timely manner. The budget appropriations for the additional staff would need to be available, at the latest, at the beginning of budget year 2023 in order to allow for timely recruitment and training of the staff necessary ahead of the 2024 European Parliament elections. To allow for proper preparation, the budget appropriations for the core team should already be provided for in the budget year 2022. Budget appropriations for the creation of IT tools facilitating the supervision should equally already be foreseen in budget year 2022, given the development and testing periods required for software products of that type.

6.2.2. Social impacts

- Political parties and other political actors will be held more accountable for their use of resources and communication activities in the context of electoral processes. Under policy option 2.2., civil society organisations will find it easier to conduct their informal oversight activities;
- More transparency is expected to lead to greater electoral integrity and trust in democracy, and ability of citizens to receive information, make choices and take active part in political life;
- Greater transparency on expenditure would dissuade foreign intervention through online political advertising, but the effects could be minimal due to the possibility of this rule be circumvented should the foreign actor choose to intervene in the financing of national political parties; and
- Possible virtuous consequences on national parties adopting similar disclosure practices.

6.2.3. Impacts on fundamental rights

- Citizens are expected to benefit from more transparency and integrity in electoral processes. The measures foreseen in this policy option would have positive effects on Article 39 of the Charter of Fundamental Rights of the European Union (i.e. the right to vote and to stand as candidate at the elections to the European Parliament), as it provides more information to voters and ensures greater equality among candidates; and in relation to Article 40, as spill-over effects on municipal elections are expected.

6.2.4. Conclusions

The combination of PO 2.1, PO 2.2 and PO 2.3 seem preferable for it ensures a more effective enforcement of the foreseen measure in an efficient way. This section also discusses the most efficient manner of implementing Policy Option 2.3.

The European Commission issued a Recommendation²³¹ in 2018 that included specific recommendations to European and national political parties in the area of political advertising ahead of the elections to the European Parliament²³². A process of consultation with national political parties in the aftermath of the 2019 European Parliament elections showcased that multiple national political parties implemented the specific recommendations, either partially or entirely. Therefore, foreseeing minimum costs to PO 2.1, this policy option is recommended, as it will contribute adopting and dissemination of best practices by European and national political parties on the use of online political advertising. Hence, the electoral integrity of European and national electoral processes will be improved. Binding measures on national political parties would not be possible due to the lack of EU competence in the area. Article 224 TFEU established the EU's competence for setting out regulations governing political parties at the EU level, though not at the national level²³³.

The study has shown that insufficient funding and problems of coordination between monitoring and enforcement authorities are responsible for the poor monitoring of relevant regulation of online political advertising (See Section 2.4). The creation of an EU-level electoral advertising body is therefore needed to improve the democratic process, making it more transparent and effectively increasing the accountability of political actors. PO 2.3 is thus recommended and should contribute to the effectiveness of PO 2.2, which must be adopted to introduce effective obligations on EU political parties.

6.3. Impacts of Policy Block 3: Regulation of micro-targeting

The risks associated with micro-targeting are many and highly complex, as detailed in section 2.3. Hence, it is essential to regulate the use of micro-targeting in online political advertising to guarantee that rights to data protection and privacy are respected, and that electoral integrity is maintained. The options proposed to this end relating to extending existing legislation. The main distinction between them lies in the **limitation (Policy Option 3.1) or prohibition (Policy Option 3.2)** of micro-targeting.

Policy option 3.1 proposes the establishment of common standards, which limit micro-targeting during reference periods and at all times for political actors unless certain conditions are met. Policy Option 3.2 is further divided into two sub-options: the prohibition of micro-targeting for political actors at all times; and the permission of micro-targets under certain conditions.

Some common standards that could be considered for the policy options proposed relate to:

- The campaign, where relevant, issue or person the political advert is connected to;

²³¹ European Commission (2018) Commission Recommendation of 12.9.2018 on election cooperation networks, online transparency, protection against cybersecurity incidents and fighting disinformation campaigns in the context of elections to the European Parliament. Available at: https://ec.europa.eu/info/sites/info/files/soteu2018-cybersecurity-elections-recommendation-5949_en.pdf

²³² These recommendations included:

“(8) European and national political parties, foundations and campaign organisations should ensure that citizens of the Union can easily recognise online paid political advertisements and communications and the party, foundation or organisation behind them.

“(9) European and national political parties, foundations and campaign organisations should make available on their websites information on their expenditure for online activities, including paid online political advertisements and communications, as well as information on any targeting criteria used in the dissemination of such advertisements and communications.

“(10) European and national political parties, foundations and campaign organisations should make available on their websites their paid online political advertisements and communications or links to them.”

²³³ Article 224 TFEU. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E224>

- Who paid and how much, and what support services or material assistance (for example, behavioural profile targeting) were paid for;
- Targeting criteria (beyond GDPR) and auditable certification of compliance with the GDPR (articles 42 and 43);
- Relevant anonymised data about dissemination; and
- Further information to ensure fairness in the context of political advertising, such as 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.).

The table below presents the different options for regulating micro-targeting under Policy Block 3.

Table 17: Policy Block 3

Description	Policy option 3.1 – Limiting micro-targeting.	
	<p>Establish common standards that limit the use of certain micro-targeting techniques (i.e. banned use of inferred data and the use of psychographic profiling) during reference periods and at all times for political actors, unless specific conditions are met, which could include:</p> <ul style="list-style-type: none"> • For political actors (outside a reference period), that the ad is clearly marked as an issue ad or an ad for commercial purposes; • For other actors within a reference period, that the ad is clearly marked as an ad for commercial purposes; • For the publisher, that all the players in the micro-targeting value chain are requested to have an auditable certification to ensure the data complies with the GDPR²³⁴; and • Auditable certification of the GDPR compliance of the personal data processing, which is included as part of the relevant transaction and included in relevant disclosures for reporting purposes. <p>Ensure economic actors adopt and implement a micro-targeting policy for political ads, and report on this in their annual report (where relevant).</p>	
	Policy option 3.2. Prohibiting micro-targeting	
	<p>Policy Option 3.2.1 Establish common standards which prohibits the use of micro-targeting during reference periods²³⁵ and at all times for political actors.</p>	<p>Policy Option 3.2.2 As sub option 3.2.1, unless specific conditions are met, which could include:</p> <ul style="list-style-type: none"> • For political actors (outside a reference period), that the ad is clearly marked as an issues ad or an ad for commercial purposes²³⁶; • For other actors within a reference period, that the ad is clearly marked as an ad for commercial purposes; • For the publisher, that all the players in the micro-targeting value chain are requested to have an auditable certification to ensure the personal data complies with the GDPR; • Auditable certification of the GDPR compliance of the personal data processing is included as part of the relevant transaction and included in relevant disclosures for reporting

²³⁴ Articles 42 and 43, General Data Protection Regulation (EU) 2016/679

²³⁵ Established nationally or on the basis of common standards

²³⁶ As defined in Article 2 Misleading and Comparative Advertising Directive.

	purposes.	
Relevant criteria	<p><u>Proportionality</u>: the policy options respond to the various harmful practices linked to micro-targeting such as profiling, which is likely to become increasingly relevant if no action is taken (baseline). Policy Option 3.1 and sub-option 3.2.2 pose a more specific approach with targeted measures. Sub-option 3.2.1 may lead to conflicts, since it proposes a ban on political actors from conducting micro-targeting, considering ECHR articles on freedom of expression.</p> <p><u>Effectiveness</u>: all policy options establish clear binding rules for the use of political micro-targeting, filling in some areas where there are regulatory gaps. Prohibiting micro-targeting, as laid down in option 3.2 reduces legal uncertainty and enhances the ability of business to operate cross-border, which in turn is expected to positively impact on its effectiveness in comparison to option 3.1 Sub-option 3.2.1, being more straightforward in relation to the prohibition of micro-targeting, is deemed to be more effective than sub-option 3.2.2.</p> <p><u>Efficiency</u>: the positive effects of the measures would clearly offset their compliance costs as these facilitate the provision of services cross-border, mitigate the risks of micro-targeting, and safeguard the electoral integrity. Option 3.2.1 would have the most significant trade-off as both the costs and the benefits would be higher. Establishing limitations as featured in option 3.1 might be challenging, as the various elements of micro-targeting are highly interconnected and require greater resources for monitoring and enforcement. In the long term, option 3.2.2 would be more efficient.</p> <p><u>Coherence</u>: the policy options build on and expand existing legislation and initiatives, namely, the GDPR, DSA, Code of Practice on Disinformation, EDAP and AI Act. Nonetheless, the prohibition of micro-targeting in Option 3.2 may conflict with the freedom of expression guaranteed by Article 11 of the EU Charter of Fundamental Rights and Article 10 of the ECHR.</p> <p><u>European Added Value</u>: the extraterritorial and cross-border nature of micro-targeting call for EU intervention. This is supported by the different national initiatives, which may lead to an even more fragmented scenario, increasing the potential risks for the integrity of European elections, along with Member State claims of limited capacity for monitoring and enforcement. EU action is therefore needed and would have added value compared to what could be achieved by Member States alone.</p>	
Main indicators	<ul style="list-style-type: none"> • Commercial ability to sell and buy political micro-targeting cross border. • Cost reduction related to legal uncertainty borne by companies operating cross-border. • Estimated costs of complying with obligations (guidelines, manuals, capacity building, etc.) to promote transparency and accountability. • Share of online political ads for which info is provided in all political ads. • Level of access provided to the information related to political advertising (budget, service providers, etc.). • Data available in repositories open to citizens (incl. targeting criteria). • Legal actions undertaken in relation to fundamental rights. 	
Overall objective	<p>Provide for high transparency standards for political parties in the EU to promote free and fair elections</p> <p>Facilitate the provision of cross-border ads and related services for economic operators in the internal market while supporting fair democratic processes based on high transparency standards.</p>	
Specific objective	Address the use of targeting and manipulative techniques to support fair elections and democratic debate.	<p>Indicators:</p> <ul style="list-style-type: none"> • Type of data collected, processed and used in micro-targeting.

		<ul style="list-style-type: none"> • Number of audits conducted on the certificate of compliance with the GDPR.
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The tables below summarise the impact assessment of policy option 3.1 and policy sub-options 3.2.1 and 3.2.2, based on the data collection (desk research, literature review, interviews, open public consultation) carried out by this study.

Table 18: Impacts of Policy Option 3.1

Policy option 3.1	Political actors		Service providers				Others		
	Political parties	Non-political parties	Online intermediaries (VLOPs)	SMEs	Large companies	Traditional media	Citizens	MS	Civil society and journalists
Economic impacts	-	-	-	-	-	+		-	
	Increased costs of political ads due to the new requirements for transparency	Increased costs of political advertising due to the new requirements for transparency	Costs related to new transparency and accountability obligations related to the targeting criteria	Costs related to transparency and accountability obligations related to the targeting criteria	Costs related to transparency and accountability obligations related to the targeting criteria	Fair competition due to online regulation	Negligible impacts	One-off costs of developing standards	Negligible impacts
	-		-	-	-			-	
	Smaller parties will be more affected by the increased costs, which can lead to inequalities in the public space		Costs related to the certification of the GDPR compliance	Small costs related to the certification of the GDPR compliance	Small costs related to the certification of the GDPR compliance			Administrative costs of monitoring and enforcing standards and specific conditions	
			+	+	+				
			Positive impacts related to the clarity of the market	Benefits related to the harmonisation of the market, facilitating cross border business	Benefits related to the harmonisation of the market				
			-		-				
Social impacts	+	+	-				++	++	+
	Increased transparency and accountability of political actors	Increased transparency and accountability of other actors	Slight negative impact on the power of some platforms to shape public debate	Negligible impacts	Negligible impacts	Negligible impacts	Access to more transparent information	Improved cooperation and increased harmonisation	Easier to monitor compliance political ad publishers. Facilitation of watchdog role
Fundamental rights	-	-					++		
	Small negative impacts on	Small negative impacts on	Negligible impacts. Very small impact	Negligible impacts. Very small impact	Negligible impacts. Very small impact	Negligible impacts	Better protection of	Negligible impacts	Negligible impacts

Policy option 3.1	Political actors		Service providers				Others		
	Political parties	Non-political parties	Online intermediaries (VLOPs)	SMEs	Large companies	Traditional media	Citizens	MS	Civil society and journalists
	freedom of expression	freedom of expression	on right on the freedom to conduct a business	on right on the freedom to conduct a business	on right on the freedom to conduct a business		personal data and privacy	(maybe less court cases)	

Table 19: Impacts of Policy Option 3.2.1

Policy option 3.2.1	Political actors		Service providers				Others		
	Political parties	Non-political parties	Online intermediaries (VLOPs)	SMEs	Large companies	Traditional media	Citizens	MS	Civil society and journalists
Economic impacts	-	-	-	+	-	+		-	
	Increased costs of political advertising due to the prohibition of using micro-targeting	Increased costs of political advertising due to the prohibition of using micro-targeting	Negative impacts in the profits due to the prohibition of micro-targeting	Small positive impacts linked to a higher demand for advertising services other than micro-targeting	Negligible impacts	Fairer competition market due to the online regulation	Negligible impacts	One-off costs of developing standards	Negligible impacts
	-		-	+		+		-	
	Smaller parties will be more affected by the increased costs, which can lead to inequalities in the public space		Costs linked to implementing common standards	Benefits related to the harmonisation of the market, facilitating cross border business		Potential increase of demand for advertising		Administrative costs of monitoring and enforcing the standards and specific conditions	
			-						
			Slight negative impact on the monopoly of some platforms to shape public debate						
			+						
			Positive impacts related to the clarity of the market						
Social impacts	++	++	-	+			++	+	++
	Increased transparency and accountability of political actors	Increased transparency and accountability of other actors	Slight negative impact on the power of some platforms to shape public debate	Potential creation of employment driven by the cross-border business and the higher demand	Negligible impacts	Negligible impacts	Access to transparent information	Improved cooperation and increased harmonisation	Easier to monitor compliance of political ad publishers
	-						-		
	Limited engagement with citizens, especially for small political						Slightly limited information		

	actors								
	-	-	-				++		
Fundamental rights	Negative impacts on freedom of expression (art 10 ECHR)	Small negative impacts on freedom of expression	Small impact on right on the freedom to conduct a business	Negligible impacts. Very small impact on right on the freedom to conduct a business	Negligible impacts. Very small impact on right on the freedom to conduct a business	Negligible impacts	Better protection of personal data and privacy	Negligible impacts (maybe less court cases)	Negligible impacts

Table 20: Impacts of Policy Option 3.2.2

Policy option 3.2.2	Political actors		Service providers				Others		
	Political parties	Non-political parties	Online intermediaries (VLOPs)	SMEs	Large companies	Traditional media	Citizens	MS	Civil society
Economic impacts	-	-	--	-	-	+		-	
	Increased costs of political advertising	Increased costs of political advertising	Negative impacts in the profits due to the restriction of micro-targeting	Costs related to transparency and accountability obligations	Costs related to transparency and accountability obligations	Fair competition market due to the online regulation	Negligible impacts	One-off costs of developing standards	Negligible impacts
	-					+		-	
	Smaller parties will be more affected by the increased costs, which can lead to inequalities in the public space		Negligible, small costs related to the certification of the GDPR compliance	Negligible, small costs related to the certification of the GDPR compliance	Negligible, small costs related to the self-certification of the GDPR compliance	Potential increase of demand for advertising		Administrative costs of monitoring and enforcing the standards and specific conditions	
			-	+	+				
			Costs linked to implementing common standards	Benefits linked to the harmonisation of the market, facilitating cross border business.	Benefits linked to the harmonisation of the market				
			-		+				
			Slight negative impact on the power of some platforms to shape public debate		Positive impacts related to the clarity of the market				
			+						
			Positive impacts related to the clarity of the market						
Social impacts	+	+	-				++	+	+
	Increased transparency and accountability of political actors	Increased transparency and accountability of other actors	Slight negative impact on the power of some platforms to shape public debate	Negligible impacts, potential creation of employment	Negligible impacts	Negligible impacts	Access to transparent information	Improved cooperation	Easier to monitor compliance of political ad publishers
Fundamental rights	-	-					++		

Policy option 3.2.2	Political actors		Service providers				Others		
	Political parties	Non-political parties	Online intermediaries (VLOPs)	SMEs	Large companies	Traditional media	Citizens	MS	Civil society
	Small negative impacts on freedom of expression	Small negative impacts on freedom of expression	Negligible impacts. Very small impact on right on the freedom to conduct a business	Negligible impacts. Very small impact on right on the freedom to conduct a business	Negligible impacts. Very small impact on right on the freedom to conduct a business	Negligible impacts	Better protection of personal data and privacy	Negligible impacts	Negligible impacts

Based on the above assessment, it can be concluded that the policy options proposed, both limiting or prohibiting micro-targeting, will help to mitigate the risks linked to abusive micro-targeting, enhancing the protection of personal data and privacy of individuals, while safeguarding the freedom of expression of political actors. By establishing common standards and specific conditions, the measures will also support the integrity of the electoral process.

6.3.1. Economic impacts

Overall, the costs of implementing the policy options suggested is offset by the positive effects on the harmonisation of the Single Market. In this respect, the following impacts will likely occur in relation to the actors involved:

- SMEs are expected to benefit the most from the clearer legal framework, as it will facilitate cross-border business and potentially increase the demand for alternative services to micro-targeting;
- VLOPs will likely bear significant compliance costs, although the main share falls under complementary initiatives on transparency. These additional costs are likely to be offset by the medium- and long-term benefits of the policy options (improved legal clarity), as pointed out by representatives of VLOPs interviewed.
- Political actors will also experience a slight increase in the cost of political advertising as compliance costs of VLOPs might be passed on to them. Since the prices of advertising are already different across Member States, the increase is expected to be proportional to the base price.

Specifically, the **new transparency and accountability requirements** (under policy option 3.1 and sub-option 3.2.2) will likely impact the different actors as follows:

- Political actors will experience an increase in the costs of engaging in online political advertising.
- Service providers, except for traditional media, will face compliance costs related to transparency and accountability obligations. Since GDPR compliance is mandatory, the provision of evidence by means of an electronic document, for example, is expected to be minimum. Service providers such as marketing companies that engage in both commercial and political advertising may experience some additional negative impacts during the reference periods (Policy Option 3.1 and sub-option 3.2.2), giving rise to the need for different labels and standards.
- VLOPs, as the main dissemination channels, are expected to bear most of the costs. The costs related to the disclosure of information depend on the volume of the data and the technical and operational improvements required to comply with changes, which in principle, should be absorbed in the services' operations. For instance, the APIs are deployed and would only require fine-tuning. The compliance with the GDPR requirements would add to the costs.
- SMEs are forecasted to be the main beneficiaries since the current cross-border obstacles, which mostly affect them, will be at least partially removed. The costs related to GDPR requirements are expected to be small.
- Member States are expected to have one-off costs linked to the development and implementation of the new requirements. Administrative costs for monitoring and enforcing the measures, which currently constitutes one of the main problems linked to micro-targeting and online political advertising in general, are expected to be rather significant.

The auditing of the certification, in Policy Options 3.1 and 3.2.2, would likely be carried out at EU level, with the subsequent costs for the public authorities responsible for the oversight of the auditing process. If this was decided to be done by the national authorities, the costs would be probably higher as many of the Member States consulted indicated a lack of resources and expertise for monitoring and enforcing existing legislation (i.e., GDPR).

The **implementation of common standards** will have the following impacts:

- Service providers, except for traditional media, will face one-off costs related to the implementation of common standards. Nonetheless, these costs will be offset by the overall benefits of having a clearer framework on micro-targeting. Further harmonising and clarifying the regulation on micro-targeting would likely further reduce costs and increase turnover.
- VLOPs, which were interviewed for this study, indicated that less fragmented legislation will likely incentivise business. However, the limitations imposed will likely cause VLOPs to lose profits linked to micro-targeting.
- The turnovers of SMEs are expected to increase. Having a common framework would positively impact their ability to conduct business. The DSA estimated that reducing the fragmentation and uncertainty on the transparency rules “could lead to a cost reduction of around EUR 400,000 per annum for SMEs”²³⁷. The limitations in micro-targeting might lead to the allocation of more funding to alternative political advertising.
- Traditional media will have an even playing field, improving their position in the market and the overall competition in political advertising. The limitations in micro-targeting could lead to the allocation of more funding to traditional political advertising (i.e., TV, newspaper, radio).
- Member States will face costs associated with the development, monitoring and enforcement of the common standards proposed.

The **prohibition of micro-targeting** (sub-option 3.2.1. will likely have the following impacts:

- Political actors will likely experience increased costs when engaging in political advertising. The approximate increase of the costs is difficult to estimate, but one of the main advantages of micro-targeting is the relative lower cost and wide reach. Therefore, it seems logical that political actors would have to resort to more expensive advertising techniques, if this is not available. On average, Facebook ads (Cost per Click) costs USD 0.35²³⁸ whereas direct micro-targeting (mail) costs USD 0.95²³⁹, which would mean an increase in USD 0.60 per ad. Since the initial costs vary across Member States, it is expected the differences will be reflected in the increase of the price²⁴⁰. Furthermore, unlike online micro-targeting, direct micro-targeting does not reach as many people as it cannot be shared with a simple click, the type of messages is more limited and its efficiency cannot be tested in real time, and the targeting criteria are not as refined, thereby the campaign may not be as optimal, despite being almost three times more expensive on average. This might require more resources to be invested to achieve the same level of effectiveness. Nonetheless, data protection laws and national laws regulate access to the data and its processing, limiting the precision of online micro-targeting and thus diminishing its cost effectiveness to a certain extent²⁴¹.
- European political parties, which already face challenges posed relating to the political advertising policies of social media platforms such as Facebook and Twitter, are expected to be more affected.
- The costs for Member States would be lower if micro-targeting is prohibited in line with Policy Option 3.2.1, since the need to check each condition disappears. Furthermore, the costs related to the inefficiencies of the current framework would be mitigated. The overall additional costs for an average national authority to monitor and enforce new rules in relation to transparency and micro-targeting would be around three FTE with an additional EUR 100 000 for training and infrastructure, according to the Member State authorities consulted. The costs overlap with the additional costs for public administrations presented by PO 1.2 and 1.3 and should not be double or triple counted²⁴².

²³⁷ Impact assessment of the Digital Services Act, available at: <https://digital-strategy.ec.europa.eu/en/library/impact-assessment-digital-services-act>

²³⁸ <https://buffer.com/library/facebook-advertising-cost/>

²³⁹ www.inkit.com/blog/cost-of-direct-mail-campaign#toc-how-much-does-a-direct-mail-cost-

²⁴⁰ Note that the prices used were taken from US sources and therefore, should be read as rough estimations.

²⁴¹ IDEA (2018) “Digital Micro-targeting. Political Party Innovation Primer 1”. Available at:

www.idea.int/sites/default/files/publications/digital-micro-targeting.pdf

²⁴² See note in Section 6.2.1.4

6.3.2. Social impacts

Social impacts are assessed as highly positive, particularly for citizens. Nevertheless, all actors will benefit from an increased transparency.

Political actors will be positively impacted by all the options. The enhanced transparency will likely yield them benefits in terms of trust and reputation. However, the capacity to engage in a wide campaign may be limited, especially for those political actors that are smaller and has less means. Ultimately, this could lead to gradually reducing the political space and free flow of ideas. The extent to which this may occur depends on whether micro-targeting becomes a restricted or prohibited policy (option 3.1 and sub-option 3.2.2.).

If micro-targeting is prohibited, the effects on the transparency and the engagement will be boosted (sub-option 3.2.1.). Banning micro-targeting will likely remove, at least in part, threats to data protection. It will also likely reduce the fragmentation of the public scrutiny of campaigns caused by micro-targeting through isolated and parallel campaigning while improving the ability of competent authorities, civil society and peers to oversee political messages. Political parties will find it more difficult to make irreconcilable promises to different audiences, as these would be easier to spot and debate. On the other hand, political actors would need to adopt alternative marketing techniques, which are likely to be more expensive and have a lower overall reach. The establishment of common standards would likely accomplish the same objectives, with limited negative repercussions.

The overall **impacts of all options on SMEs** are difficult to predict since they depend on many factors. If the regulation of micro-targeting, and the different practices linked to it, are harmonised, thereby promoting business outside of VLOPs, then SMEs would likely see an increase in their turnover and could thus create new jobs. The potential increase in the use of advertising that it is not automated, (i.e., if micro-targeting is banned or limited for political actors), could also benefit employment levels. Most companies that engaged in political advertising during the 2019 European Parliament elections had fewer than 10 employees.²⁴³ It is expected that those companies able to harness the benefits of the new situation would likely create between one to three jobs (e.g. staff dealing with compliance procedures, marketing positions, etc.).

The limitation and particularly the prohibition of micro-targeting may curb the capacity of **VLOPs** to shape public debate. Consequently, they would see their political influence reduced.

The labelling of the ads proposed in options 3.1 and sub-option 3.2.2 will likely help to raise awareness on the type of advertising viewers are watching. Overall, **citizens** will be better informed and will thus be able to engage in a more informed decision-making process on elections, for example. In the event that micro-targeting is banned (sub-option 3.2.1), the information that citizens receive from political actors may be limited. For example, they might not be aware of new political parties. This would negatively affect their ability to make informed decisions and adopt critical positions. Micro-targeting has also been linked to the creation of echo-chambers and the polarisation of the public opinion, which also affects decision-making. Some 42% of the citizens (and 100% of the public authorities) who responded to the OPC support its prohibition even when limited to certain criteria. The prohibition would also likely better protect citizens that are more susceptible to targeted messages, *inter alia*, the less well-educated.

The overall transparency measures proposed under all options would likely prevent or at least reduce the ability of certain actors to manipulate the citizens and public opinion. Having clear standards defining the type of data that can be used and not used for targeting users would be of significant relevance. Stakeholders consulted for the study strongly supported banning the use of inferred data.

Moreover, the standardisation of micro-targeting rules across the EU will likely facilitate cooperation among **Member States** on the oversight of compliance of political actors and service providers. Member States would also be able to exchange good practices in this area.

Likewise, **civil society** would greatly benefit from improved transparency caused by a ban and/or limitation of micro-targeting. Access to data is especially relevant for those organisations with a supervisory role. Civil society will also be in a better position to inform citizens on the various aspects of online political advertising.

²⁴³ Data extracted from the Google Transparency Report

6.3.3. Fundamental rights

The policy options will likely provide a greater protection of the individual fundamental rights. Only sub-option 3.2.1 would likely incur in a conflict with the right to freedom of expression (Article 11 of EU Charter of Fundamental Rights).

Political actors might experience a negative impact on their freedom of expression. A blank prohibition of micro-targeting could be overturned following the 2008 judgement by the European Court of Human Rights²⁴⁴.

The Court judged whether there was a reasonable proportionality between the legitimate aim pursued by the prohibition on political advertising and the means deployed to achieve that aim (micro-targeting was not mentioned). The ban on political advertising itself did not constitute a violation of Article 11 of the ECHR, guaranteeing the freedom of expression according to the ruling of the Court. Other case of law in this area seems to vary across Member States.

Service providers of online political advertising may have a slight impact on their right on the freedom to conduct a business (Article 16 of the EU Charter of Fundamental Rights) since they would be requested to adhere to new standards. The prohibition of micro-targeting would likely pose a greater risk in this respect.

Citizens will highly benefit from a better protection of their fundamental rights, especially with regard to personal data. The establishment of common standards could include robust guidelines for the type of data used in targeting – e.g. banning the use of inferred data, the informed consent of the individuals, and the monitoring of the compliance of advertisers with the GDPR.

Member States would likely see a decrease in court cases related to violations of the data protection laws.

6.3.4. Conclusions

Policy option 3.2 seems preferable to Policy Option 3.1 as it ensures a more effective and efficient enforcement of the foreseen measures. The main distinction between the options proposed lies in the limitation (policy option 3.1) or prohibition (Policy Option 3.2) of micro-targeting.

Sub-option 3.2.1 seems to have slightly more positive effects in economic and social terms, but it may be problematic from a proportionality perspective. Micro-targeting is a form of political communication guaranteed by the right to freedom of expression, which can only be restricted under very specific circumstances. Its prohibition as expressed in sub-option 3.2.1 may be considered a violation of Article 11 of the EU Charter of Fundamental Rights, which guarantees freedom of expression.

Policy sub-option 3.2.2 foresees the prohibition of micro-targeting unless some specific conditions are met. The ban not only provides a clearer framework for the use or non-use of micro-targeting compared to its sole limitation (policy option 3.1), but it better fulfils its purpose of protecting citizens' fundamental rights. The four conditions envisioned aim to ensure transparency in the use of micro-targeting and compliance with the GDPR. Since the latter is already an obligation and transparency has been emphasised in initiatives such as the Code of Practice for Disinformation, the prohibition, in case certain minimum conditions are met, seems to be the most proportional approach for achieving the objective of regulating the use of micro-targeting to guarantee respect of fundamental rights.

The current legal framework is insufficient for addressing all the problems related to micro-targeting and the oversight and enforcement of rules is thus very challenging. The establishment of common standards that restrict certain unlawful and/or harmful practices will likely reinforce and add clarity to the current legislation. The specific responsibilities of the actors in online political advertising will increase their accountability. Establishing common standards will also likely facilitate cross-border business and will establish a fair level playing field for traditional media, which is subject to greater

²⁴⁴ European Court of Human Rights (2008), *TV Vest AS & Rogaland Pensjonistparti V. Norway*.

regulation. In addition, Member States will likely have a consistent common framework to operate and align their different initiatives in this area.

Overall, the transparency obligations will likely bring a wide array of positive impacts to society. The availability of information will potentially help to raise awareness on micro-targeting, fostering the adoption of a critical position. In this regard, more transparency on the functioning of ranking algorithms will also help educate citizens.

With regards to economic impacts, the costs of sub-option 3.2.2 are expected to be small. This sub-option largely builds on some of the provisions of the GDPR, such as principle of purpose, informed consent and lawfulness of processing (Article 6), automated decision-making (Article 22) and transparency (Article 12 – Article 14). As noted in the study, the enforcement of the GDPR appears to be the main issue to date. This is likely to continue unless more adequate monitoring is introduced, impacting the implementation of the proposed action. Similarly, the DSA intends to set some transparency obligations. The measure proposed seeks to enhance compliance by making more explicit the commitment to the GDPR of the different actors in the value chain using micro-targeting. In addition to the GDPR and the DSA, the standards and conditions proposed in the policy option also expand the provisions of the Code of Practice on Disinformation and the EDAP, thus ensuring coherence. Considering all these elements, sub-option 3.2.2 appears to be the most viable in social and economic, terms and with respect to rights. It also boasts the widest support among the different categories of consulted stakeholders.

In relation to the EU added value, given the many links of micro-targeting with the European regulation, its cross-border nature and the key role of international online platforms in micro-targeting, as well as the implications for European political parties, the EU is deemed to be better placed to implement and oversee the actions proposed. The difficulties expressed by the consulted Member States concerning insufficient capacity and expertise to tackle the problems at national level, further supports the EU's right to act, while aligning with the subsidiarity principle.

Member States, political parties, academia and civil society organisations, which were consulted for this study, advocate the implementation of targeted regulatory measures concerning the use of micro-targeting. These shall preferably build on and expand existing legislation, in particular, the GDPR and the DSA, as well as the Code of Practice on Disinformation and the European Democracy Action Plan. Self-regulation or soft measures alone are unlikely to make any significant difference in addressing the various issues identified in relation to micro-targeting, in their opinion. For instance, Decode Democracy found that the major social media platforms and messenger apps, (i.e Google, Facebook, Twitter, YouTube, WhatsApp, Instagram, Reddit, Snapchat and TikTok), had collectively made more than 300 policy changes in a year and a half. Yet, they still failed to effectively monitor and enforce their own policies²⁴⁵. For instance, a 2020 study carried out by New York University found that “USD 37 million in advertising – representing 55% of all pages with political ads during the study period –... failed to identify the funding source, in violation of Facebook policy”.²⁴⁶ Facebook also failed to enforce its own policies that called for outside monitoring of its political ad library. These policies responded to public and political pressure instead of anticipating and mitigating potential threats.

Overall, the consulted stakeholders prefer policy option 3.2. Academia and civil society organisations are more inclined to prohibit micro-targeting (policy option 3.2.1), whereas Member States and political parties lean towards the prohibition of micro-targeting unless some conditions are met (Policy Option 3.2.2). There is a wide support among stakeholders interviewed for combining targeted regulation with soft measures that are more flexible to capture and address fast-changing technology, such as that used for profiling. These should always have clear commitments and sanction mechanisms.

²⁴⁵ Decode Democracy's March 2021 Report

²⁴⁶ <https://engineering.nyu.edu/news/researchers-report-widespread-disclosure-violations-political-advertising-facebook>

By contrast, the industry argues that self-regulation is sufficient. In this regard, there needs to be made a distinction between industry associations and VLOPs. Industry associations represent businesses conducting both political and commercial advertising, and their aim is to prevent any increases in burdens relating to regulation of political micro-targeting. Moreover, those working with traditional media underline the unfairness of the current situation in which political advertising is heavily regulated compared to the loose situation online. For instance, offline micro-targeting (i.e. via mailbox letters) is not only more expensive, but it is much more regulated and monitored. In contrast, VLOPs argue that the initiatives undertaken to enhance transparency, such as the ad libraries, as well as the existing regulation are sufficient to ensure lawful use of micro-targeting. Despite these differences in options, most of the service providers consulted during the study favour Policy Option 3.1., as being the less intrusive while still reducing fragmentation of the legislative framework.

6.4. Impacts of Policy Block 4: Measures oriented to enhancing the enforcement of relevant rules through common standards to support oversight and audit, and the applications of sanctions; and to strengthen cooperation and interoperability

Section 6.4 presents the findings for Policy Block 4: Measures oriented to enhancing the enforcement of relevant rules through common standards to support oversight and audit, and the applications of sanctions; and to strengthen cooperation and interoperability. These measures would complement the governance system under the DSA and the GDPR.

6.4.1. Impacts of Policy Option 4.1: Measures oriented to enhancing the enforcement of relevant rules through common standards to support oversight and audit, and the applications of sanctions; and to strengthen cooperation

Table 21: Policy Option 4.1

Description	Policy Option 4.1.1	Policy Option 4.1.2
	<p>Provide for the identification of a competent authority in each Member State responsible for the national coordination of the monitoring and enforcement of the obligations envisaged by the initiative.</p> <p>Establish a coordinating body at EU level to ensure the efficient and consistent implementation of the envisaged measures, and to facilitate the resolution of issues connected to the conduct of monitoring and enforcement across borders of the obligations foreseen in this proposal, in the context of the country of origin principle.</p> <p>Provide a process among competent national authorities to support the coordination of cross-border monitoring and enforcement of rules relevant to elections which are facilitated by the envisaged measures, as well as the adoption of soft law measures for mutual support.</p> <p>Provide support for capacity building, joint action and the exchange of good practice.</p>	<p>Policy option 4.1.1, plus:</p> <p>Establish a process whereby monitoring and enforcement across borders can be escalated and where action against problematic activities affecting one state which originate in another can be guaranteed.</p> <p>Require sufficiently dissuasive and effective sanctions.</p>

Relevant criteria	<p><u>Proportionality</u>: in comparison to the baseline, PO 5.1 entails enhanced cooperation across Member States, whereas PO 5.2 (requiring sufficiently dissuasive and effective sanctions) would not be proportionate to the Member States.</p> <p><u>Effectiveness</u>: the effects of PO. 4.1.1 would arise as a consequence of the obligations of Member States to participate in cooperation mechanisms. PO 4.1.2 envisages the process whereby monitoring and enforcement across borders can be escalated and where action against problematic activities affecting one Member State which originate in another can be guaranteed, which would increase the effectiveness of enforcement in the absence of adequate legislation in Member States where online platforms engaged in cross-border political advertising are based.</p> <p><u>Efficiency</u>: both proposed policy options would entail new compliance and administrative costs to be borne by Member States' public authorities, but would also result in a more efficient use of the resources at their avail.</p> <p><u>Coherence</u>: PO 4.1.1 and PO 4.1.2 are coherent with the DSA as proposed, as they outline forms of cooperation among Member States and between Member States and the EU in line with those in the DSA. PO 4.1.1 is deemed more coherent with legislation at the national level, for PO 4.2.2 foresees the establishment of a process that is redundant to existing legislation at the level of the Member States.</p>	
Overall indicators	<p>Number of Member States that designate a competent authority in the period established;</p> <p>Number of cases of resolved issues connected to the conduct of monitoring and enforcement across borders of the obligations foreseen in this proposal, in the context of the country of origin principle;</p> <p>Frequency of uses per year of a process among competent national authorities to support the coordination of cross-border monitoring and enforcement of rules relevant to elections which are facilitated by the envisaged measures, as well as the adoption of soft law measures for mutual support.</p> <ul style="list-style-type: none"> • Number of activities related to capacity building, joint action and the exchange of good practice supported by the European Commission. • Effective supervision and enforcement by Member State of establishment • Responsive and effective cross-border cooperation 	
Overall objective	Provide for high transparency standards for political parties in the EU to promote free and fair elections	
Specific objective	Ensure the satisfactory oversight of the envisaged obligations and strengthen regulatory outcomes	Extent to which electoral rules are monitored (including results of monitoring)
Specific objective	Address the use of targeting and manipulative techniques to support fair elections and democratic debate	<p>Extent to which anti-interference mechanisms are in place</p> <p>Extent to which electoral rules are monitored (including results of</p>

		monitoring)
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The tables below summarise the impact assessment on Political Parties, based on the research carried out through the study. The Impacts of Policy Option 4.1.1 are first outlined, followed by the impacts of Policy Option 4.1.2.

Table 22: Impacts of Policy Option 4.1.1

Policy option 4.1	Political actors		Service providers				Others		
	Political parties	Non-Political parties	Online intermediaries	SMEs	Large companies	Traditional media	Citizens	MS	Civil society
Economic impacts			+	+	+				
	Negligible effects	Negligible effects	Marginal effects, enhanced legal certainty	Marginal effects, enhanced legal certainty	Marginal effects, enhanced legal certainty	Negligible effects	Negligible effects	Uneven distribution of costs and benefits among Member States	Negligible effects
Social impacts	+	+	+	+	+		+	+	
	Political actors better held accountable	Political actors better held accountable	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Enhanced enforcement of legislation	Enhanced ability to enforce relevant of legislation	Negligible effects
Fundamental rights							+		
	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Enhanced protection of fundamental rights	Negligible effects	Negligible effects

Table 23: Impacts of Policy Option 4.1.2

Policy option 4.2	Political actors		Service providers				Others		
	Political parties	Non-political parties (European Political Foundations)	Online intermediaries	SMEs	Large companies	Traditional media	Citizens	MS	Civil society
Economic impacts			+	+	+				
	Negligible effects	Negligible effects	Marginal effects, enhanced legal certainty	Marginal effects, enhanced legal certainty	Marginal effects, enhanced legal certainty	Negligible effects	Negligible effects	Uneven distribution of costs and benefits among Member States	Negligible effects
Social impacts	+	+	+	+	+		++	++	
	Political actors better held accountable	Political actors better held accountable	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Enhanced enforcement of legislation	Enhanced ability to enforce relevant of legislation	Negligible effects
Fundamental rights							++		
	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Enhanced protection of fundamental rights	Negligible effects	Negligible effects

6.4.1.1. Economic Impacts

- Identifying a competent authority in each Member State involves a negligible one-off cost for Member States, arising from the time dedicated by different public authorities to decide which relevant public authority would assume the coordinating role. The Member States that have already designated a coordinating public authority for their participation in ECNE (See Section 2.4) are expected to have less costs, as these authorities already coordinate the work on the consultation process for the initiative. Based on the consultations, there is a negligible recurrent cost for the competent authority in each Member State to coordinate the monitoring and enforcement by other authorities of the obligations envisaged by the initiative, but they are expected to be offset by the benefits of a better implementation of the initiative.
- Providing a process among competent national authorities to support the coordination of cross-border monitoring and enforcement of rules relevant to elections which are facilitated by the envisaged measures would have marginal costs to the European institutions. These costs overlap with the costs for European institutions described in Policy Option 2.2 and 2.3, as this intervention would be conducted by a reinforced ECNE with a permanent secretariat. The combined recurrent cost would be a recurrent cost of 1 full-time equivalent. These costs also overlap with the establishment of a coordinating body at EU level to ensure the efficient and consistent implementation of the envisaged measures, and to facilitate the resolution of issues connected to the conduct of monitoring and enforcement across borders of the obligations foreseen in this proposal, in the context of the country of origin principle. Therefore they should not be double- or triple-counted.
- European institutions will face costs arising from organising events for the exchange of good practices and from providing support for capacity building. These costs cannot be quantified in the absence of a plan for the amount of events, and will depend on the number of them. Bilateral joint actions will imply costs marginal costs for Member States, that would nevertheless results in a more effective work by the public authorities involved in the monitoring of online political advertising and the enforcement of relevant rules. Consulted Member States estimate the costs of engaging in joint actions in EUR 10.000 – 15.000.
- Service providers operating in a cross-border basis will benefit from a more homogeneous implementation on the measures envisaged by the initiative as legal uncertainty will be reduced, including those on transparency and micro-targeting. Increased legal certainty will translate into economic gains since measures to minimise risks will decrease (e.g. costs relating to legal advice).

6.4.1.2. Social impacts

- The measures are expected to result both in a more effective enforcement of legislation introduced in this initiative and in a more successful extraterritorial enforcement of national legislation, hence leading to democratic processes with more guarantees and greater trust of citizens in it, as well as further reduction of legal uncertainty for economic operators. However, Policy Option 4.1.2. provides further guarantees to Member States to escalate their action against problematic activities affecting their Member State which originate in another member State, providing for more effective enforcement.

6.4.1.3. Impacts on fundamental rights

- Freedom to information and protection of personal data are expected to be better protected, for the measures under Policy option 4.1.1 and Policy option 4.1.2. are expected to result in an increase of the Member States' ability to enforce the current relevant legal framework, the obligations introduced by this initiative and any other additional rule in relation to online political advertising. Policy option 4.1.2. is expected to result in a stronger protection of fundamental rights through the introduction process whereby monitoring and enforcement across borders can be escalated and where action against problematic activities affecting one

state which originate in another can be guaranteed and dissuasive measures are in place in all Member States.

6.4.1.4. Conclusions

Policy Options 4.1 and 4.2 would have similar impacts. However, Policy Option 4.1.2 is considered to be more effective than 4.1.1. and have more positive social impacts and impacts on fundamental rights.

Measures under Policy Option 4.1 have minimal costs. Designating a competent authority in each Member State responsible for the coordination and enforcement of the obligations envisaged by the initiative has minimal administrative costs arising from the need of competent authorities at the national level to decide on which specific authority should be responsible for coordination and enforcement of the obligations. This should result in a more uniform implementation of the initiative – which in turn should provide legal certainty to service providers.

Coordination at the EU level to ensure the efficient and consistent implementation of the envisaged measures would not require the creation of any coordination body. The European cooperation network on elections²⁴⁷ could serve as a coordination platform once competent authorities in all Member States have been designated.

The need for better coordination to enforce existing legislation at the level of the Member States has been mentioned in interviews to European institutions and public authorities in the Member States, both in response to specific questions and spontaneously.

The costs of provision of support for capacity building, joint action and the exchange of good practice are hard to estimate, for these depend on the volume of activities that the Commission and the Member States wish to conduct. However, due to the disparity in the fact that some Member States have adopted legislation that addresses the specific problems associated to online political advertising and some have not yet (see section 2.1.3), it is possible to foresee potential benefits from exchange of good practice.

VLOPs operating in the European Union are located in multiple Member States. The analysis of the regime sanction in these Member States outlines in Section 2.4 and available in full in Annex 5 shows not all of these Member States provide for adequate sanctions to dissuade breaches, as in some cases the maximum fines would have a ceiling of EUR 8.500 and imprisonment sanctions are not contemplated. Therefore, should different Member States where VLOPs operate fail to adopt dissuasive sanctions as recommended under 4.1.2., the establishment of a process whereby monitoring and enforcement across borders can be escalated and where action against problematic activities affecting one Member State which in other Member State can be guaranteed is recommended.

The 2018 Recommendation on election cooperation networks, online transparency, protection against cybersecurity incidents and fighting disinformation campaigns in the context of the elections to the European Parliament²⁴⁸ demands Member States to apply appropriate sanctions on political parties and foundations at the national or regional level for cases of infringements on the protection of personal data. Similar soft law measures could be issued to restate the recommendation that Member States introduce effective and dissuasive sanctions.

²⁴⁷ https://ec.europa.eu/info/policies/justice-and-fundamental-rights/eu-citizenship/electoral-rights/european-cooperation-network-elections_en

²⁴⁸ Commission Recommendation of 12.9.2018 on election cooperation networks, online transparency, protection against cybersecurity incidents and fighting disinformation campaigns in the context of elections to the European Parliament. Available at: https://ec.europa.eu/info/sites/info/files/soteu2018-cybersecurity-elections-recommendation-5949_en.pdf

6.4.2. Impacts of Policy Option 4.2: Support interoperable information systems and processes to enable transparency (e.g. clear line of sight and automated reporting).

Under this policy option, the systems and processes used to enable the transparency obligations envisaged in Policy Option 2.1 – 2.3 are considered. Under Policy Option 4.2.1, the obligations for each actor in the value chain (see Section 2.1.2) are defined in a protocol. Under Policy Option 4.2.2 specific headline requirements for interoperable information systems are mandated.

Table 24: Policy Option 4.2

Description	<p>Policy option 4.2.1:</p> <p>Specify per category of economic actor the necessary technical standards (APIs, data retention protocols, etc.) for ad libraries, the “know your client” data, and for the disclosures based on retained data, in order to enable the transparency obligations to be delivered efficiently for both their beneficiaries (citizens, interested stakeholder, authorities) and for the addressees of the obligations.</p>	<p>Policy option 4.2.2:</p> <p>Specify headline requirements for interoperable information systems on the basis of the required outcome (established on the basis of the transparency needs), in order to enable the transparency obligations to be delivered efficiently for both their beneficiaries (citizens, interested stakeholder, authorities) and for the addressees of the obligations.</p> <p>Support multi-stakeholder collaboration for the establishment of necessary technical standards</p>
Relevant Criteria	<p><u>Proportionality</u>: PO 4.2.2. is regarded as more proportionate than PO 4.2.1. as specific headlines requirements are introduced instead of detailed categories of economic standards, allowing for more flexibility for economic operators when collecting data on the value chain.</p> <p><u>Effectiveness</u>: PO 4.2.1 and PO 4.2.2. are regarded as similarly effective towards meeting the goal of ensuring interoperability of systems and processes.</p> <p><u>Efficiency</u>: PO 4.2.1. is regarded as slightly more efficient than PO 4.2.2. PO 4.2.1 would allow more flexibility to economic operators on how to guarantee that they collect the necessary information, allowing these operators to choose the most efficient options.</p>	
Overall indicators	<ul style="list-style-type: none"> • Number of support activities to multi-stakeholder collaboration groups during the establishment of technical standards; • Number of complains in relation to interoperability by citizens, interested parties, and public authorities. 	
General objective	<ul style="list-style-type: none"> • Provide for high transparency standards for political parties in the EU to promote free and fair elections 	

Specific objective	Ensure the satisfactory oversight of the envisaged obligations and strengthen regulatory outcomes	<ul style="list-style-type: none"> Degree of interoperability among systems and processes.
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The tables below summarise the assessment of the options, based on the research conducted for the study. Policy Option 4.2.1 is first outlined, followed by Policy Option 4.2.2.

Table 25: Impacts of Policy Option 4.2.1.

Policy option 4.4.1	Political actors		Service providers				Others		
	Political parties	Non-political parties	Online intermediaries	SMEs	Large companies	Traditional media	Citizens	MS	Civil society and journalists
Economic impacts			-	-	-			+	
	Negligible effects	Negligible effects	Increased administrative costs	Increased administrative costs	Increased administrative costs	Negligible effects	Negligible effects	Easier access to information	Negligible effects
Social impacts								+	+
	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Easier cooperation among Member States	Information provided more efficiently
Fundamental rights									
	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Negligible effects

Table 26: Impacts of Policy Option 4.2.2.

Policy option 4.4.2	Political actors		Service providers				Others		
	Political parties	Non-political parties	Online intermediaries	SMEs	Large companies	Traditional media	Citizens	MS	Civil society and journalists
Economic impacts			-	-	-			+	+
	Negligible effects	Negligible effects	Increased administrative costs	Increased administrative costs	Increased administrative costs	Negligible effects	Negligible effects	Easier access to information	Potentially better interoperability of the data
Social impacts								+	+
	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Easier cooperation among Member States	Information provided more efficiently
Fundamental rights									
	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Negligible effects	Negligible effects

6.4.2.1. Economic impacts

- Recurrent costs for economic actors would emerge for economic operators under both PO 4.2.1. and 4.2.2. These costs must be distinguished from the costs arising from the costs of compiling, processing, and publishing the data under the obligations foreseen in PO 1, 2 and 3. Consultation with economic operators and the literature review conducted suggest that specifying headline requirements (PO 4.2.2.) could result in lower recurring costs for economic operators as it would allow these to use the most efficient procedures to deliver information as envisaged in Policy Options 1, 2 and 3.
- Policy Option 4.2.2. would impose minor one-off costs on economic operators and political parties and economic operators to participate in the establishment of necessary technical standards. These costs would be offset by the benefits of participating in the establishment of these standards.
- Policy Option 4.2.2.'s one-off costs for the European Union's own resources are higher than the costs of Policy Option 4.2.1 as the Union would not provide indications on the technical standards, but also engage with different stakeholders to assist in the establishment of standards.

6.4.2.2. Social impacts

- The development of interoperable systems and processes to enable transparency should facilitate access to information by Member States and interested parties.

6.4.2.3. Impacts on Fundamental Rights

- No significant impacts on fundamental rights are identified.

6.4.2.4. Conclusions

Policy Option 4.2.2 seems to be preferable for the impacts of both options are similar and Policy Option 4.2.2 is more proportionate, for it clarifies the outputs in terms of transparency needs, while the option is allowing service providers to use the most efficient form of providing this.

Also, the multi-stakeholder collaboration to establish the technical standards and technical specification envisaged is strongly recommended following the implementation of the measures. This is needed especially in terms of interoperability.

6.5. Impacts of Policy Block 5: Costs of cross-border provision of services and legal uncertainty

Table 27: Policy Block 5

Description	Policy Option 5.1 (PO 5.1)	Policy Option 5.2 (PO 5.2)
	<p>Defining political advertising as advertising on behalf of a political actor. Further elements of the definition are left at the Member State level.</p>	<p>Political advertising is defined as advertising on behalf of a political actor, that is, a candidate or party at local, regional, national or European Parliament elections, or on behalf of a campaign organisation in a referendum; or:</p> <ul style="list-style-type: none"> • advertising that raises money for a cause, candidate or party; • advertising on behalf of any actor that attacks any party or candidate; • promoted political editorials in newspapers or magazines; • self-notified advertising promoting political views regardless of the actor on whose behalf is conducted (issue ads).
Relevant criteria	<p>Proportionality: PB5 constitutes an initial policy step aimed at promoting transparency in the political advertising value chain. The adoption of PB5 will therefore provide a fundamental building block for other activities (policy options) that aim to promote transparency, defining the scope of activities that constitute online political advertising and preventing the circumvention of the rules envisages by providing online advertising services from a Member State where the scope of online political advertising is defined in more narrow terms. In turn, improved transparency will enable a well-functioning internal market for online political advertising.</p> <p>In comparison to the baseline (no action) PO 5.1 and PO 5.2 entail a new and binding agreement on the definition of political advertising, with PO 5.2 providing a more detailed elaboration than PO 5.1 (see Description above). However, neither option will change the scope of the definition of political advertising, and therefore not affect those countries that have (FR, LT, LV) or are planning legislation (IE, NL) defining online political advertising.</p> <p>With regards to subsidiarity, Policy Block 5 (PB5) will applied in the context of application of EU law and – unless a conflict within the scope of application occurs – will not replace national legislation.</p> <p>Effectiveness: the effects of PB5 (both sub-options) would arise as a consequence of a binding new definition which in turn would require political parties and service providers (the actors in the political ad value chain) to conform their activities to adhere to this definition, thereby possibly affecting</p>	

	<p>transparency in the sector. Clearer rules would eventually lower costs of transactions as well as have a positive impact on competitiveness. Clearer rules would also benefit actors that form part of the wider media value chain but that are not preoccupied with political advertising since better defined rules would ensure these actors that they are unaffected by any obligations put in place to oversee political adverts.</p> <p>Efficiency: implementation of PO5.1 and PO5.2 would both entail new and initial compliance costs borne by Political Parties and Service Providers. Implications on the Member States' legal systems would also arise to accommodate for the agreed definitions. However, the additional costs could be offset by a more effective functioning market for political ads, including higher transparency standards.</p> <p>Coherence: PO5.1 and PO5.2 constitute intervention which is complementary to the DSA since actions would go beyond DSA remit but be targeted to all actors in the political advertising value chain. Specifically, the political advertising transparency intervention complements the definitions introduced by the DSA – e.g. “advertising online” – by elaborating a definition for “political advertising”.</p> <p>European Added Value: PO5.1 entails a common approach to a definition at the European level. PO5.2 elaborates a more detailed definition. EAV for PB5 is focused on the functioning of the internal market.</p>	
Overall indicators	<ul style="list-style-type: none"> ▪ Commercial and legal ability to sell and buy political advertising services cross-border; ▪ Change in proportion of EU cross-border political advertising of overall advertising activity for a given medium or service type; ▪ Level of cost reduction related to legal uncertainty borne by those companies who operate cross-border (e.g. reduction in costs of legal advice); ▪ Cost of doing business, incl. the costs of intermediate inputs (e.g. energy) and production related factors, incl. costs of labour and capital for each actor: political actors, consultancies, internet platforms, governance; ▪ Metrics on imports, exports, investment flows, trade barriers, market share etc.) 	
Overall objective	<p>Provide for high transparency standards for political parties in the EU to promote free and fair elections</p> <p>Facilitate the provision of cross-border ads and related services for economic operators in the internal market while supporting fair democratic processes based on high transparency standards.</p>	
Specific objective	Reduce legal fragmentation, limit circumvention of regulation and remove obstacles and reduce costs for the provision of cross-border services	<p>Indicator(s)</p> <p>Change in value of cross-border trade vs intra Member State trade</p> <p>Extent to which a common definition is applied</p> <p>Number of cases out of a total found not to apply an agreed</p>

		definition
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The tables below summarise the impact assessment on Political Parties, Service Providers and Other stakeholders based on the research carried out through the study. Summaries of the impacts of Policy Option 5.1 are first outlined, followed by the impacts of Policy Option 5.2. The full analysis of the impact assessment can be found below the two tables.

Table 28: Impacts of Policy Option 5.1.

Policy Option 5.1	Political actors		Service providers				Others		
	Political parties	Non-political parties	Online intermediaries	SMEs	Very large online platforms	Traditional media	Citizens	MS	Civil society and journalists
Economic impacts	+	+	+	+	+	+			+
	No costs are foreseen for political parties. Benefits in terms of efficiency savings are foreseen: <ul style="list-style-type: none">Increased offer of political advertising servicesIncreased legal clarity	No costs are foreseen for political parties. Benefits in terms of efficiency savings are foreseen: <ul style="list-style-type: none">Increased offer of political advertising servicesIncreased legal clarity, in particular on issues-based advertising	No costs are foreseen for online intermediaries (e.g. political consultancies, advertising agencies) Benefits in terms of efficiency savings are foreseen: <ul style="list-style-type: none">Better access to the Single Market as conditions for the provision of services are harmonisedIncreased legal clarity for trading cross-border	No costs are foreseen for SMEs. Benefits in terms of efficiency savings are foreseen: <ul style="list-style-type: none">Better access to the Single Market as conditions for the provision of services are harmonisedIncreased legal clarity for trading cross-border	Minor costs are expected for VLOPs to ensure political advertising published on their platforms conform to the intervention. However, these will be minor given the size of these enterprises. Benefits for the VLOPs are expected in the form of efficiency savings: <ul style="list-style-type: none">Simplification of the engagement with Member States, more homogeneous provision of services.Increased legal clarity	No costs are foreseen for traditional media No economic impacts are foreseen	No costs are foreseen No economic impacts are foreseen	Manageable initial costs are foreseen for national authorities. These are expected to be outweighed by the benefits of increased legal clarity	No costs are foreseen for CSOs and journalists. Slight positive impacts thanks to harmonisation of the definition (related to research costs for those CSOs that oversee political advertising). Slight positive economic impacts from increased legal certainty for CSOs that run issues-based campaigns
	-	-	-	-	-	-		-	
	No administrative costs are foreseen for political parties	No administrative costs are foreseen for non-political parties	No administrative costs are foreseen for online intermediaries	No administrative costs are foreseen for SMEs	Initial increase in the administrative burden to comply with new definition	No administrative costs are foreseen for traditional media		Initial small increase in the administrative burden to comply with new definition	No administrative costs are foreseen for CSOs or journalists

Policy Option 5.1	Political actors		Service providers				Others		
	Political parties	Non-political parties	Online intermediaries	SMEs	Very large online platforms	Traditional media	Citizens	MS	Civil society and journalists
Social impacts	+	+							+
	Increased accountability of political actors	Increased accountability of political actors	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts, slightly better possible cooperation	Slightly easier to monitor online political advertising in the EU
Fundamental rights	+	+							
	Small positive impacts on freedom of expression.	Small positive impacts on freedom of expression.	Negligible impacts. Very small impact on right on the freedom to conduct a business	Negligible impacts. Very small impact on right on the freedom to conduct a business	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts	Negligible impacts

Table 29: Impacts of Policy Option 5.2.

Policy Option 5.2	Political actors		Service providers				Others		
	Political parties	Non-political parties	Online intermediaries	SMEs	Very large online platforms	Traditional media	Citizens	MS	Civil society and journalists
Economic impacts	++	++	++	++	+				+
	No costs are foreseen for political parties.	No costs are foreseen for political parties.	No costs are foreseen for online intermediaries (e.g. political consultancies, advertising agencies)	No costs are foreseen for SMEs.	Minor costs are expected for VLOPs to ensure political advertising published on their platforms conform to the intervention. However, these will be minor given the size of these enterprises.	No costs are foreseen for traditional media	No costs are foreseen	Manageable initial costs are foreseen for national authorities.	No costs are foreseen for CSOs and journalists.
	Benefits in terms of efficiency savings are foreseen:	Benefits in terms of efficiency savings are foreseen:	Benefits in terms of efficiency savings are foreseen:	Benefits in terms of efficiency savings are foreseen:		No economic impacts are foreseen	No economic impacts are foreseen	These are expected to be outweighed by the benefits of increased legal clarity (more elaborated than PO5.1)	Slight positive impacts thanks to harmonisation of the definition (related to research costs for those CSOs that oversee political advertising.
	Increased offer of political advertising services	Increased offer of political advertising services	Better access to the Single Market as conditions for the provision of services are harmonised	Better access to the Single Market as conditions for the provision of services are harmonised	Benefits for the VLOPs are expected in the form of efficiency savings:				
	Increased legal clarity (more elaborated than PO5.1.)	Increased legal clarity in particular on issues-based campaigns (more elaborated than PO5.1)	Better access to the Single Market as conditions for the provision of services are harmonised	Increased legal clarity for cross-border trading (more elaborated than PO5.1)	Simplification of the engagement with Member States, more homogeneous provision of services.				Slight positive economic impacts from increased legal certainty for CSOs that run issues-based campaigns
			Increased legal clarity for cross-border trading (more elaborated than PO5.1)		Increased legal clarity (more elaborated than PO5.1)				
	-	-	-	-	-	-		-	
	No administrative costs are foreseen for political parties	No administrative costs are foreseen for non-political parties	No administrative costs are foreseen for online intermediaries	No administrative costs are foreseen for SMEs	Initial increase in the administrative burden to comply with new definition	No administrative costs are foreseen for traditional media		Initial small increase in the administrative burden to comply with new definition	No administrative costs are foreseen for CSOs or journalists

Policy Option 5.2	Political actors		Service providers				Others		
	Political parties	Non-political parties	Online intermediaries	SMEs	Very large online platforms	Traditional media	Citizens	MS	Civil society and journalists
Social impacts	+	+			+			+	++
	Increased accountability of political actors	Increased accountability of political actors	Negligible impacts	Negligible impacts	Likely to develop more ambitious self-regulation that is homogeneous across the Single Market and is adapted to more homogeneous definitions of online political advertising across Member States	Negligible impacts	Positive impacts relating to transparency and trust of online political advertising	Better coordination among Member States, enhanced societal resilience to interference in democracy	A clear, substantive definition of online political advertising is provided, allowing civil society organisations to better monitor
Fundamental rights	++	++	+	+			+		
	Positive effects, freedom of expression positively affected as political advertising on a cross border basis is made more simple Indirect positive effect on political candidacy (confidence in integrity of political candidates)	Positive effects, freedom of expression positively affected as political advertising on a cross border basis is made more simple. Greater positive effects for organisations campaigning on areas of policy where the EU has competence Indirect positive effect on political candidacy (confidence in integrity of political candidates)	Small positive impacts on the freedom to conduct a business	Small positive impacts on the freedom to conduct a business	Negligible impacts	Negligible impacts. Freedom of expression in support of a candidate, cause, or party is not curtailed. Obligations only arise from sponsored content.	Citizens' from Member States where there was not a clear, effective definition of online political advertising. Better access to information regardless of frontiers. Indirect positive effect on the right and importance of voting (confidence in integrity of political candidates)	Negligible impacts	Indirect positive effect on political candidacy and right to vote (confidence in integrity of political candidates)

6.5.1. Economic impacts

The conclusions with regards to PO5.1 and PO5.2 suggest that either option will have overall slight positive economic effects contributing to the specific objectives of PB5 – reduce legal fragmentation, limit circumvention of regulation and remove obstacles and reduce costs for the provision of cross-border services.

The wider scope and more detailed elaboration of PO5.2 is expected to also translate into wider economic impacts, given that a more detailed definition would provide additional certainty (compared to PO5.1) for a broader set of stakeholders, including advertising agencies and other actors who operate in the media industry generally. This is because PO5.2 encompasses issues-based advertising, which – as shown by the Coca-Cola advertising during Pride Month example²⁴⁹ – would improve legal certainty for a wider range of commercial and non-commercial actors who communicate around issues-based topics, i.e. actors who are active in the ‘grey zone’ whose messages could be seen as political at times and commercial at times. Secondly, as described in section 2.5, economic actors consulted by the study agree that the current legal uncertainty contribute to hindering cross-border trade.²⁵⁰

Given the horizontal nature of this Policy Block – the application of a common definition – affected stakeholders have been able to describe the nature of the costs and benefits likely to occur but have been challenged to quantify them in EUR terms.

However, the following can be concluded with regards to economic impacts.

As described in section 1.2 of this report, there are no comprehensive or fully verifiable quantitative figures on the political advertising market in the EU. There are no official numbers on cross-border trade in the sector. However, preliminary data on cross-border trade can be derived from Google Transparency report. As also concluded in section 1.2, the top eight cross-border trade countries (e.g. Germany to Austria) in terms of trade flows spent a total of EUR 1,355,500 during the 2019 European elections. For the same election, a total of EUR 462,000 was seen to originate from the Netherlands (the funds were spent in Belgium and Ireland) – this was the highest amount of EUR to originate from one Member State²⁵¹. Therefore, the cross-border market can be valued to a several million EUR given that virtually all Member State register some cross-border trade.

Establishing common transparency standards in political advertising which provide market actors with a clear definition for political advertising, thereby reducing compliance and asymmetrical administrative costs

An agreed common definition should not only remove compliance and asymmetrical administrative costs but has the potential to ensure actors that operate in the sector that they can trade with certainty and without risk. Therefore, a common definition can also be associated with improved transparency and an assurance that the cross-border transaction complies with certain standards on accountability and openness.

Given that this certainty is difficult to quantify, the most appropriate proxy available is that of ‘legal distance’. This proxy has been selected since it was also used in the impact assessment of the DSA, which assessed impact in a sector very similar to that of political advertising. Indeed, the online political advertising sector can be deemed a niche sector within the wider digital sector encompassed by the DSA.

Legal distance measures the extent to which the Member States transposed Article 14 of the E-Commerce Directive into their national legislations.²⁵² The more removed the national legal

²⁴⁹ Pro-LGBT Coca-Cola adverts spark boycott calls in Hungary. The Guardian 5 August 2019. <https://www.theguardian.com/world/2019/aug/05/pro-lgbt-coca-cola-ads-spark-boycott-calls-in-hungary>

²⁵⁰ The interview programme found that political parties foresee reputational costs to cross-border trade and avoid using a consultancy for cross-border services through fear of being seen as avoiding national rules.

²⁵¹ Slovakia follows the Netherlands with EUR 259,850 spent in Czechia, Greece, Hungary and Poland. Sweden ranks third with EUR 239,400, all spend in Denmark.

²⁵² See Annex 4 of the DSA IA

frameworks were from each other, the more legal uncertainty is involved for economic actors who trade cross-border. In turn, the more legal uncertainty in place, the less trade between those cross-border jurisdictions.

The same principle applies to political advertising and has been confirmed through stakeholder interviews. In the case of cross-border political advertising, legal uncertainty is manifested in that economic actors are unwilling to trade in a jurisdiction unfamiliar to them since this is deemed risky (the rules may be different and needs to be examined before the trade can occur, and this is associated with additional costs) or deemed a reputational risk (cross-border trade, e.g. the hiring of an intermediary operating in a different Member State is seen as avoiding national rules).

The results of the DSA trade model simulation suggested that a harmonisation of rules (such as a common definition) could improve cross-border trade in terms of traffic between Member States in a range between 1% and 1.5%.²⁵³ This DSA simulation was done measuring the volume of web traffic between Member States. Web traffic volume was used as a proxy for online trade, and is considered to be a robust proxy. The exercise concluded that there is a correlation between higher volumes of web traffic (trade) and similarities in the regulatory framework. Although the sector of political advertising is influenced by other factors beyond the regulatory framework (diasporas, language, the timing of elections), similarities of regulatory frameworks are also an important factor, which has been confirmed in stakeholder interviews.²⁵⁴

Yet, given that the interventions encompassed by this study will essentially complement the DSA, since the online political advertising sector is a sub-set of digital services, it is logical to apply the same assumptions described above in the case of online political advertising services as in the DSA.

Moreover, it can also be assumed that smaller economic operators, including SMEs, will derive greater benefit from the harmonisation of regulatory frameworks compared to large actors like the VLOPs. This is because the VLOPs are able to, through their sheer size, take advantage of a lack of harmonisation because they are more professionalised and the cost of adapting to national legislation is minimum.²⁵⁵ Positive economic impacts of legal uncertainty would not be limited to economic operators providing online advertising services, but also to those providing commercial advertising services in the form of efficiency and administrative savings (less FTE time spent on researching legislative frameworks, less costs spent on legal advice). In consultation with service providers, these have indicated that the political nature of advertisements can occasionally be unclear, as an advertisement distributed online with a commercial purpose could be seen as trying to influence social, political or environmental debates if the content of the advertisement tangentially addresses these issues. A clear definition would eliminate legal uncertainty for these economic operators.

Eliminating market distortion by removing obstacles and reducing costs for the provision of cross-border services

As described in section 2.5, interviews with political parties and intermediaries concluded that cross-border trade i) incur additional costs through adapting to the national legislation relevant to online political advertisement and identifying the transparency requirements and other duties arising from providing this services to a buyer in a different Member State, and ii) is impeded by the legal uncertainty that advertising in another Member State may be a sign of the party or candidate avoiding national legislation, i.e. there is some stigma attached to cross-border trade.²⁵⁶

Data from the European Audiovisual Observatory show that the online political advertising market is growing vis-à-vis the offline market, which is a trend expected to continue (see Section 1.2.1).²⁵⁷ Although there are no data on the proportion of cross-border trade vis-à-vis national trade, it is proven by the Google data that cross-border trade constitutes a non-negligible share of all trade, and the

²⁵³ See Annex 4 of the DSA IA

²⁵⁴ Consultation with political parties, intermediaries and the Joint Research Council.

²⁵⁵ Consultation with the Joint Research Council.

²⁵⁶ Source: semi-structured interviews with political parties and consultancies.

²⁵⁷ This is a main conclusion from the interview programme.

baseline scenario identified in Section 2.2. suggests that European political actors' demand for online political advertising provided on a cross-border basis will increase.

The improved clarity of cross-border trade should lead to an increase in the proportion of EU cross-border political advertising of overall advertising activity for a given medium or service type. This assumption can be backed by trade model assumptions equivalent to those used for the DSA impact assessment as well as stakeholder opinions (explained below).

Clearer rules would also benefit actors that form part of the wider media value chain but that are not preoccupied with political advertising. This is because better defined rules would ensure these actors that they are unaffected by any obligations put in place to oversee political adverts. More specifically, actors that are part of the wider (non-political) advertising value chain can be certain they are not impacted by definitions or other obligations put on the value chain of political advertising. For example, civil society organisations consulted as part of this study do not envisage any costs associated to this PB, but would benefit from a common definition given their communication activities on issues-based topics. Increased legal certainty would allow them to operate more effectively.²⁵⁸ The cost-savings to be gained by these actors would be related to the research costs (staff costs) associated with ensuring online political adverts comply with current obligations in the Member States in question.

Although initial administrative costs (in the form of human resources and IT infrastructure to i) implement and ii) monitor a definition through data collection on advertisement) are expected, these costs will eventually be outweighed by the level of cost reduction related to legal uncertainty borne by those companies who operate cross-border. The initial administrative costs would predominantly fall on the relevant national authorities who would be responsible for ensuring implementation and compliance by the political advertising industry of a given definition.

Compliance costs would be dependent on the nature of the application of the common definition. For example, transposing a common definition through a directive would incur more costs than the application of a regulation containing a common definition. National authorities consulted for this study have not been able to quantify these costs, but report that they are negligible and that they would welcome an EU-wide definition. There are no differences in costs expected between Member States – whether or not a country has its own already existing definition or not – the costs would be similar.

With regards to economic actors, associated costs would include compliance costs to ensure that published adverts are in-line with the agreed definition and suitable labelled. These costs would predominantly fall on the VLOPs since they host the absolute majority of cross-border online political adverts in the EU. However, service providers, including the VLOPs, also stand to benefit from a reduction of legal uncertainty (particularly SMEs and online intermediaries), whereas VLOPs would benefit from having more similar requirements across Member States.²⁵⁹

Political actors (Political Parties and non-Political Parties) and Service Providers alike are also likely to ultimately benefit from common definitions since the competition across service providers is expected to increase once obstacles to the provision of services on a cross-border basis are removed. This ought to ensure competitive prices on the market.

Citizens are predominantly unaffected by direct economic impacts of PB5.

Social impacts

The impact assessment also indicates that PB5 will indirectly – over the medium to long term – lead to positive social impacts.

²⁵⁸ For example, CSOs would not need to obtain legal advice if they are planning campaigns on borderline issues.

²⁵⁹ The VLOPs have been consulted on the matter of costs and benefits but have not been able to quantify these.

Most immediately, common definitions affect political actors – political parties and candidates specifically – positively, as they would bring clarification and increase accountability and transparency, and hence have a positive impact on fairness of electoral competition.

As outlined in section 2.5, there is evidence of existing circumvention (deliberate or not) of online political advertising rules as a result of a lack of a common definition. Interviews with an international organisation provided concrete examples of a political party in the Netherlands whose members bought political advertising as individuals rather than through the party management. This resulted in adverts which i) risked circumventing funding rules, ii) were not clearly perceived as political advertising but appeared as ‘organic’ content rather than political messaging. PB5 would directly address this problem since it would define online political advertising as ‘advertising on behalf of a political actor’.

CSOs can also with more certainty, and more effectively communicate their messages which would contribute to Articles 10 and 11 of the Fundamental Rights Charter,²⁶⁰ which cover the Freedom of thought, conscience and religion and the Freedom of expression and information respectively.

Civil society organisations and journalists are expected to be able to better research and hold political actors and service providers accountable if a common, robust definition is included. Indeed, in the 2020 Staff Working Document Assessment of the Code of Practice on Disinformation there are chronic shortcomings of the current set up of the ad libraries housing online political and issues-based advertising.²⁶¹

Member States that do not have previous clear definitions of online political advertising will benefit from a more robust legal framework that ensures integrity of electoral processes. Indeed, given the heterogeneity in the regulatory approach, as concluded by the study’s legal analysis, an EU definition ought to contribute to the harmonisation of national definitions without aiming to replace what definitions currently already exist.

The interview programme with national authorities also indicates a strong political will to implement a definition.

Finally, a common definition and emphasis on transparency through reporting requirements and monitoring and enforcement by Member State authorities can also contribute towards citizens’ strengthened trust in the democratic processes at the EU level and Member State level.²⁶²

6.5.2. Impacts on Fundamental Rights

Policy Block 5 is also expected to contribute to improved legal certainty to political parties and other political actors that conduct political advertising campaign on a cross border basis. It would enhance their ability to exercise freedom of speech and to engage citizens in electoral processes. This benefits particularly national parties from Member States with larger community diasporas in other Member States and European political parties, as well as other political actors running issue-based campaigns on a cross border basis. This impact is therefore also relevant to the preservation of pluralism.

6.5.3. Conclusions

Policy Option 5.2 is preferable as it seems better suited to meet the objectives of i) eliminating a regulatory failure which impacts on the creation of obstacles in the market of cross-border services, and ii) establishing common transparency standards in political advertising which provide market actors with a clear definition for political advertising.

This conclusion is based on the following evidence and assumptions.

²⁶⁰ https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights_en

²⁶¹ Staff Working Document (SWD(2020)180)

²⁶² For example, 66% of respondents in the 2020 Flash Eurobarometer 485 survey said that greater transparency of paid political advertising and its financing would make them more likely to vote in the next European Parliament election.

In the absence of a common definition of online political advertising, different jurisdictions develop divergent definitions of online political advertising, from which uncertainty for economic and political actors emerges. Therefore, defining online political advertising at the level of the European Union is necessary to ensure the clarity of the definition and to reduce uncertainty.

However, the results of the primary data collection suggest that a more comprehensive intervention is justified. The results from the Open Public Consultation “Political Advertising – improving transparency” show that there is a high consensus among a wide group of stakeholders on different elements for a definition. 67% of the respondents think that political adverts that support a clear political view (*issue adverts*) should be regarded as online political advertising, as well as promoted editorial campaign by a newspaper or magazine (83%).

A more comprehensive approach to a common definition would benefit those civil society organisations that oversee online political advertising since they would not need to familiarise themselves with different definitions. Those CSOs that conduct online political advertising will see one-off costs in case the definition of online political advertising includes issue-based advertising.

Ads attacking a party or candidate²⁶³, regardless of the actors on whose behalf they are conducted, are regarded as political advertising by a high majority of the respondents (80%), and so are adverts raising money for a political objective (cause, candidate, party, etc.) (82%). Therefore, it is possible to determine that there is consensus for the content of a clear definition for political advertising and that in the absence of EU intervention, definitions are likely to diverge further. At the time of writing, only a minority group of Member States make direct reference to the term of “online political advertising” in their legislation and provide for relevant definitions (France, Lithuania, Latvia, with Ireland and the Netherlands currently developing legislation).

A widely applicable definition is a prerequisite for the imposition of clear and proportionate obligations for each category of actors and to define conditions under which obligations are incurred. In the absence of a common definition, the same actors might be subject to certain obligations for providing a service that is regarded as political advertising in the legal framework of a Member State but not in a different Member State. This would lead to legal uncertainty and create an obstacle to cross-border provision of services.

In conclusion, Policy Option 5.2 seems a better fit to remove market obstacles and reduce costs for the provision of cross-border services as it provides more certainty for economic and political actors and would more effectively remove obstacles by creating a clear, substantive and common definition of online political advertising, providing economic and political actors operating on a cross border basis with shared definitions that will reduce their uncertainty and administrative obstacles. There is a legal basis for this Policy Block in Article 114 TFEU. Additionally, streamlining proportionate reporting and oversight requirements across the Union can be done in a more effective manner the more similar the definitions of online political advertising are across Member States. In the longer-run, this ought to ease data collection by the Member States since they are able to follow a common set of definitions.

²⁶³ These ads are a different category from hate speech, as they do not necessarily involve any form of hate speech but instead are characterised as a type of ad that appeals citizens not to vote for a party. Organisations other than parties might conduct these acts with the purpose of attacking candidates or parties that they oppose. Failing to include this category of advertisements would lead allow political parties and candidates to circumvent relevant rules, particularly in elections with two or few contenders, such as second rounds of electoral campaigns, but using proxy civil society organisations as intermediaries to launch negative ads on other candidates.

7. What is the preferred policy option?

The results of the analysis conducted in Section 6 indicate that the preferred set of policy options is the following:

Table 30: Set of preferred policy options

Preferred alternatives per block and policy option	Specific objective addressed	Indicator(s)	Rationale for why the alternative is preferable
<p><u>Policy option 1.1.2</u></p> <p>Ad publishers provide additional relevant information on the face of the ad.</p> <p>Ad publishers, which are VLOPS under the DSA, provide additional relevant information in ad repositories.</p> <p>Online ad publishers enable access to information regarding relevant elections (link to official site).</p> <p>Ad publishers, which publish (targeted) banner ads on their app, platform, website or other online service, make available <i>ex ante</i> information regarding the advertising brokers whose adverts they carry, with an indication of their use of personal data and links to an independent assessment of their compliance with relevant norms.</p>	<p>Define high transparency standards for political ads (including issue ads)</p> <p>Address the use of targeting and manipulative techniques to support fair elections and democratic debate</p>	<p>Change in degree of awareness among citizens on their exposure to political adverts.</p>	<p>The policy alternative is more effective at increasing trust among viewers and enhancing their capacity to understand why and how they are being targeted.</p> <p>The preferred alternative has synergies with the GDPR, as it positively contributes to awareness about the use of personal data.</p>

Preferred alternatives per block and policy option	Specific objective addressed	Indicator(s)	Rationale for why the alternative is preferable
<p><u>Policy Option 1.2.2</u></p> <p>Ad publishers, which are very large online platforms (VLOPs) under the DSA, provide access to interested actors to relevant additional information when requested.</p> <p>Ad publishers provide relevant additional information in a suitably aggregated form, to interested actors on request, specifically:</p> <ul style="list-style-type: none"> • The full chain of actors involved; • The amounts of money spent on the advertising and its sources, and link this to any wider associated campaign or interest group; • Meaningful detail about the targeting used (where relevant), including the amounts spent on it, and the sources of data used; and • The scope and period of circulation of an advert, including meaningful information about variants and organic 	<p>Define high transparency standards for political ads (including issue ads)</p> <p>Address the use of targeting and manipulative techniques to support fair elections and democratic debate</p>	<ul style="list-style-type: none"> • Number of requests for additional information submitted; • Purpose of the request (article, research study, etc.); • Type of data requested and level of detail; and • Share of requests met. 	<p>The preferred measure provides interested parties with more information which is manageable and useful for interested parties to hold political and economic actors accountable (according to those interested parties consulted). The policy option is coherent with the DSA.</p>

Preferred alternatives per block and policy option	Specific objective addressed	Indicator(s)	Rationale for why the alternative is preferable
<p>distribution.</p> <p>Economic actors retain relevant information regarding transactions, including amounts, parties and the use of targeting, where relevant.</p> <p>Economic actors provide extracted information through the value chain to the eventual ad publishers.</p> <p>Ad publishers publish timely reports on the amounts spent on political advertising, including on its targeting, aggregated to campaign or candidate.</p> <p>Ad publishers, which are VLOPs, provide meaningful information in ad repositories regarding the amounts spent linked to an ad, and suitably aggregated information by party, candidate or other relevant political actor.</p>		As above	
<p><u>Policy Option 1.3.2</u></p> <p>Economic actors retain relevant information regarding transactions, including amounts, parties and the use of targeting, where relevant.</p> <p>Economic actors provide relevant additional information in a suitably aggregated form, to competent authorities, including information on:</p> <ul style="list-style-type: none"> • Expenditure; • Financial or material political contributions; • Equality between candidates (e.g. regarding parity of resources and airtime during election campaigns); 	<p>Promote stronger transparency and free and fair elections through compliance with relevant rules among political parties in the EU</p> <p>Reduce legal fragmentation, limit circumvention of regulation and remove obstacles and reduce costs for the provision of</p>	<ul style="list-style-type: none"> • Number of requests to obtain additional information. • Share of requests fulfilled vs total requests. • Authorities that submitted requests and objections. 	<p>The preferred measure provides more information to public authorities, which those consulted deem crucial for their ability to hold political and economic actors accountable.</p> <p>The policy option is coherent with the DSA.</p>

Preferred alternatives per block and policy option	Specific objective addressed	Indicator(s)	Rationale for why the alternative is preferable
<ul style="list-style-type: none"> Silence periods and the periods during which ads are permitted; The nature of participants (e.g. third-country corporate entities); and The profiling and targeting of voters, including through the use of personal data. (Policy Option 2.3.2) <p>Economic actors provide extracted relevant information through the value chain to the eventual ad publishers.</p> <p>Ad publishers publish periodic reports on the amounts spent on political advertising, including on its targeting, aggregated by campaign or candidate.</p> <p>Ad publishers, which are VLOPs, provide meaningful information in ad repositories regarding the amounts spent linked to an ad, and suitably aggregated information by party, candidate or other relevant political actor.</p>	<p>cross-border services</p> <p>Define high transparency standards for political ads (including issue ads)</p> <p>Address the use of targeting and manipulative techniques to support fair elections and democratic debate</p>	<ul style="list-style-type: none"> Type of data requested. Periodicity of the reports and level of detail. 	
<p>Policy Option 2.1</p> <ul style="list-style-type: none"> Invite European and national political parties in 'clear line of sight' initiative to support transparency in the political ads industry; and Invite European and national political parties to prepare and commit to a 'fair campaigning pledge'. 	<p>Promote stronger transparency and free and fair elections through compliance with relevant rules among political parties in the EU</p> <p>Define high transparency standards for political ads (including issue ads)</p> <p>Ensure the satisfactory oversight of the envisaged obligations and strengthen regulatory</p>	<ul style="list-style-type: none"> Number of national political parties that voluntarily adopt the obligations imposed on European political parties. 	<ul style="list-style-type: none"> Similar measures have had positive spill over effects on national parties at very low costs for the European Union

Preferred alternatives per block and policy option	Specific objective addressed	Indicator(s)	Rationale for why the alternative is preferable
	outcomes.		
<p><u>Policy Option 2.3</u></p> <p>Establish binding rules for European political parties and European political foundations, as foreseen in the operational objective within the framework of Regulation 1141/2014, i.e. obligations to:</p> <ul style="list-style-type: none"> • Provide real time and meaningful information on expenditure; • Provide meaningful ad labelling and information about the use of targeting techniques; • Limit the use of certain characteristics or levels of granularity of targeting; • Participate in 'clear line of sight' initiatives to support transparency in the political ads industry; and • Prepare and commit to a 'fair campaigning pledge' <p>Establish a dedicated instrument for creating an EU-level electoral advertising body responsible for supervising the financing and placement of political advertising by European political parties, foundations and groups, and the maintenance of an independent, platform and party-neutral, repository of information about political advertising activity in European elections, accessible in real time by all citizens.</p>	<p>Promote stronger transparency and free and fair elections through compliance with relevant rules among political parties in the EU</p> <p>Define high transparency standards for political ads (including issue ads)</p> <p>Ensure the satisfactory oversight of the envisaged obligations and strengthen regulatory outcomes.</p>	<ul style="list-style-type: none"> • Degree of compliance with the new rules by European political parties. 	<p>The preferred alternative is more coherent with the general findings related to the widespread difficulties in monitoring and enforcement of regulation in the Member States.</p>
		As above	...

Preferred alternatives per block and policy option	Specific objective addressed	Indicator(s)	Rationale for why the alternative is preferable
<p><u>Policy Option 3.2.2.</u></p> <p>To establish common standards which prohibit the use of micro-targeting during reference periods and at all times for political actors, unless specific conditions are met, which include:</p> <ul style="list-style-type: none"> • For political actors (outside a reference period), that the ad is clearly marked as an issues ad or an ad for commercial purposes²⁶⁴; • For other actors within a reference period, that the ad is clearly marked as an ad for commercial purposes; • Additional steps are taken by the publisher to ensure that GDPR-compliance of the data used can be determined, and the role played by the platform's prioritisation algorithms can be understood); and • Auditable self-certification of the GDPR compliance of the personal data used is included as part of the relevant transaction and included in relevant disclosures for reporting purposes. 	<p>Address the use of targeting and manipulative techniques to support fair elections and democratic debate</p>	<ul style="list-style-type: none"> • Type of data collected, processed and used in micro-targeting. • Number of audits conducted on the self-certification of compliance with the GDPR 	<p>The preferred policy option is coherent with the case law of the ECHR.</p> <p>The initiative on Artificial Intelligence by the European Commission will regulate issues related to the transparency of algorithms.</p>

²⁶⁴ As defined in Article 2 Misleading and Comparative Advertising Directive.

Preferred alternatives per block and policy option	Specific objective addressed	Indicator(s)	Rationale for why the alternative is preferable
<u>Policy Option 4.1.2</u> <ul style="list-style-type: none"> Provide for the identification of a competent authority in each Member State responsible for the national coordination of the monitoring and enforcement of the obligations envisaged by the initiative. Establish a coordinating body at EU level to ensure the efficient and consistent implementation of the envisaged measures, and to facilitate the resolution of issues connected to the conduct of monitoring and enforcement across borders of the obligations foreseen in this proposal, in the context of the country-of-origin principle. Provide a process among competent national authorities to support the coordination of cross-border monitoring and enforcement of rules relevant to elections, which are facilitated by the envisaged measures, as well as the adoption of soft law measures for mutual support. Provide support for capacity building, joint action and the exchange of good practice. Establish a process whereby monitoring and enforcement across borders can be escalated and where action against problematic activities affecting one state which originate in another can be guaranteed. Require sufficiently dissuasive and effective sanctions. 	<p>Ensure the satisfactory oversight of the envisaged obligations and strengthen regulatory outcomes</p> <p>Promote stronger transparency and free and fair elections through compliance with relevant rules among political parties in the EU</p> <p>Define high transparency standards for political ads (including issue ads)</p>	<ul style="list-style-type: none"> Extent to which electoral rules are monitored (including results of monitoring). Extent to which anti-interference mechanisms are in place. 	<p>Enhanced cooperation for enforcement is welcomed by the stakeholders involved under the baseline scenario and is increasingly relevant as a consequence of the new measures envisaged in block 2 and 4.</p> <p>The preferred policy option is better suited to ensure that service providers are sufficiently dissuaded from infringing upon the provisions foreseen under the initiative and to ensure that Member States can best coordinate their efforts and effectively enforce relevant rules extraterritorially.</p>
<u>Policy Option 4.2.2</u> <ul style="list-style-type: none"> Specify headline requirements for interoperable information systems on the basis of the required outcome (established on the basis of the transparency needs), in order to enable the transparency obligations to be delivered efficiently for 	<p>Ensure the satisfactory oversight of the envisaged obligations and strengthen regulatory outcomes</p>	<p>Degree of interoperability among systems and processes.</p>	<p>The measures introduced by the initiative will lead to a need for interoperability, but ongoing cooperation with the industry</p>

Preferred alternatives per block and policy option	Specific objective addressed	Indicator(s)	Rationale for why the alternative is preferable
<p>both their beneficiaries (citizens, interested stakeholders, authorities) and for the addressees of the obligations.</p> <ul style="list-style-type: none"> Support multi-stakeholder collaboration for the establishment of necessary technical standards. 			<p>(including the revision of the Code of Practice on Disinformation) will allow for a flexible approach when defining obligations across the value chain.</p>
<p><u>Policy Option 5.2</u></p> <p>Defining political advertising as advertising on behalf of a political actor, i.e. a candidate or party at local, regional, national or European Parliament elections, or on behalf of a campaign organisation in a referendum; or:</p> <ul style="list-style-type: none"> advertising that raises money for a cause, candidate or party; advertising on behalf of any actor that attacks any party or candidate; promoted political editorials in newspapers or magazines; or self-notified advertising promoting political views regardless of the actor on whose behalf it is conducted (<i>issue ads</i>). 	<p>Reduce legal fragmentation, limit circumvention of regulation and remove obstacles and reduce costs for the provision of cross-border services</p>	<p>Extent to which a common definition is applied.</p> <p>Proportion of non-compliant cases.</p> <p>Improved legal certainty for cross-border providers.</p> <p>Reduced administrative and compliance costs for cross-border service providers.</p>	<p>A comprehensive definition is needed to reduce legal distance between regulation in different Member States.</p> <p>Stakeholders express support for specific elements of a wider definition.</p> <p>A common definition enhances the coherence of the initiative because it contributes to defining the scope of application of the measures in blocks 1, 3 and 4.</p> <p>A wide definition contributed to reducing the risk of circumvention of the rules.</p>

The bundle of preferred policy options addresses each of the specific objectives listed in Section 4.2, and both of the overall objectives of the initiative.

To ensure internal coherence, the definition of online political advertising resulting from the choice made under Policy Option 5.2 must be used consistently across the rest of the measures. Additionally, the effectiveness of Policy Option 5.2 in reducing administrative costs and barriers to cross-border trade of political advertising services, harmonising the provision of political advertising services across the internal market in a manner that enhances the integrity of the internal market, relies on the provision of a set of minimum common rules on transparency (Policy Block 1) and targeting (Policy Block 3).

A specific point under Policy Option 4²⁶⁵ presupposes the adoption of measures related to micro-targeting and transparency under Policy Option 3 and Policy Options 1.1.2, 1.2.2, and 1.3.2 respectively.

The measures envisaged are coherent with the GDPR and lead to synergies with its implementation. Policy Option 3.2.2. permits the provision micro-targeting services as long as these are provided in a GDPR-compliant manner and auditable self-certification of the GDPR compliance of the personal data used is included as part of the relevant transaction and included in relevant disclosures for reporting purposes. As a result, awareness on the GDPR and ability of authorities to monitor its compliance is expected to be enhanced.

The measures proposed are coherent with the objectives and categories introduced in the Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC²⁶⁶. They are designed to be complementary measures, addressing the specific problems that online political advertising poses, while the DSA addresses the issue of online advertising more broadly. Only additional measures on the type of data and the actors upon whom the obligations are imposed are considered.

The Digital Services Act foresees that very large online platforms that display advertising on their online interfaces must compile ads and make them publicly available through an advertisement repository (or ad library). This repository must contain, at least: information on the content of the advertisement; the natural or legal person on whose behalf the advertisement is displayed; the period during which the advertising was displayed; whether the advertisement was intended to be displayed specifically to one or more particular groups of recipients of the services, and then, the main parameters used for that purpose; and the total number of recipients of the service reached, including – if applicable – aggregate numbers for the group or groups of recipients to whom the advertisement was targeted specifically. All online advertising platforms that display advertising on their online interfaces, other than micro or small enterprises, must ensure that recipients of advertising can identify that the information displayed is an advertisement; the natural or legal person on whose behalf the advertisement is displayed; and meaningful information about the main parameters used to determine the recipient to whom the advertisement is displayed (Article 30). The preferred policy option would entail the use of the same repository, hence creating a synergy and avoiding additional costs by proposing a policy response that uses a digital infrastructure foreseen under a different initiative.

The proposed bundle of preferred policy options accounts for the specific problems related to online political advertising by expanding the scope in terms of the information to be provided in the repositories and the actors that must provide it (Article 24). The designation of a competent authority in each Member State responsible for the national coordination of the monitoring and enforcement of the obligations envisaged by the initiative follows the model of the Digital Services Coordinators that are to be designated under the DSA in each Member State (Article 38).

²⁶⁵ "Establish a coordinating body at EU level to ensure the efficient and consistent implementation of the envisaged measures, and to facilitate the resolution of issues connected to the conduct of monitoring and enforcement across borders of the obligations foreseen in this proposal, in the context of the country-of-origin principle"

²⁶⁶ <https://ec.europa.eu/digital-single-market/en/news/proposal-regulation-european-parliament-and-council-single-market-digital-services-digital>

The combined implementation of the preferred policy options bundle would result in the European Cooperation Network on Elections gaining a more prominent role as a forum for coordination among national authorities in the area of online political advertising. As discussed in Sections 6.2 and 6.4, this would result in the ECNE adopting a permanent secretariat.

The eventual intervention by the European Union in relation to artificial intelligence announced by the European Commission in April 2021²⁶⁷ could involve the introduction of transparency obligations in relation to the use of algorithms in general and the use of algorithms in advertising in particular. Once the general framework for transparency in the use of algorithms has been developed, it is recommended that the present initiative should be reviewed in the light of any regulation of transparency on the use of algorithms that might affect fundamental rights, particularly in relation to online political advertising.

The envisaged initiative is coherent with provisions on offline advertising at the EU-level in EU legislation on offline advertising services. In particular, the definition of political advertising proposed under Policy Block 5 does not contradict the definition of advertisement as a service used in the Audiovisual Media Services Directive²⁶⁸, since it defines a subset of services within the general description of an advertisement provided in this Directive.

Overall, compliance costs are expected to be relatively higher for service providers that are SMEs, as the costs of collecting, processing and sharing data imposed under Policy Block 1 and 3 are higher in relative terms to their turnover than for VLOPs. However, as outlined in Section 6.5, they are also expected to benefit to a larger extent from the benefits of greater harmonisation of the provision of services, offsetting the relatively additional costs.

The successful implementation of the policy options within the five operational objective blocks presented above depends on several factors. The next chapter proposes several indicators to monitor and evaluate the implementation of the changes. Monitoring and evaluation indicators ought to be designed and agreed before implementation to ensure that any progress reports and ex-post studies undertaken can robustly measure changes that follow implementation.

7.1. Economic impacts of the preferred policy option

7.1.1. Economic impacts on service providers

- Service providers will bear a significant part of the cost of the measures foreseen, as they will have to collect and process information to share with viewers, the wider public and public authorities, but ultimately the value of their service will be upgraded, as the reputation of (online) political advertising will increase and the demand by political actors of this service will increase;
- SMEs and online platforms that are not VLOPs will experience more costs (Policy Option 1, Policy Option 3) but also more benefits in the form of potential scale-up of services (Policy Option 5) from the preferred policy than very large online platforms. While smaller companies might face greater costs to meet transparency and targeting standards due to economies of scale, lack of a legal department, and being involved in more complex value chains, the establishment of a common definition and a common set of obligations regarding transparency and targeting across the Single Market will allow them to benefit from the smoother and more efficient provision of services on a cross-border basis.

²⁶⁷ Communication on Fostering a European approach to Artificial Intelligence: Available at: <https://digital-strategy.ec.europa.eu/en/library/communication-fostering-european-approach-artificial-intelligence>

²⁶⁸ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities: Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018L1808&from=EN#d1e664-69-1>

7.1.2. Economic impacts on political actors

- European political parties will face higher costs as described in Policy Option 2;
- Political parties, candidates and organisations conducting issue-based political advertising will face higher costs that will be passed on by service providers, particularly for targeted ads;
- Parties, candidates and other organisations will benefit from greater guarantees that the services they request are legitimate and they will face less risk of reputational damage; and
- Political actors other than parties and candidates will face greater costs due to Policy Option 5.2, which extends the scope of the initiative to issue-based advertising.

7.1.3. Economic impacts on public authorities

- National public authorities will face greater operational costs and one-off costs to the extent that their national regulation does not foresee similar obligations to those foreseen under the preferred policy option, particularly for Policy Option 1 and 3.
- National public authorities will face one-off costs from the establishment of cooperation mechanisms at the European level (Policy Option 4). The Union's own resources will also be affected, as they will be facing part of the one-off costs in the form of administrative burden;
- Transparency obligations foreseen in Policy Option 1.3.2. will lower costs for public authorities since service providers will report in a more structured manner relevant information to public authorities;
- European Union authorities and national authorities will face costs related to training, joint action and capacity building. National public authorities are expected to benefit from these activities in the form of more efficient and effective supervision;
- European Union public authorities will face greater administrative costs relating to the overview of European political parties as discussed in Policy Option 2.

7.1.4. Economic impacts on civil society organisations, journalists and citizens

- Civil society organisations active in the area of transparency and democracy and journalists will have fewer operational costs, and one-off costs are not foreseen for this group of stakeholders. Greater provision of information on political advertising over advertisement repositories in a more harmonised way across the EU will result in these organisations being able to perform such tasks more efficiently, particularly those with cross-border operations.

7.2. Social impacts of the preferred policy option

7.2.1. Social impacts on service providers

- Effects on employment are expected to be marginal as different aspects of the preferred policy option will have opposing effects on employment; and
- Service providers, and in particular VLOPs, might benefit from reputational gains.

7.2.2. Social impacts on political actors

- Impacts on political pluralism are expected not to be negative, as the measures foreseen do not pose disproportionate burdens on smaller political parties, but they are not expected either to be negative in relation to smaller parties or organisations²⁶⁹; and
- Political parties, candidates and civil society organisations wishing to conduct advertising campaigns at the European level will find it easier to do so and are expected to engage in more sponsored campaigns on political and social issues at the European level, fostering engagement and participation.

7.2.3. Social impacts on public authorities

- There are no remarkable social impacts on public authorities.

7.2.4. Social impacts on civil society organisations, journalists and citizens

- Better informed citizens are expected to have greater trust and engagement with democratic processes, both at the national and the European level.

7.3. Impacts on fundamental rights of the preferred policy option

7.3.1. Fundamental rights impacts on service providers

- Minor impacts on the freedom to conduct a business are identified, affecting very small SMEs that amount to a very small number of companies.

7.3.2. Fundamental rights impacts on political actors

- The fundamental right to freedom of expression not only in terms of content but also in terms of means of communication is upheld, as limitations to the use of targeting techniques are not foreseen, and only transparency requirements are set for the use of these techniques; and
- Political parties and candidates are expected to benefit from elections run with greater guarantees of integrity and equality among candidates.

7.3.3. Fundamental rights impacts on public authorities

- Public authorities will be able to better protect the fundamental right of citizens, political parties, candidates and journalists to information and expression, along with freedom of assembly and of association.

7.3.4. Fundamental rights impacts on civil society organisations, journalists and citizens

- Fundamental rights impacts on civil society organisations and journalists will be enhanced as these will have greater access to relevant information that they can share with citizens.

²⁶⁹ Whereas technological and market developments might affect political pluralism by making it easier and/or more cost-effective to request online political advertising services, these effects might not be attributable to the preferred policy option. In the context of rapid technological and market changes, smaller or larger political actors might be positively or negatively affected by these changes regardless of the regulation adopted.

- The fundamental right to data protection of citizens will be better protected through the guarantees foreseen in Policy Option 1.1.2 and 3; and
- Citizens' right to freedom of information will be enhanced, as they will receive more information that they will be able to use when exercising their political rights.

7.4. Environmental impacts

- Significant environmental impacts were not identified through the study either through desk research or in consultation with stakeholders.

8. How will monitoring and subsequent retrospective evaluation be organised?

The successful monitoring and evaluation of the policy options within the five Policy Blocks will require preparatory planning. This chapter proposes several indicators to aid the monitoring and evaluation of the implementation of the specific objectives within the scope of the possible interventions.

Monitoring and evaluation indicators ought to be designed and agreed before implementation in order to ensure that any progress and ex-post studies undertaken can robustly measure changes before and after the implementation.

This chapter will now discuss key issues around monitoring and evaluation for the specific objectives. Section 8.6 then proposes indicators which have been derived from the operational objectives agreed.

8.1. Reduce legal fragmentation, limit circumvention of regulation and remove obstacles and reduce costs for the provision of cross-border services

The aim is to reduce costs for economic actors by having a common European definition of political and issue-based advertising. In order to monitor the implementation of such a definition, the indicators to be collected by DG JUST should focus on the existence of national legislation transposing the common European definition of political and issue-based advertising; existence of national legislation transposing the definition of additional key terms, such as advertising for a political aim, self-notified issues advertising etc.; existence of clearly defined obligations and conditions for each category of actors in the national legislation; compliance with the European definitions, i.e. any possible deviations from the common interpretation; existence of an authority with clearly defined oversight competences in the area of political and issue-based advertising; occurrence of gold-plating provisions should the European legislative framework allow them; and frequency of legislative amendments.

For this objective, the evaluation should focus on the transposition and correct use of EU definitions. To this end, a compliance check of the legislative framework could be carried out periodically, such as every four years.

In relation to the obligations to increase transparency, the focus of the monitoring and evaluation activities should be on different aspects for each different sub policy option.

In relation to the recognisability of online political advertising, Special Eurobarometer 507270 contained questions that allowed the degree of awareness of online political advertising and the ability to distinguish online political advertising from other types of online content to be measured. Including the same questions in a following round of Eurobarometer would be useful.

In relation to the provision of information to interested parties, the number of complaints in each Member State about relevant actors not providing data must be monitored.

In relation to the provision of data to Member State authorities, it can be recommended that they publish reports in the aftermath of national and European Parliament elections detailing the degree of access that they had to relevant data.

8.2. Define high transparency standards for political ads (including issue ads)

Section 8.2 is relevant different stakeholder groups (citizens, civil society organisations and economic actors).

In order to monitor the activities and behaviour of these diverse stakeholder groups, a number of approaches can be used. Member State level data will be important to monitor the activities – and changes in activities – of economic actors. Data covering cross-border activities would also be required.

Service provider data, including from the VLOPs, will be an important source for assessing the level of information accessible to civil society organisations, academia etc. However, other data sources stemming from NGOs or from administrative data should complement VLOP data for triangulation purposes.

For assessing the awareness and attitudes from citizens, survey data, such as Eurobarometer, will provide input to aid monitoring and evaluation. Member State level data should also be collected.

Specific indicators are proposed in Section 8.6.

8.3. Address the use of targeting and manipulative techniques to support fair elections and democratic debate

For micro-targeting, the focus should be on number of political advertisement using micro-targeting in breach of the common standards; number of political advertisement that used micro-targeting in line with the specific conditions/exceptions; number of mislabelled political advertising (i.e. labelled as advertisement but not as political advertisement) that used micro-targeting; GDPR-compliance of the processing of personal data for micro-targeting; existence of GDPR-compliance self-certification; number of black listed actors that still used micro-targeting techniques after being banned; number of political advertisement removed by online platforms due to prohibited micro-targeting; and percentage of political advertisement using micro-targeting from the overall number of advertisement using micro-targeting.

The monitoring of this policy block would be twofold. First, at national level, the data should be collected by the national authorities tasked with the enforcement and oversight of political advertising under policy block 5. At EU level, the supervisory body that collects and collates such data from online platforms should be the same one that oversees European political parties and foundations. The supervisory body would also collect data from national levels.

An overview of collected information should be published on a yearly basis, both at EU and national levels. Furthermore, in order to monitor the evolution of such data, a more in-depth assessment should be performed on a regular basis – for example, every four years, in line with the European elections, to reflect upon whether further policy developments in this area are necessary.

8.4. Ensure the satisfactory oversight of the envisaged obligations and strengthen regulatory outcomes

With regards to enhancing oversight, the monitoring should consider different aspects of the proposed measures separately.

First, the number of Member States that designate a coordinating authority must be monitored.

Second, the evaluation of the establishment of a coordinating body at the EU level to ensure the efficient and consistent implementation of the envisaged measures must focus on the ability to establish it promptly and the number of issues related to monitoring and enforcement across borders where the coordinated body was involved.

Third, the number of times that the competent national authorities follow the provided process to support cross-border coordination or monitor and enforce rules relevant to elections should be monitored, as well as the degree of satisfaction of the Member States concerned.

Fourth, the number of joint actions and events related to the exchange of good practices should be monitored.

Last, the number of cases of foreign interference per year in electoral processes identified by EU or Member States must be monitored.

8.5. Promote stronger transparency and free and fair elections through compliance with relevant rules among political parties in the EU

In order to monitor the activities of the European political parties and European political foundations, the advertising body responsible for supervising the financing and placement of political advertising at the EU level would need to collect indicators such as timely provision of information on a range of indicators. An initial proposal can be found under section 8.6.

The supervisory body should collect and publish annual reports on the collected indicators and the repository. Furthermore, a more in-depth evaluation of the collected information should be performed periodically, for example, every four years after the European elections, to evaluate whether the set objectives are being met and what is the impact of the policies. Such evaluation should be accompanied by a stakeholder consultation to collect primary feedback on the impact of labelling of political advertisement at EU level.

8.6. Operational objectives and proposed indicators

This section outlines the operational objectives (which can be derived from the specific ones) and proposed draft indicators to be used for the monitoring and evaluation of the final intervention.

Table 31: Operational objectives and proposed indicators

Operational objectives		Proposed indicators
A) Establish common transparency standards in political advertising which provide market actors:	<ul style="list-style-type: none">• clear and proportionate specific obligations for each category of actor and defined conditions under which obligations are incurred;• streamlined and proportionate reporting and oversight requirements and support for collaboration in the establishment of technical interoperability standards;• reduced costs and risk for	<ul style="list-style-type: none">• Change in political advertising; completeness of such information provision (e.g. labelling, targeting techniques, paid content ranking); inclusion of such information in the common EU repository;• Change in percentage of expenditure spent on political advertising via online means as opposed to other means (i.e. television, radio, paper etc.);• Reported incidents of breached obligations;

Operational objectives		Proposed indicators
	<ul style="list-style-type: none"> providing political advertising services in the EU; a level playing field for all relevant economic operators. 	<ul style="list-style-type: none"> Change in cross-border advertising trade.
B) Ensure that the common standards established at EU level provide viewers of political advertising with sufficient transparency to enable them to:	<ul style="list-style-type: none"> recognise an advert as such; know the identity of the actors and interests which have sponsored the advert and; where relevant, know that it was targeted at them and meaningful information about how this was done. 	<ul style="list-style-type: none"> Number of advertisement labelled as such in real-time; Number of political advertisement labelled as such retrospectively and the time it took to assign such label; Number of users that interacted with labelled political advertisement; Number of users that read the disclaimer accompanying political advertisement; Number of users targeted by specific advertisement; user interaction with such targeted advertisement; key characteristics used for targeted advertisement; compliance with transparency principles of political advertisement; existence of 'fair campaigning pledge'; level of implementation of 'fair campaigning pledge'; existence of national standards aligned with the EU level ones.
C) Ensure that the common standards established at EU level provide "interested users" of political advertising with sufficient transparency to enable them to determine:	<ul style="list-style-type: none"> the full chain of actors involved; the amounts of money spent on the advertising and its sources, and link this to any wider associated campaign or interest group; Meaningful detail about the targeting used (where relevant), including the amounts spent on it, and the sources of data used; The scope and period of circulation of an advert, including meaningful information about variants and organic distribution. 	<ul style="list-style-type: none"> Compliance of the national standards with the EU level standards; extent of use of national standards; Change in political advertising; completeness of such information provision (e.g. labelling, targeting techniques, paid content ranking); inclusion of such information in the common EU repository; Number of users targeted by specific advertisement; user interaction with such targeted advertisement; key characteristics used for targeted advertisement; compliance with transparency principles of political advertisement; existence of 'fair campaigning pledge'; level of implementation of 'fair campaigning pledge'; existence of national standards aligned with the EU level ones.
D) Ensure that the common standards established at EU level provide Member States with sufficient transparency to enable the monitoring and enforcement of relevant	<ul style="list-style-type: none"> expenditure; financial or material political contributions; equality between candidates (e.g. regarding parity of resources and airtime during 	<ul style="list-style-type: none"> Change in political advertising; completeness of such information provision (e.g. labelling, targeting techniques, paid content ranking); inclusion of such information in the common EU repository; Change in percentage of expenditure spent on political advertising via online

Operational objectives		Proposed indicators
rules as regards the financing, preparation, placement and dissemination of political advertising, including those which regulate:	<p>election campaigns);</p> <ul style="list-style-type: none"> • silence periods and the periods during which ads are permitted; • the nature of participants (e.g. third-country corporate entities); • the profiling and targeting of voters, including processing of personal data. 	<p>means as opposed to other means (i.e. television, radio, paper etc.);</p> <ul style="list-style-type: none"> • Compliance of the national standards with the EU level standards; extent of use of national standards with regards to silence periods; • Number of users targeted by specific advertisement; user interaction with such targeted advertisement; key characteristics used for targeted advertisement; compliance with transparency principles of political advertisement; existence of 'fair campaigning pledge'; level of implementation of 'fair campaigning pledge'; existence of national standards aligned with the EU level ones.
<p>E) Common standards should support oversight and audit, and the application of sanctions.</p> <p>Provide citizens with information regarding political advertising to enable them to know:</p>	<ul style="list-style-type: none"> • that an advert is a political advert; • the identity of the sponsor of the advert; • where relevant, information about how the advert was targeted; • where relevant, practical information about the related elections. 	<ul style="list-style-type: none"> • Change in political advertising; completeness of such information provision (e.g. labelling, targeting techniques, paid content ranking); inclusion of such information in the common EU repository; • Number of advertisement labelled as such in real-time; • Number of political advertisement labelled as such retrospectively and the time it took to assign such label; • Number of users that interacted with labelled political advertisement; • Number of users that read the disclaimer accompanying political advertisement; • Number of political advertisement that lost its labelling due to user interaction with the political advertisement;
F) Provide researchers, journalists and other interested actors in the political process with additional information to enable them to determine:	<ul style="list-style-type: none"> • expenditure on an advert, and relate it to relevant campaigns and to related adverts in other media or platforms; • to determine compliance with relevant rules and standards. 	<ul style="list-style-type: none"> • Change in percentage of expenditure spent on political advertising via online means as opposed to other means (i.e. television, radio, paper etc.); • Compliance of the national standards with the EU level standards; extent of use of national standards with regards to silence periods.
G) Establish rules for European political parties which promote the transparent use of political advertising, including:	<ul style="list-style-type: none"> • real time and meaningful provision of information on expenditure; • meaningful ad labelling and the provision of information about the use of targeting 	<ul style="list-style-type: none"> • Compliance of the national standards with the EU level standards; extent of use of national standards; • Change in political advertising; completeness of such information provision (e.g. labelling, targeting

Operational objectives		Proposed indicators
<p>Promote awareness of the Commission's transparent political ads policies.</p> <p>Recommend to national political parties to adopt standards aligned to those suggested for European political parties.</p>	<p>techniques;</p> <ul style="list-style-type: none"> • limitations to the use of certain characteristics or levels of granularity of targeting; • participation in "clear line of sight" initiative to support transparency in the political ads industry; • preparation of and commitment to a 'fair campaigning pledge'. 	<p>techniques, paid content ranking); inclusion of such information in the common EU repository;</p> <ul style="list-style-type: none"> • Number of users targeted by specific advertisement; user interaction with such targeted advertisement; key characteristics used for targeted advertisement; compliance with transparency principles of political advertisement; existence of 'fair campaigning pledge'; level of implementation of 'fair campaigning pledge'; existence of national standards aligned with the EU level ones.
<p>H) Establish common standards applicable to very large online platforms which limit the use of micro-targeting techniques for political advertising during certain periods or for certain actors; unless:</p>	<ul style="list-style-type: none"> • enhanced transparency requirements in this respect are met which would permit the precise characteristics used to be understood, the GDPR-compliance of the data processed to be determined, and the role played by the platform's prioritisation algorithms to be understood) and/or; • auditable self-certification of the GDPR compliance of the personal data used is included as part of the relevant transaction and included in relevant disclosures for reporting purposes. 	<ul style="list-style-type: none"> • Reported incidents of breached GDPR obligations; • Compliance of the national standards with the EU level standards; extent of use of national standards; • Number of users targeted by specific advertisement; user interaction with such targeted advertisement; key characteristics used for targeted advertisement; compliance with transparency principles of political advertisement; existence of 'fair campaigning pledge'; level of implementation of 'fair campaigning pledge'; existence of national standards aligned with the EU level ones.

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