



Position Paper

European Commission Proposal on Transparency and Targeting of Political Advertising

Introduction

The Computer & Communications Industry Association (CCIA Europe) welcomes the ambition of the European Commission's proposal on transparency and targeting of political advertising (TTPA).¹ We agree with the proposal's objective to enable citizens to exercise their democratic rights in an informed manner. We fully support the aspiration to create a modern EU-wide framework that provides more transparency in political advertising and that safeguards election integrity and freedom of expression.²

CCIA members who offer political advertising services are committed to contributing to an open and fair political debate and free and fair electoral process in Europe. They are also very engaged in the combat against disinformation. While services offer wide-ranging economic and social benefits, technologies can be misused by some users. Platforms that offer political advertising services have responded to this challenge with a range of initiatives to prevent the abuse of political ads, in line with the services they provide. For instance, they have taken part in and made meaningful contributions to initiatives such as the EU Code of Practice on Disinformation.³

As the European Parliament and the Council seek to define their positions on the TTPA and reach a common agreement, CCIA offers the following comments.

1. Striking the right balance

The European Commission seeks to strike an important balance: It acknowledges that targeted ads are beneficial for society while also addressing concerns about the potential use of personal data to inappropriately promote political messages.⁴ The TTPA proposal should become a workable and effective EU-wide ruleset that avoids legal uncertainty.⁵

2. Strengthening the EU single market (Article 1 and Article 3)

It is essential to harmonise national rules on transparency and targeting of political advertising to avoid a fragmented regulatory landscape which is difficult to enforce in the inherently cross-border

¹ Proposal for a regulation of the European Parliament and of the Council on the transparency and targeting of political advertising COM/2021/731, European Commission, 25 November 2021, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0731>

² CCIA Welcomes EU Objective to Increase Transparency in Political Advertising, CCIA press release, 25 November 2021, available at: <https://www.ccianet.org/2021/11/ccia-welcomes-eu-objective-to-increase-transparency-in-political-advertising/>

³ European Commission, Code of Practice on Disinformation, available at: <https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation>

⁴ EU Lawmakers May Want to Think Twice Before Banning Targeted Ads, Victoria de Posson, Project DisCo, 9 November 2021, available at: <https://www.project-disco.org/european-union/110921-eu-lawmakers-may-want-to-think-twice-before-banning-targeted-ads/>

⁵ Project DisCo, Transparency in Political Advertising: Translating Ambitions Into Workable and Effective EU Rules by Victoria de Posson, 28 January 2022, available at: <https://www.project-disco.org/european-union/012822-transparency-in-political-advertising-translating-ambitions-into-workable-and-effective-eu-rules/>

online environment. While national concerns are understandable, action at the EU level would be the most effective.

A harmonised EU-wide framework also helps start-ups scale up in one EU single market.

3. Setting a simple and clear framework (Article 2)

For an issue as sensitive as political advertising, regulation will need to set clear and unambiguous rules about who it applies to, and in which circumstances.

We would welcome greater clarity on a number of the proposal's definitions, including the suggested definitions of "political ads" and "political actor" which are overly broad. These concepts leave much room for interpretation which will likely lead to differences in subsequent national interpretations and implementations.

3.1. Political advertising (Article 2.2)

Based on the current text, various content could qualify under the category "political advertising". The European Commission's proposal to include what "*is liable to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour*" (Art. 2.2.(b)) can be very broadly interpreted. For instance, it could refer to ads promoting anti-climate change actions by NGOs, commercial advertisements related to diversity and inclusion, or ads raising awareness of poverty from private citizens. In addition, the definition of political ads should include a specific reference to remuneration or compensation to respect the spirit of the proposal and to avoid inadvertently capturing organic content (which is content posted by users without paid promotion).

Clarifications would also be welcome on the exemption of "purely private" or "purely commercial" messages (Art. 2.2.(a)). In practice, platforms offering political ads services will likely face difficulties to identify when a message is expressed in a personal capacity. For instance, how could a platform differentiate when a politician speaks in his official role or as a private citizen? Many questions remain. To ensure legal certainty, the European legislators should clarify the definition of "political advertising".

3.2. Political actor (Article 2.4)

Similar questions can be asked about the definition of "political actors". An "influencer" would be considered as such. Where would we draw the line as to who could fall into the scope of an "influencer"? Would a journalist, a civil society advocate, or a NGO staff member qualify as an "influencer"?

We recommend obligating "political actors" to self-declare themselves as such, and make them liable for the content they share either by being accountable for their publications or by disclosing their partnership with politicians or political movements. A platform offering political advertising services will never be able to have a sufficiently complete and accurate registry of stakeholders considered as "political actors" under this Regulation. Requiring platforms offering political advertising services to define the "political actor" status would therefore be disproportionate.

Furthermore, platforms cannot be required to verify if an account posted content in exchange for monetary compensation, when the financial exchange took place without any involvement of the platform.

3.3. Political advertising publisher (Article 2.11)

We understand the European Commission’s intention to define platforms displaying political ads, as “Political advertising publishers”, but the reference to “publisher” adds confusion. It could insinuate that platforms have editorial control over the ads displayed, like media publishers have editorial control over their content, while platforms are merely acting as intermediaries. The TTPA term should better reflect the service provided by platforms, for instance “Political Advertising Displayer”.

As negotiations progress, it will be important to clarify such details, so that obligations remain feasible and proportionate. This will, in turn, allow for effective enforcement of the law.

4. Recognising advertisers’ role and shared responsibilities (Article 5)

Addressing disinformation and protecting election integrity requires active participation of all the players in the ecosystem, including political candidates, campaigners, advertisers, publishers, and platforms. An initiative that fails to reflect this multitude of actors would not be effective.

Policymakers should recognise the variety of actors involved and assign their responsibilities accordingly. For instance, political advertisers and sponsors should be obliged to provide truthful and complete information about their campaigns to ensure transparency and responsibility.

Advertisers are best placed to communicate their identity and determine the political nature of their ads, as they act as editors and they are the ones placing political ads. Such an approach would also ensure a level playing field between the online and offline rules, as advertisers take such responsibilities with other media, like television or press.

Advertisers should be incentivised to make truthful declarations and provide all the information necessary to platforms. Clarifications would be welcomed on the liability of advertisers when they fail to declare the political nature of their ads.

Platforms should be able to rely in good faith on advertisers’ information. Requiring platforms to independently verify all information submitted by advertisers would be disproportionate and practically impossible.

5. Creating clear transparency requirements for all stakeholders in the ecosystem (Article 7)

Access to the information is a fundamental part of well-functioning democracies. High-quality information provided in an understandable way helps citizens to make informed decisions when voting. However, it is critical that all actors involved in the political advertising process appropriately contribute to the transparency framework.

As mentioned above, platforms offering political advertising services should be able to rely on political actors’ and advertisers’ information and declarations when they have to disclose transparency notices. Furthermore, more clarity is needed regarding “the wider context of the political advertisement *and its aims to be understood*”, which political advertising publishers would be required to provide. Those placing the ad best understand the wider context and aims of their own advertisement.

We also believe further discussion is needed regarding the formats for disclosure and transparency notices. The formats that are currently proposed might be cumbersome for users to read and

understand. We invite policymakers to leave enough room for manoeuvre to platforms offering political advertising services to organise their interface, displaying the required information on political actors as they see most efficient for their specific services. A one-size-fits-all approach wouldn't reflect the richness and multitude of platforms. Therefore, we ask co-legislators to continue engaging with industry stakeholders and show flexibility in prescribing what transparency formats are available.

6. Clarifying data access

6.1. Law enforcement (Article 10)

Additional safeguards are required regarding competent authorities' access to data, especially for their ability to require records on political advertising.

We recommend basing data access obligations on specific requests from the relevant national or EU authorities. These should be subject to judicial oversight given the material's sensitivity from both commercial confidentiality and privacy perspectives. Given the basis of the TTPA, much of the data requested will relate to third-party individuals and businesses. Furthermore, specifying the tasks and objectives of the competent authorities may support the proportionate exercise of investigatory powers.

6.2. Interested entities (Article 11 and Article 13)

The current proposal grants "interested entities" access to very sensitive information. It is critical to further frame this access by including safeguards around confidentiality, the scope and nature of what data may be requested, the purposes for which the data may be used, and how that data may be accessed. The processes and criteria to obtain the "interested entity" status should also be strengthened, for example, by including transparency on the funding that they may receive especially for "vetted researchers" and "civil society organisations".

We would also recommend to further frame the efforts required by platforms providing ads services, as they bear the operational burden and financial cost. These efforts should be proportionate to the interested entity request. A more viable solution for instance could be a repository through which platforms offering advertising services would make information available.

6.3. Alignment with GDPR

TTPA should be aligned with the EU data protection framework, especially with Article 12 and 23 of the General Data Protection Regulation (GDPR).⁶ Article 7 could for instance raise certain privacy and commercial concerns, especially regarding the disclosure of personal contact details of individuals, the disclosure of ad spend data of commercial actors, and the extensive data storage provision related to requirements on targeting and amplification.

Furthermore, TTPA's transparency requirement (Article 12.3 as per Annex II) would require the disclosure of personal characteristics of users who interacted with an ad "at the same level of detail

⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 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



as used for the targeting”.⁷ This level of disclosure could constitute an invasion of privacy, and misalign with GDPR.

7. Ensuring consistency

The political advertising proposal complements and strengthens the ongoing efforts towards transparency in sponsored political content in the EU.⁸

TTPA acts as a *lex specialis* for political advertising, on top of the horizontal rules set by the Digital Services Act.⁹ The obligations set forth in both proposals should be consistent. For instance, the transparency and access to data obligations should follow the same logic. Different approaches might lead to legal uncertainty and lack of clarity.

Lastly, the European Commission is currently working on a strengthened Code of Practice on Disinformation. To prevent the dissemination of disinformation during electoral periods, the TTPA and the Code should be compatible and mutually strengthen each other.

8. Timing of enforcement

CCIA supports the EU policymakers’ ambitious timeline to adopt and enforce the rules ahead of the upcoming EU elections. We believe that we will have enough time to reach this deadline while having robust and practical rules on transparency and targeting of political advertising.

Conclusion

To guarantee transparency in political advertising and to safeguard election integrity, lawmakers should set clear EU-wide rules, properly recognise the shared responsibility of all actors involved in political messaging, and continue their dialogue with stakeholders. This way the final EU regulation has the best chances to achieve lawmakers’ ambitions.

About CCIA

CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For fifty years, CCIA has promoted open markets, open systems, and open networks. For more, visit www.ccianet.org.

⁷ Annex II relating to Article 12.3, point (a): “the specific groups of recipients targeted, including the parameters used to determine the recipients to whom the advertising is disseminated, with the same level of detail as used for the targeting, the categories of personal data used for the targeting and amplification, the targeting and amplification goals, mechanisms and logic including the inclusion and exclusion parameters and the reasons for choosing these parameters.”

⁸ For instance, the Digital Services Act, the European Democracy Action Plan and the Code of Practice on Disinformation.

⁹ 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, available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=COM%3A2020%3A825%3AFIN>