

EACA POSITION ON the European Commission's Inception Impact Assessment on the proposal for an initiative on greater transparency in sponsored political content, and other supporting measures (Ares (2021) 622166)

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EACA welcomes the possibility to provide feedback on the European Commission's roadmap on political advertising (Ares(2021) 622166). EACA also intends to submit comments on the public consultation "Political advertising – improving transparency".

We welcome and fully support the overall objective of the initiative, which has also been laid out in the political guidelines of Commission President Ursula von der Leyen, notably to "ensure greater transparency on paid political advertising". This is particularly true now that political campaigning increasingly moves online.

A common set of rules in this field is not only essential to ensure the digital single market, i.e. making it possible and easier to advertise across EU borders. Having the right to express and disseminate one's political views and messages – which includes advertising them - is a building block of democratic participation and European society. We have to be absolutely clear about the objective of this initiative, namely to regulate, i.e. increase transparency, and not to regulate, i.e. restrict the freedom of speech.

With this in mind, we would like to share the following comments regarding the Commission's inception impact assessment:

Set the scope: Start by defining what political advertising is – and what it is not

As a first step, it is important to set the scope. This requires having a consistent, harmonised and actionable definition of political advertising and to clearly distinguish it from commercial communications. The same is true for any attempt at defining "issue ads" or "issue-based ads". They are not commercial communications. This distinction is important, as some communications agencies (and other actors typically involved in advertising) are not engaged in political advertising at all.

In this context, we also believe that the definition of "advertising" as per the Digital Services Act ¹proposal is not helpful and rather counterproductive in that it refers to both commercial and non-commercial purposes.

By "actionable" we mean a definition that allows industry to effectively respond to an issue, that they can integrate into their policies and/or implement through their tools. An example of such an actionable definition has been described by EACA in a letter accompanying our submission to the European Democracy Action Plan. In there, we refer to a self-governed industry-wide process to come up with a common, global, consistent and actionable definition of mis/disinformation in the context of the Global Alliance on Responsible Media (GARM).

¹ Art. 2, n: 'Advertisement' means 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 platforms on its online interface against remuneration specifically for promoting that information

Set clear objectives: Focus on legal fragmentation - not on an unspecific set of “actors involved”

As the IIA states, the organisation of elections in the EU “is largely regulated at Member State level”, “there are a variety of national laws affecting political advertising and communications, including on their transparency”, “partisan or political advertising is defined variously in Member States”. National laws regulate who can spend money on or sponsor what type of political ads, at what points in time and through which channels.

Service providers, including communications agencies, that are involved in political advertising abide by these laws of a given country. For example, if a Member State protects the anonymity of a donor or grants political parties the right not to reveal the amount sponsored, then a service provider cannot do anything about that.

The current situation clearly shows that the starting point of any EU-level initiative in the field of political advertising must be the harmonisation of national laws as regards the financing, preparing, placing and dissemination of political advertising. It does not make sense to start by looking at “all actors involved” in these activities.

A common set of rules would help address barriers to the single market of and legal uncertainties related to cross-border political advertising. Such rules would then also apply to online platforms that might not be established within the EU and whose terms and conditions can vary significantly.

Avoid unnecessary regulation: Look at existing legislation first – before introducing new laws

The GDPR sets high standards with regards to the protection of citizens’/users’ personal data. This also applies in the context of political advertising. Data revealing users’ political opinion and affiliations are sensitive personal data, which require explicit consent to be processed. This also applies in the context of advertising targeting. The data controller must ensure to collect the appropriate consent before using such data for micro-targeting. This obligation is accompanied by different transparency requirements which aim to inform users about the data processing taking place and by which entity. Additionally, national regulation stipulates what kind of disclosures must be made in terms of funding (amount, entity behind it, etc.), candidates’ identity, etc.

Provide transparency, choice and control – deliver trust in political advertising

By adhering to international advertising codes of conduct or standards, our members adhere to fair and responsible advertising, which includes clearly distinguishing paid-for or sponsored content from “organic content”.

Also, as we pointed out in our submission to the public consultation on the Digital Services Act, we believe that information about the identity of the advertiser and about the fact that the ad was targeted by using personal data should be made public. To that end, the AdChoices Icon can help deliver transparency.

The AdChoices Icon is a consumer-facing, interactive tool, symbolising consumer transparency, choice and control over interest-based advertising. The symbol is placed in or around online ads by third parties, or on websites where online behavioural advertising data may be collected and/or used by website operators. It demonstrates that companies involved in serving the ads are respecting the self-regulatory principles in a way that empowers consumers. The AdChoices Icon links through to consumer-friendly information about interest-based and online advertising, including the information portal and Consumer Choice Platform YourOnlineChoices.eu.

EACA members that are involved in political advertising would welcome the implementation of such an icon for political ads. However, in order for it to be meaningful and effective, it needs to be enshrined in law.

We remain at your disposal for any clarifications or additional information regarding our position.

In case of questions, please contact:

Nina Elzer
Senior Public Affairs Manager
Nina.elzer@eaca.eu