



ERGA WELCOMES THE PROPOSED REGULATION ON THE TRANSPARENCY AND TARGETING OF POLITICAL ADVERTISING AND HIGHLIGHTS THE NEED FOR A HIGHER LEVEL OF HARMONIZATION

ERGA statement about the proposed Regulation on political advertising

The emergence of new digital services and unprecedented ways to communicate through online tools requires new rules, applicable also to the Internet and aimed at protecting the European fundamental values enshrined in the Treaties, including democratic principles and free and fair elections.

ERGA therefore welcomes the proposal for a regulation on the transparency and targeting of political advertising published by the European Commission on November 25, 2021, and fully shares its aims. ERGA considers the idea of ensuring fair and transparent campaigns, both online and offline, as well as a new harmonized approach in the implementation of EU democratic values and fundamental rights, as a milestone for the audiovisual sector. ERGA wishes that the proposal will be applicable also to the next European Parliament elections.

In particular, ERGA appreciates:

1. the approach adopted by the Commission, imposing **obligations on the whole value chain** of political advertising (that is, on all the “political advertising service providers”, preferably in proportion to the activity performed within the value chain) and not only on online platforms;
2. the **consistency with the DSA**, as regards, *inter alia*, the treatment of the providers that are not based in the EU; the way the transparency notices should be made visible and user-friendly; the identification of competent authorities (which, according to Article 15, para. 2 and 3, could be the same as the authorities designated under the DSA) and the requested independence features and specific powers such as:

- a) requesting to access data, documents or any necessary information from providers,
- b) issuing warnings to the providers for the non-compliance with the regulation;
- c) publishing a statement which identifies the legal and natural person(s) responsible for the infringement and the nature of that infringement;
- d) imposing sanctions including administrative fines and financial penalties.

Concerning this Regulation's governance structure, which is also consistent with the governance structure designed by the DSA, ERGA confirms the substantial concerns expressed in its position paper related to the DSA¹ published in June 2021;

3. the **explicit reference to the national regulatory authorities** or bodies under Article 30 of the AVMS Directive (Recital 58), as well as to **ERGA**, as a suitable body to ensure cooperation among authorities competent for the oversight of the Regulation (Recital 60).

While the overall assessment of the draft provisions is very positive, ERGA would like to highlight some areas for further improvement, with the aim of ensuring a greater impact in terms of electoral integrity and protection of fundamental rights. In particular, ERGA:

1. calls for the creation of **comprehensive political ads repositories**, providing more data granularity on each individual ad. In particular, ERGA calls for the creation of real-time, comprehensive and easily accessible ad libraries for political ads that would contain all the information listed in Article 7, para.1, Annex I and Annex II for each and every political ads. With such repositories, public authorities and citizens would be able to link the ads they see to the political actor on whose behalf it is published and its political and sponsored nature, see how much has been spent on the ads or on the campaign, see why they are targeted with an ad and what data source was used for this targeting. The creation of such repositories would represent an effective mechanism for the provision of aggregated data and would ensure more effective enforcement of the rules set out by this regulation over political advertising service providers and that political actors are held accountable by relevant national authorities in real time in case they exceed expenditure limits or if the contents of their ads is not compliant to the rules. In order to allow for a proper and effective monitoring and oversight activity, besides, ERGA highlights that the ad

¹ <https://erga-online.eu/wp-content/uploads/2021/06/2021.06.25-ERGA-DSA-Paper-final.pdf>

repositories should all be structured in a harmonized manner, respecting precise format standards and be accessible online. In this regard, recalling the EC Guidance on Strengthening the Code of practice on disinformation, ERGA recommends that the ad repositories “*include a set of minimum functionalities, as well as a set of minimum search criteria that enable users and researchers to perform customised searches to retrieve real-time data in standard formats and allow for easier cross-platform comparison, research and monitoring*”.

2. highlights that, although the sanctioning system proposed by Article 16 (which leaves the identification of the sanctions to the discretion of the Member States) and recital 63 provides the required flexibility to the Member States, there is a strong need for the adoption of a more **harmonized sanctioning regime** and the introduction of proportionate, dissuasive, and effective sanctions **in all Member States**: as online advertising services are provided on a cross-border basis, it would only take a single Member State not to adopt adequate sanctions to jeopardize the success of the regulation. ERGA recommends that the regulation defines a minimum and/or a maximum sanction (possible expressed as a percentage of the turnover) in order to have a consistent approach across Member States, while leaving to the Member States the freedom to set the concrete amounts.
3. advocates the idea to provide a **common definition of political advertising** (Article 2, para. 2), which will empower national electoral bodies to engage with platforms much more effectively, while still providing room for adaptation by national electoral laws. The actor-based definition is greatly welcomed, as it covers both political parties and those paid by political parties (for instance influencers) to campaign.

However, ERGA notes that the notion of “providers of advertising services” could be further detailed in order to better identify the categories of players and that, with regard to the issue-based advertising, the proposed **definition is very wide** and risks to encompass cases that are not strictly and directly related to “political advertising”. Further clarifications of the definitions would be appropriate in order to avoid any potential risk of undermining fundamental rights, such as, freedom of speech. In this regard, ERGA confirms the views expressed in its report “Notions of disinformation and related concepts²” published in 2021.

² <https://erga-online.eu/wp-content/uploads/2021/03/ERGA-SG2-Report-2020-Notions-of-disinformation-and-related-concepts-final.pdf>. The ERGA report identifies and maps relevant elements and characteristics of disinformation, political advertising and related concepts and aims to provide for clearer and more uniform definitions and common understanding of key notions

4. raises concern with regards to the **appointment of a single point of contact at EU level** (Article 15, para. 7), in view of ensuring the effectiveness of the cross-border cooperation among competent authorities. Recital 62 stipulates that “*the contact point should, if possible, be a member of the European Cooperation Network on Elections*”. This means that it could be a different authority to those appointed under paragraph 2 or 3 of Article 15 of this Regulation. Such aspect could complicate the coordination amongst different authorities and undermine the supervision of online platforms. ERGA recommends that the mentioned clause in Recital 62 is deleted, and that Article 15 refers more clearly to Recital 60 where the regulation refers to ERGA and existing cooperation mechanisms. One of these mechanisms that are already up and running and that might be further empowered is the *Memorandum of Understanding* adopted by ERGA in December 2020, establishing effective cooperation mechanisms to support the implementation of the AVMS Directive, in particular as regards cross-border cases.

In addition to the aforementioned issues, ERGA draws attention to the Opinion on the proposed Regulation by the European Data Protection Supervisor published on 20 January 2022, stating that the safeguards in the proposal with regard to processing of personal data in the context of political advertising and, in particular, the use of targeting and amplification techniques should be further strengthened. In line with the mentioned Opinion, ERGA believes that **microtargeting** for political purposes should be limited and, at the same time, that further restrictions should be introduced as regards the categories of data that may be processed for the purposes of political advertising, in particular prohibiting targeted advertising based on pervasive tracking techniques. Moreover, ERGA believes issues regarding the distribution of content are highly relevant for media oversight. In order to be able to assess phenomena like illegitimate amplification techniques, media oversight must be equipped with data access and enforcement powers in this area.

ERGA is fully committed to continue working side by side with the European Institutions, by making available the expertise of its Members in the field of political advertising and to take up any responsibility that could come from the adoption of the proposed Regulation.