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BVDW on the Proposal for a Regulation on the Transparency and Targeting of Political Advertising

According to the EU Commission it is, in the age of digital transformation, of utmost importance that people can easily identify whether they are interacting with paid political content or not, and to enable people to participate in open debates free from disinformation, influence or manipulation. Elections and political deliberation processes are fundamental aspects of democracy. New regulations can play an important part in keeping elections open, transparent, and accountable. BVDW therefore supports the initiative to harmonize and improve European transparency and targeting rules for political advertising. Addressing this issue is currently more important than ever.

Having in mind the sensitivity of this topic, it is however also crucial that the regulation creates legal certainty for all relevant players, avoids unintended consequences and achieves the common goals, as set out in the EU Action Plan for Democracy. With the goal of helping achieve these outcomes, we would like to address four key elements of what we think is necessary for a successful legislation on political advertising. We encourage the co-legislators to keep these considerations in mind during the negotiations to ensure the success of this timely and highly relevant regulatory initiative.

1) Definition of “political advertisement”

We are still of the opinion that the definition of a “political advertisement” is not clear enough. The definitions put forward by all three European institutions are very broad, risking that a vast category of online content and advertisements would fall within the scope, even including organic non-paid online speech about issues that could be considered political. The exemption for political opinions expressed under editorial responsibility of a media service provider, unless it is paid for, is a good step in the right direction, but the Regulation needs to provide legal certainty with regards to non-paid content by civil society organizations as well as regular users that addresses social issues like climate change. Currently, this category of content would be included within the scope, which would lead to significant restrictions of its visibility, which would ultimately penalize societally relevant content compared to purely commercial content. We consider the goal of this initiative to regulate political advertisement, but not political speech at large and urge the co-legislators to clarify the scope in this regard. One way to achieve this is to align the definition of “political advertisement” with the Digital Services Act (DSA), which clearly ties advertisement to remuneration.

2) Transparency obligations and user flags

Furthermore, it must be ensured that the companies concerned can fulfill the due diligence and transparency obligations of the regulation. In order to achieve the goal of the legislation, all parties must cooperate. Many information points relating to a given ad are generally not available to every player in the value chain. The new transparency obligations of the DSA, which

already prescribe an increased level of protection and transparency for online advertising in general, should be considered here. In the context of the DSA, new technical ways must be developed to meet the new transparency requirements. On top requirements that go even further in relation to the category of political advertising may be justified, but they must remain feasible in practice and must not overburden companies but accept “good faith” principles.

Additionally, it needs to be ensured that user flags, also a method covered by the DSA, cannot be abused by malicious actors. Allowing anyone at any time to flag a political ad could pave the way for abuse of the system. Especially in the context of electoral campaigns, the possible negative implications to the integrity of elections are obvious. Combined with tight turnaround times, these user flags could have a chilling effect as political advertising publishers may overblock content. To achieve a good balance between safety, transparency, and the freedom of speech, we recommend removing strict turnaround times, ensuring that notices are appropriately substantiated - in line with the DSA and - that flags should come from competent authorities.

3) Targeted advertising

The Regulation should not go further than what is necessary to achieve its goals. Any disproportionate restrictions on the use of personal data in targeting and delivery of ads would be detrimental to the basic functionality requirements of online advertising, such as language settings. We would like to stress that the Regulation therefore needs to be aligned with the General Data Protection Regulation as well as the Digital Services Act, where only recently a good compromise was reached restricting the use of sensitive data and ensuring the protection of minors in a proportionate way.

4) Implementation period

Currently, the co-legislators are considering short implementation periods, which we would like to caution against. Given the complexity of the new rules and their practical implementation, and the criticality of political advertisement in the context of elections and democratic processes generally, we urge policymakers to provide adequate time (at least 12 months) for industry to implement the requirements of the Regulation in full, as these are likely to require, among other things, changes in contractual arrangements, internal policies, product features and operations.