

European Commission Discussion Points: Online Focus Group on Transparency and Targeting of Political Advertising

Article 3, 5, 8, 12, 15

Regulation 2024/900 EU on the Transparency and Targeting of Political Advertising (TTPA) is a key component of the EU's broader efforts to safeguard democracy. It aligns with other tech regulations, such as the Digital Services Act (DSA), and initiatives like the Democracy Shield, playing a vital role in protecting open democratic systems from undue influence and ensuring fair and transparent public discourse.

In this paper, Liberties shares concerns regarding the scope and practical implications of the law.

Recital 108 and Article 8 of the TTPA grant the European Commission the authority to clarify and issue guidance, ensuring all stakeholders understand their obligations and compliance requirements.

1. Definition of Political Advertising

The overly broad possible interpretation of political advertising in the TTPA raises serious concerns. Therefore, we ask the Commission to consider the following ideas when creating guidance on the law.

Article 3 of the TTPA, without clear guidance from the European Commission, creates significant ambiguity in defining political advertising. Under certain interpretations, the provision could encompass party newsletters and virtually all professional and semi-professional political communication due to the use of the term “normally” before remuneration. Unless the guidance clearly states otherwise, this ambiguity could lead to misinterpretation by various political actors, and also by national-level enforcement bodies. Therefore, it is of utmost importance to clearly set the boundaries for political advertisements.

Furthermore, the TTPA encompasses a wide range of cause-based communications by civil society organizations (CSOs). This overly expansive approach risks placing undue restrictions on CSOs, limiting their ability to contribute to democratic debates and fulfill their role as watchdogs

in society. Furthermore, the overly broad definition could hinder political debate and the right to freely express political views and participate in political discourse.

To uphold a healthy public sphere and support civil society in an increasingly restrictive environment, we urge the Commission to narrow the interpretation of political advertising in forthcoming guidance.

Key Considerations:

1. **Article 3 (2):** Political advertising is defined as “normally provided for remuneration or through in-house activities.”

To ensure a clear understanding of this definition, guidance is needed on both elements:

- "Normally" in relation to remuneration provided for remuneration;
 - In-house activities.
2. **Article 3 (2) (b):** Political advertising “is liable and designed to influence the outcome of an election or referendum, voting behavior, or a legislative or regulatory process, at Union, national, regional, or local level.”

To ensure clarity and avoid overregulation, guidance is needed on:

- "Liable and designed";
- What constitutes "voting behavior";
- In what terms does influencing legislative or regulatory process fall under the scope of the TTPA, particularly when CSOs organize protests inviting people to gather against domestic violence and request stricter rules on perpetrators?

2. The impact of TTPA on political influencers

As political influencers play an increasingly significant role in shaping public discourse and election outcomes, the TTPA introduces a comprehensive regulatory framework that directly affects their activities alongside Regulation (EU) 2022/2065, the Digital Services Act (DSA).

The guidance will be essential for online platforms to implement necessary measures, such as mechanisms to classify and declare organic posts as advertisements where appropriate, and to report undeclared political advertising. This guidance also enables content producers to align with transparency requirements effectively, ensuring a fair and predictable regulatory environment for all actors involved.

The possibility of broad interpretation risks overregulating political speech and imposing unintended compliance burdens on opinion leaders and influencers. While Article 3 excludes communication of a purely commercial or private nature, it does not provide clear criteria for distinguishing such content. As a result, enforcement bodies, platforms, and political actors may struggle to determine when a message is exempt from regulation, leading to inconsistent enforcement and legal uncertainty.

3. Influencers and Political Advertisements

When influencers work on political issues and receive financial support from a political party or other advantages for supporting political candidates, their content should be considered political advertisements. However, when financial remuneration is secondary or not directly linked to the content—such as increased visibility from guests likely attracting more followers and enhancing the influencer’s future income as a content creator—this distinction should be made clear.

To provide clarity, the Commission should:

- Specify that intent is a determining factor in identifying political advertising;
- Clarify whether indirect financial gains count as remuneration under Article 3;
- Require platforms to ensure that influencers can report when their organic posts qualify as political advertisements under TTPA;
- Enable users to report when influencers fail to flag their posts as advertisements;
- Include influencer content as part of the transparency database.

4. Influencers as Political Actors and Publishers

Political influencers may simultaneously be classified as political actors Article 3 (4) g) and political advertising publishers Article 3 (13), leading to extensive compliance obligations. An influencer who expresses political opinions (actor) and simultaneously hosts guests who are political figures (publisher) could be subjected to regulatory burdens designed for political advertising services that are not micro, small or medium-sized undertakings. This would not be in line with the principle of proportionality.

To provide clarity, the Commission should:

- Define when or whether influencers should consider themselves to be political advertising services and publishers falling under the transparency requirements required for such actors.

5. Foreign interference

Liberties believes that the activities of CSOs, many of which receive essential funding from entities established in third countries like the US, must be considered. Some of these entities, being owned or controlled by third-country nationals, could be prohibited from sponsoring political advertising, including their own fundamental rights protection activities, if the definition is applied too broadly, 3 months prior to an election. In a context where civic space is already under pressure and considering the crucial role that civil society plays in ensuring robust public debate and participation in elections, there should be no undue interference with the legitimate work of civil society actors to protect and promote fundamental rights.

Preventing foreign interference and disinformation campaigns orchestrated by malicious state actors from third countries is a valid intervention on behalf of EU institutions. However, limiting CSOs from organizing “Get out and vote” campaigns or other public-facing advocacy work 3 months prior to elections would disproportionately hinder their efforts, especially when they rely on third-country financial support.

To provide clarity, the Commission should:

- Provide clear clarifications on which activities fall within the scope of the Regulation to avoid unintended consequences on CSOs right before elections, a time when their contribution is particularly important.

6. Defining best efforts in Article 12 and Article 15

The TTPA provides an explanatory list of the 'best efforts' set out in Article 12, point 2, paragraph 3:

“Where the political advertising publisher becomes aware by any means that the information referred to in Article 11(1) and paragraph 1 of this Article is incomplete or inaccurate, it shall make best efforts, including by contacting the sponsor or the providers of political advertising services, to complete or correct the information without undue delay.”

Beyond contacting the sponsor or providers of political advertising services and correcting the information without undue delay, we would like to call the Commission’s attention to additional elements of 'best efforts':

1. Notices or Labels:

- Apply notices or labels to indicate pending cases in the database.

2. Reporting Systemic Issues:

- In cases of systemic, large-scale issues, publishers should have an obligation to report to enforcement bodies, which in turn should report to the Commission for further guidance.

3. Further Actions:

- Provide information on any further actions taken, including suspension or de-ranking of profiles or posts.

Article 15 of the TTPA requires sponsors to declare advertising as political. Article 15 mandates that Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs) “make best efforts to examine” the self-declaration by sponsors. Defining “best efforts” is crucial for proper enforcement.

Clarification is needed in the guidance about the notification mechanism for non-complying political advertisements. According to point 2, the TTPA requires that the mechanism be:

- Free of charge;
- User-friendly;
- Easy to access;
- Included in the transparency notice;
- Technically feasible and made in electronic form;

The guidance should further clarify:

- Accessible for people living with disabilities;
- Deadlines for notification;
- Designated contact points;
- Requirements for human overview;
- Reporting obligations regarding the notification and its consequences.

7. Additional Points

The enforcement of the TTPA will be complex and challenging, potentially involving multiple distinct authorities: Data Protection Authorities, Digital Services Coordinators, Media Authorities, and national Electoral Authorities. The guidance could provide more certainty about the roles and duties of these authorities and how they could collaborate nationally and

cross-border. This includes the application of sanctions, possibly in a harmonized manner, as the Commission has the power to establish guidance on sanctions.

8. Conclusion

Clear and precise guidance is crucial to prevent unintended restrictions on civil society, ensure proportionate enforcement, and maintain a balance between transparency and free political expression. Liberties urges the Commission to consider these recommendations to uphold democratic engagement and protect fundamental rights under the TTPA.

The Civil Liberties Union for Europe (Liberties) is a Berlin-based civil liberties group with 22 member organisations across the EU campaigning on human and digital rights issues, including the rule of law, media freedom, SLAPPs, privacy, targeted political advertising, AI, and mass surveillance.

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