

Responses to the European Commission's consultation
on a proposal for an initiative on greater transparency
in sponsored political content, and other supporting measures

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For questions and comments, please contact the author [Dr. Julian Jaursch](mailto:jjjaursch@stiftung-nv.de) at jjjaursch@stiftung-nv.de. The responses to the consultation questions include input from colleagues from SNV as well as other European think tank and civil society representatives. We thank the European Commission for the opportunity to participate in the consultation on political advertising and look forward to engaging further not only with the Commission, but also the European Parliament and other interested stakeholders.

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Summary of key points

It is timely and necessary for the European Commission to establish transparency measures for online political advertising. Digital political campaigning that is fair and open, **and supports, not weakens, citizens' fundamental rights** to freely form their political opinions is a necessity both for citizens themselves as well as for society as a whole.

While member states oversee their own national laws on political parties, electoral systems and campaign finance regulations, the EU nevertheless has an important role to play. It can and should suggest courses of action to member states based on working practices and legal guidelines from across the EU. It can also find and enforce rules dealing with political advertising at the European level, e.g., for European political parties and European Parliament elections. More crucially, the Commission can and should enact rules for advertising platforms such as social media sites, video-sharing apps and search engines, which work across the EU. That is why considerations on political advertising should be embedded in and considered along with other legislative proposals, chiefly among them the draft Digital Services Act and Digital Market Act. The use of online platforms to pay to spread political messages is directly connected to the gatekeeping power of platforms, the algorithmic information and news spaces tech companies offer and the tracking **and profiling of users' online behavior**.

With a specific view to online political advertising, this short summary of the following **responses to the Commission's consultation** discusses the need to establish meaningful transparency. It lays out transparency measures that are necessary for all ads (not just political ads), while acknowledging there might still be a need for definition of political ads. An outline of such a definition is provided, focusing on an actor-based approach.

The rationale for transparency for political advertising

Paying to reach citizens and potential voters with messages to persuade them of candidates, parties, political ideas, to solicit donations and volunteer work and to disparage political opponents affects both individuals and society as a whole. For **example, such messages can reinforce or alter individuals' opinions regarding which party platform to support**. This, in turn, can affect larger parts of society by shaping political power balances and agendas. Political advertising can also heighten already existing polarization and voter segmentation, as political views are being entrenched, even radicalized, or conspiracy myths about candidates, political issues and the electoral process spread.

Because of these individual and societal consequences of paid political communication, a basic necessity for political advertising is transparency. Transparency is necessary, but not sufficient to support free and fair political opinion formation and should therefore be accompanied by educational measures for all ages on media and news literacy as well as civics, by support measures for journalism and academia and by regulation for digital platforms regarding their use of automated recommender systems.

Details on what challenges arise with political online advertising and how to tackle them can be found in the SNV policy paper "Rules for Fair Digital Campaigning: What Risks Are Associated with Online Political Advertising and What Reforms Are Necessary in Germany", **available here:** <https://www.stiftung-nv.de/en/publication/rules-fair-digital-campaigning>

Meaningful transparency for all advertising

Transparency requirements should serve to help citizens understand who is paying to reach them and should provide clarity on what political advertisers are paying to reach what segments of the population with what messages (and what segments are being left out). This could be achieved with clear, easy-to-find and easy-to-understand ad disclosures. In addition, citizens, but especially researchers from journalism, academia and civil society, should be able to easily and freely use cross-platform ad databases that save online ads (including removed ads) and provide detailed information on their ad targeting and ad delivery criteria.

Such heightened transparency measures compared to offline ads are necessary and justified, because contrary to offline or broadcasting ads, online behavioral advertising relies on massive amounts of various personal data that can be used to target and deliver ads only to specific, rather small, homogeneous groups. Because of the specific characteristics of online advertising, minimum requirements for meaningful transparency should be in place for all online advertising, not just political advertising.

Defining political advertisers

There could be further measures to ensure accountability and public interest scrutiny specifically for political advertising, which necessitates a clarification as to what political advertising is. This is a tricky issue, because defining paid political messages depends on the timing, EU member state and context they appear in. One way to address this issue is to define a set of actors as political: Certain core political advertisers should be defined whose paid communication is always considered political, for instance, political parties, candidates, parliamentary groups and lobby associations. They could face heightened scrutiny for their paid communication, such as financial reporting requirements or spending caps. Actors that are financially or otherwise connected to these core advertisers could be deemed political advertisers on the periphery and in such cases be subject to such additional scrutiny as well. This might apply to social media influencers and non-party campaigns, thus acknowledging that what is sometimes called **“sponsored content”** can also be political.

Defining core and peripheral advertisers and subjecting their ads to heightened scrutiny would cover a wide range of political advertising online. Ads by non-core and non-peripheral advertisers, for example, by companies or non-party groups on social or political issues (“issue ads”), might fall out of the scope of this approach, even though they are an important facet of online political advertising. This could be addressed by mandating meaningful labeling and self-reporting options at platforms for issue ads, so that advertisers can flag their paid messages as political. While leaving some uncertainty, this is preferable to companies or governments deciding on their own what **content is “political” and thereby subject to political ad rules.**

Details regarding the challenges of defining political ads can be found in the SNV policy paper **“Defining Online Political Advertising: How Difficulties in Delineating Paid Political Communication Can Be Addressed”**, available here: <https://www.stiftung-nv.de/en/publication/defining-online-political-advertising>

Note: Answers in bold are the ones chosen in the consultation form.

Questions on political advertising and related services

Q1. Is political advertising permitted for elections in your home country?

- a. Yes
- b. Maybe
- c. No
- d. Don't know**

Q2. Which format of political ads have you encountered most often in your country?

- a. Leaflets
- b. Posters
- c. Radio
- d. TV
- e. Online
- f. Other

Q3. Have you ever encountered any of the following (check all which apply):

- an advert raising money for a political objective (cause, candidate, party etc)
- an advert promoting participation in an election an advert providing essential information about an election (public service information)
- an advert attacking another political movement, actor, party or group
- sponsored political editorial in a newspaper or magazine
- an ad which promoted a political view without clearly being a political ad (an **'issues ad'**)
- political advertising outside an election period
- political advertising promoted in your country which appeared to be sponsored from outside your country
- political advertising in European Parliamentary election promoted by a European (not national) political party

Q3.1 Should definitions of political advertising include the following:

- an advert raising money for a political objective (cause, candidate, party etc): Include
- an advert promoting participation in an election: Neutral
- an advert providing essential information about an election (public service information): Neutral
- an advert attacking another political movement, actor, party or group: Include
- sponsored political editorial in a newspaper or magazine: Include
- an ad which promoted a political view without clearly being a political ad (an **'issues ad'**): Include
- political advertising outside an election period: Include
- political advertising promoted in your country which appeared to be sponsored from outside your country: Include
- political advertising in European Parliamentary election promoted by a European (not national) political party: Include

Please explain your response (optional):

The answers to the above questions vary depending on who is advertising. For example, "an advert providing essential information about an election (public service information)" paid for by a government agency or a private citizen should not be defined as political

advertising. However, if paid for by a candidate or a political party, for instance, it should be defined as political advertising.

This distinction, generally, points to the need to define political advertising based on advertisers. The Commission could define a list of **“core political advertisers”** on the European level, e.g., European political parties and candidates running for the European Parliament, whose paid messages are considered political advertising by default. This should include paid communication offline and online, specifically on social media, in apps, via influencers and via consultancies. The Commission could also recommend that member states define a list of core political advertisers, if they have not done so already. A starting point for a list could be the idea of **“politically exposed persons”** found in EU anti-money laundering legislation. These lists might vary slightly from country to country and could include parties, candidates, potential candidates and political foundations. The list of core political advertisers should be revisited annually to check whether new advertisers should be added or existing entries should be scratched. Defining core political advertisers should not be left to companies or governments alone but should include citizens and experts from a variety of fields, including media and political party law as well as social sciences.

In addition to core political advertisers, the Commission should define political advertisers on the periphery. Their paid messages are not considered political by default, but only when these advertisers speak out on behalf of a core political advertiser and/or are financed by a core political advertiser. This would include, for instance, consultancies advertising for a candidate or associations speaking out for a particular party (but not, for example, the shop where candidates print marketing material).

This leaves **“issue ads”**, as the consultation text calls them, i.e., **“an ad which promoted a political view without clearly being a political ad”**. Issue ads should also face some scrutiny, as they are important in shaping political discourse. They are harder to define, **though, because what is a “political issue” varies across member states, time and context**. Issue ads could be regulated by mandating meaningful labeling and self-reporting options at platforms, so that advertisers can flag their paid messages as political. This would also allow news outlets to flag their commentary as political, if they pay to promote it. While leaving some uncertainty, this is preferable to companies or governments **deciding on their own what content is “political” and thus subject to political ad rules**. This would leave too much power with corporate or governmental actors to determine what issues are deemed **“political”**, which is already a difficult task, as virtually all topics can be political or politicized.

For an in-depth discussion on how to define political advertising and what challenges **arise on that question, please see the SNV policy paper “Defining Online Political Advertising: How Difficulties in Delineating Paid Political Communication Can Be Addressed”**, which can be accessed here: https://www.stiftung-nv.de/sites/default/files/snv_definingpoliticalads.pdf

Q3.2 Should definitions of political advertising be:

- a. Defined in law
- b. Dynamically adaptable
- c. **Don’t know**
- d. Other

Please explain your response (optional):

Definitions for political advertising should be defined by law AND be dynamically adaptable. This can be achieved, for example, by adding provisions to any political advertising law that the definitions need to be reviewed on a regular basis, say, every year or before every major federal/national election. The review could be done by a diverse, pluralistic group of experts, practitioners and citizens. See also item ten on this list: <https://medium.com/@WhoTargetsMe/ten-simple-ideas-to-regulate-online-political-advertising-in-the-uk-52764b2df168>

Q4. Have you ever encountered political advertising online?

- a. Yes
- b. No
- c. Don't know

Q4.1 Roughly how often?

- a. Daily
- b. Weekly
- c. Monthly
- d. Seldom

Please indicate where you have most often or most memorably encountered political ads: Social networks and search engines (Facebook/Instagram, Twitter (mostly before 2019), YouTube, Google, Reddit, TikTok, Snapchat)

Q4.2 Regarding the advertising you encountered, were you able to easily find the following information

- 1. clear labelling that it was a political ad – No
- 2. information about who placed the ad – No
- 3. information about entities sponsoring or co-sponsoring the ad – No
- 4. information about the amount paid – No
- 5. (where relevant) information regarding the use of targeting (whether and why the ad was targeted at you specifically) – No
- 6. Other information about the ad – No

Please specify:

The information provided varies across platforms, which makes an assessment hard, not only for outside observers like media, academic and civil society researchers, but also for citizens and potential voters. In a recent representative survey of Germans, respondents overall struggled with understanding labels of online ads (not specifically on social media sites). For details, please see pp. 47-55 in this SNV study: https://www.stiftung-nv.de/sites/default/files/studie_quelleinternet.pdf

Generally speaking, only rudimentary information on online advertising is available and this information is not easy to find and access for users. For example, the search functions for ad databases at big platforms do not allow for a thorough and easy-to-use query, in addition to the databases lacking important data such as detailed information on ad targeting and ad delivery criteria. A database should include the following information:

- content of the ad
- natural or legal person on whose behalf the ad is played
- period during which the ad was displayed
- sponsor of the ad
- targeting applied as well as any exclusions from the targeting

- ad optimization applied
- exact spend
- numbers on engagements and reach
- advertiser registrations (company or tax number, data protection or electoral commission registration)
- unique identifiers associated with each ad and advertiser

For a further discussion of what information should be included in ad labeling and ad archives (as well as more sources on this), please see pp. 56-59 in this SNV policy paper: https://www.stiftung-nv.de/sites/default/files/rules_for_fair_digital_campaigning.pdf

Meaningful transparency standards should be in place for all online advertising, not just political online advertising. Both the general public as well as researchers from media, academia and civil society need to be able to see who is paying to people them with political messages. Ad disclosures/labels should be in required when users see an ad and ad databases should allow citizens and researchers to understand the online ad system better. The algorithmic ad delivery, the volume of ads online and the amount and type of personal data being used for online ads require and justify heightened transparency standards compared to offline ads. For a further discussion of the unique characteristics of online ads, please see pp. 13-14 in this SNV policy paper: https://www.stiftung-nv.de/sites/default/files/rules_for_fair_digital_campaigning.pdf

Questions on relevant rules for political advertising

Q5. Are you aware that there are rules limiting party spending for electoral campaigns in your country?

- a. Yes
- b. No
- c. Don't know

Q5.1 Do you think that the limits of political party spending for electoral campaigns should be:

- a. Increased (more money)
- b. left as they are
- c. decreased (less money)
- d. Don't know**

Q6. Should spending by actors other than political parties (such as foundations and campaign organisations) on political ads during an election period count towards campaign or political party spending limits?

- a. Yes
- b. Maybe
- c. No
- d. Don't know**

Please explain your response (optional):

Only if there is a financial connection between parties and other groups should other **groups' spending count towards political party spending. Other groups should** still face financial transparency obligations, though. That means that a group not (financially) affiliated with a party, which nonetheless spends money to support that party, should be obliged to report on their income and expenditures. **This issue of what is called “parallel action” in Germany is already hard to grapple with offline** (see, e.g.,

<https://mip.pruf.hhu.de/article/view/140/142>) and is not accounted for at all in the online sphere.

Q7. Should spending on ‘issues ads’ during an election period count towards campaign or political party spending limits?

- a. Yes
- b. Maybe
- c. No
- d. Don’t know**

Please explain your response (optional):

Disregarding issue ads would miss a large part of paid online political communication, which is often not related to a particular candidate or election. It is therefore necessary to include issue ads in political ads regulation, acknowledging the caveats mentioned in the optional response to Q3.1.

Q8. Should civil society and other actors have to follow the same rules as political parties when paying for and placing political advertising?

- a. Yes
- b. Maybe
- c. No
- d. Don’t know**

Please explain your response (optional):

Public-interest groups, including non-governmental organizations and civil society actors, should only face all of the transparency requirements asked of political parties, candidates and other **“core political advertisers”** (see optional answer to Q3.1), if they are financially connected to and/or speak out on behalf of these core advertisers (thus becoming **“peripheral political advertisers”**). If civil society actors advocate for certain issues, ask for donations for a political cause or recruit volunteers via paid online messages, this is issue advertising, which should be clearly labeled and self-reported by the organizations (see answer to Q3.1 and for more pp. 13-15 in this SNV policy paper: https://www.stiftung-nv.de/sites/default/files/snv_definingpoliticalads.pdf).

Q9. Should there be rules set at EU level on how political adverts can be funded?

- a. Yes
- b. Maybe
- c. No
- d. Don’t know**

Please explain your response (optional):

The EU cannot and should not legislate on party political funding in the member states, since this remains a national competency. However, the EU could recommend or require European political parties to establish financial transparency and accountability guidelines for European Parliament elections.

In addition, the EU could and should put in place legal requirements for online advertising platforms on how ads can be funded. This includes, for instance, mandating know-your-customer rules at tech platforms and verification systems for (political) advertisers. While some big platforms have already voluntarily started doing this, legal requirements and cross-platform standards would be helpful.

Q9.1 Do you think the following sources of funding should be permitted to pay for political ads in your country?

1. Anonymous donations through online payment services: Maybe
2. Crowdfunding: Maybe
3. EU citizens residing in another Member State: Maybe
4. Individuals or companies from third countries: Maybe
5. Third-country state actors: Maybe
6. Bank loans: Maybe

Q9.2. Should there be limits set at EU level to how much money can be spent in total on political advertising in a particular campaign?

- a. Yes
- b. Maybe
- c. No
- d. **Don't know**

Please explain your response (optional):

For European Parliament elections, where the EU has competency, spending limits, if reviewed regularly and set in place by an independent, pluralistic body, could be useful. For the national stage, where the EU has no competency, the Commission could provide guidance to member states on spending limits, for instance, via the European Cooperation Network on Elections.

Q9.3. Should there be limits set at EU level to how much money can be received by a particular party, candidate or campaign from any single source?

- a. Yes
- b. Maybe
- c. No
- d. **Don't know**

Please explain your response (optional):

For European Parliament elections, where the EU has competency, donation limits, if reviewed regularly and set in place by an independent, pluralistic body, could be useful. For the national stage, where the EU has no competency, the Commission could provide guidance to member states on donation limits, for instance, via the European Cooperation Network on Elections.

Q9.4. Should there be rules set at EU level as to how a specific amount of political advertising during an election should be allocated (for instance through proportionately **allocated 'online/offline ad vouchers'**), **to ensure access for more parties** to the campaign?

- a. Yes
- b. Maybe
- c. No
- d. **Don't know**

Please explain your response (optional):

While the amount of money spent and received could be capped to provide a somewhat level playing field for all political advertisers, telling them how to spend that money seems unnecessary. If this question is meant to imply that increasing the proportion offline political advertising would be beneficial, this would miss the benefits that online political advertising also has for political parties and other advertisers.

Q10. Should there be rules set at EU level requiring all political advertising be clearly and specifically labelled as such?

- a. Yes
- b. Maybe
- c. No
- d. Don't know**

Please explain your response (optional):

Labeling is one of the key components in ensuring a baseline of transparency for citizens as well as outside observers such as academic, civil society and media researchers. It needs to be meaningful, easy-to-find and easy-to-understand, which is often not the case today (for an empirical study on online media in general, please see pp. 47-55 in this SNV study: https://www.stiftung-nv.de/sites/default/files/studie_quelleinternet.pdf). The EU could and should mandate such labeling for platforms, for instance, via the proposed Digital Services Act. Such a requirement for platforms goes hand in hand with standards to verify advertisers and ensuring that advertisers themselves do not try to circumvent the labeling requirements.

Q11. Should there be rules requiring all the sponsors of political ads to be disclosed within the ad itself?

- a. Yes
- b. Maybe
- c. No
- d. Don't know**

Please explain your response (optional):

If “within the ad” means that the actual ad content should include all sponsors, this is not necessary. If “within the ad” means that meaningful, easy-to-understand sponsor information is one click/tap away for citizens, mandating this is crucial. As it varies across platforms and devices what “one click/tap away” means, requirements on this should be flexible enough to account for this diversity and stringent enough for platforms and advertisers to not be able to easily circumvent this.

Q12. Should there be rules requiring political ads to be truthful and not misleading about verifiable factual claims?

- a. Yes
- b. Maybe
- c. No
- d. Don't know**

Please explain your response (optional):

Only for very narrow instances and time frames, a ban could be considered. This could be, for instance, in the time around an election, paying to promote false or misleading statements about the date of an election, about the process of registering to vote and the process of voting. Ads containing such mis- and disinformation should still be archived in ad databases with clear, easy-to-understand explanations and corrections about the mis- and disinformation.

A blanket ban on misleading ads is neither desirable nor feasible in the current political ad system, as a thorough fact-checking of hundreds of thousands of ads is currently not being done. Since it is unlikely that independent fact-checkers will soon have the

capacity to accomplish this task, a blanket ban on misleading ads would essentially mean that platforms and/or governments would decide what counts as false or misleading. This is not a desirable situation and should be avoided. Even if the number of political ads were so significantly reduced, e.g., by a mandatory quota, that it became humanly possible to independently fact-check all ads, a blanket ban on false or misleading ads should not be considered, as the determination of what is misleading is challenging, varies across languages, time and member states. Moreover, if such a ban would lead to tech companies using even more automated systems to determine what is true and false, this could have negative consequences for speech, as these systems are not (yet) good enough to make this distinction and could potentially lead to more censorship.

Q13. Should there be rules in times of elections campaign regulating how advertising space is allocated online?

- a. Yes
- b. Maybe
- c. No
- d. Don't know**

Please explain your response (optional):

Rules specifically for elections could be useful, since election or referendum times are periods of heightened political debate (see also response to Q12). However, election-specific rules miss the point that political advertising online is happening independently of elections and is often not tied to candidates. Therefore, in general, political ad rules should not just cover election periods.

On the idea of a space allocation/quota online, the EU could consider this for European Parliament elections, whereas for national elections, this is a member state competency and some quotas are already in place in member states. The EU could nonetheless mandate that advertising platforms are not allowed to discriminate against certain political advertisers via higher ad prices. This speaks to the automated ad buying and delivery systems being widely used online, which the EU could mandate to be stopped for political ads or at least for election periods.

Q14. Are you concerned about the possibility of foreign actors (such as foreign states or foreign organisations) being able to sponsor political advertising to increase their own influence within the EU?

- a. Yes
- b. Maybe
- c. No
- d. Don't know**

Please explain your response (optional):

The possibility of foreign actors paying for ads is an issue to be considered, as evidenced by the 2016 US presidential elections (where the US government found that Russian actors paid for ads containing false and misleading information). Similarly, foreign actors are paying to promote disinformation about the COVID-19 pandemic in the EU.

However, elections in the EU (and the 2020 US presidential election) have shown that the bigger danger lies with domestic actors using and abusing online advertising systems. This concerns both well-known advertisers and smaller, grassroots organizations within a country. Too strong a focus on foreign interference could therefore be detrimental to

dealing with political advertisers at home and the platform design issues themselves. Privacy infringements, voter segmentation potentially heightening polarization and wealthy advertisers paying to drown out other voices are not risks associated only with foreign actors, but concern the entire online advertising system.

Q15. Are you concerned that political advertising, especially online, can be used to intentionally spread false or misleading information (disinformation)?

- a. Yes
- b. Maybe
- c. No
- d. Don't know**

Please explain your response (optional):

Disinformation is a serious threat for having sound and fair political debates. However, the spread of disinformation is not reliant on paid communication online. Much of the false or misleading (political) information online is not advertising.

Nonetheless, paying to spread disinformation should not be underestimated. For COVID-19-related ads, there were instances of fake cures being peddled and false information about its origins spread online. It is possible that similar issues could arise with paid messages about political parties, causes and candidates, especially but not only during election times. Isolated cases have already been documented, for example, in Germany, where political advertisers wrongly claimed that mail-in voting was inherently insecure.

That is why is the Commission should be concerned about actors paying to spread disinformation online, either via advertising on platforms and/or website and/or via paid influencers and/or bought likes and followers.

Please note the response to Q15 on dangers associated with online advertising generally and the answer to Q12, that despite issues related to disinformation, a blanket ban on **“disinformation”** is not a good way forward.

Q16. Should political actors or organisations that violate or are systematically noncompliant with agreed rules be sanctioned?

- a. Yes
- b. Maybe
- c. No
- d. Don't know**

Please explain your response (optional):

This is mostly a member state competency and, for example, already in place in Germany for political parties if they breach financial disclosure rules. Similarly, if there were other rules regarding political advertising transparency, sanctions should be in place for breaches. The EU should advise national governments to do this.

The EU could and should implement and enforce sanction mechanisms for advertising platforms, for instance, via the Digital Services Act and the reworked Code of Practice on Disinformation, which in its first iteration already included a section on political advertising.

Q17. Do you consider that specific measures are needed to ensure that the competent authorities can have more effective oversight over political advertisement online?

- a. Yes
- b. Maybe
- c. No
- d. Don't know**

Please explain your response (optional):

Political advertising online is different from offline advertising (for an analysis, please see pp. 13-14 in the SNV policy paper here: https://www.stiftung-nv.de/sites/default/files/rules_for_fair_digital_campaigning.pdf) and thus monitoring and enforcing rules for it require additional, different skills and competencies compared to offline oversight. Ensuring that existing competent authorities have adequate levels of financial resources and expert staff with diverse expertise (e.g., law, communications, economics, psychology, humanities), should be the baseline of any reform. Beyond that, it is worthwhile to consider what type of agency is necessary to properly oversee online political advertising. This is a sensitive question touching on freedom of expression and the important role of parties for democracies, in policy fields ranging from party political law to media regulation to data protection to campaign (finance) regulation.

For the German case, it has been pointed out repeatedly that the existing oversight structure for party finances is insufficient (for an overview of the debate, please see pp. 40-41 in the SNV policy paper here: https://www.stiftung-nv.de/sites/default/files/rules_for_fair_digital_campaigning.pdf). A reform could aim to create an independent body dedicated to campaign finance regulation, including (online) political advertising. The EU could recommend to member states that reforms to this end are necessary and continue to facilitate information exchange between member states. That way, member states currently undergoing reforms such as Ireland and the Netherlands can share their experiences with other governments (while acknowledging legal and cultural differences in party political considerations). Bolstering the European Coordination Network on Elections could be explored as one way to further coordinate such dialogue.

Questions on European elections

Q18. Should there be certain common rules for political ads in European Parliamentary elections?

- a. Yes
- b. Maybe
- c. No
- d. Don't know**

Please explain your response (optional):

Transparency measures such as ad disclosures/labels and ad databases should be mandatory, as explained above (see response to Q4.2). Thus, these rules should also be in place for Parliament elections for the European Parliament.

Q18.1 Which rules do you believe should be common in European Parliamentary elections (tick as many responses as you agree with).

- the period during which political ads are permitted
- the types of actor entitled to place political ads
- the types of actor entitled to fund political ads
- the amounts of money permitted to be spent on political ads in a period

- equal or proportionate access to placing political ads on social media
- platforms for the various political actors contesting an election
- the amounts of public money granted to support **smaller parties' campaigns**
- Other

Q19. Please indicate your preference

During a European election, who should be able to place a political ad (check one answer only)?

1. Any person or legal person (company or foundation), from anywhere
2. Any person (not a legal person) from anywhere
3. Any person or legal person residing in any Member State
4. Any person (not a legal person) residing in any Member State
5. Any person or legal person residing in the specific Member State the ad will circulate
6. Any person (not legal person) residing in the specific Member State the ad will circulate

Q20. Please indicate which you think should apply:

European political parties should:

1. disclose their ad spending online in real time: Yes
2. maintain examples on their website of the ads they sponsor: Yes
3. disclose the advert targeting services they use: Yes
4. refrain from using certain technologies which can be used to mislead (e.g. micro-targeting and other data-driven techniques, ad amplification, etc): Neither
5. refrain from political advertising altogether (rely on national campaigns only): No

Questions on transparency requirements

Q21. Should publishers of political ads retain certain basic information from those placing such ads?

- a. Yes
- b. Maybe
- c. No
- d. Don't know**

Q21.1. What information should be retained? (optional)

Minimum information to be retained: Identity of advertiser; exact amount paid for ad with proof; ad content

Retaining this information does not automatically mean publishing this information, but it implies that publishers/advertising platforms have some basic procedures in place to ensure they know their (business) customers.

Q21.2. What information should not be retained? (optional)

Generally speaking, all ad transparency measures, especially ad databases, should be compliant with the General Data Protection Regulation and thus safeguard individual's data.

Q22. Should service providers involved in political ads also have obligations to retain and provide information?

- a. Yes
- b. Maybe

- c. No
- d. **Don't know**

Please explain your response (optional):

Minimum information to be retained: Identity of advertiser; exact amount paid for ad with proof; ad content; ad targeting criteria; ad delivery criteria (for the last two points, see also response to Q4.2)

Retaining this information does not automatically mean publishing this information, but it implies that publishers/advertising platforms have some basic procedures in place to ensure they know their (business) customers.

Q23. Should requirements to retain information apply to all political ads, regardless whether online or offline?

- a. Yes
- b. Maybe
- c. No
- d. **Don't know**

Please elaborate your response (optional):

Transparency for paid political communication is helpful and necessary for citizens and researchers across channels, media and distribution methods. Retaining and publishing information on political ads is one way to establish transparency. As mentioned above (see response to Q17), online ads require even higher transparency standards than offline ads due to the fact that they **rely on users' personal behavioral data**.

Q24. Should all political ads be made similarly accessible:

- a. only to competent authorities by being retained for a period
- b. specifically registered with the competent authorities
- c. also to citizens, eg through a common online database or by being **retained on the advertiser's website**
- d. they should not be accessible
- e. **don't know**

Q24.2 What information should be publicly available (please indicate a response for each row)?

1. retain the ad itself
2. who placed the ad
3. the amount paid
4. on the use of targeting and amplification techniques
5. on when and where the ad appeared (where available)
6. Other

Please specify:

A tiered system could be envisioned where regulators and researchers from academia, media and civil society have access to more and/or more detailed data than the public. However, a database that is available for a long period of time and offers detailed information not only to competent authorities, but also to the public, is a necessary and justified measure, considering the breadth of personal data being used to target and deliver ads online (see response to Q17). Such transparency should apply to all online **advertising, not just "political" advertising (see also response to Q4.2)**. Databases can and should be compliant with European data protection law.

Some platforms already provide some of the information mentioned in the question on a voluntary basis. This level of transparency needs to be made legally binding and the data made available needs to be more detailed than it is now (for instance, instead of offering wide ranges of the amount paid for an ad, more specific details on the money spent is necessary; similarly, targeting and delivery criteria need to go into more detail, see response to Q4.2).

Questions on targeting and amplification

Q25. Should there be any additional limits on targeting and amplification methods, besides compliance with data protection rules?

- a. Yes
- b. Maybe
- c. No
- d. Don't know

Please explain your response (optional):

Enforcing existing EU data protection rules is a key element in ensuring fair digital campaigning, for instance, regarding explicit user consent, privacy by design and by default, and purpose limitations. Further specifying some rules on profiling and its limitations could be an additional step. There could also be heightened requirements for political advertisers and advertising platforms to carry out data protection impact assessments, at least parts of which could be made public for external experts to review.

Beyond data protection rules, other measures could be applied. There could be volume restriction on ads, **as described, for instance, by the NGO “Who Targets Me”**. This could take the form of capping the relative or absolute number of ads an advertiser can run at a given time. The goal of such a measure is to bring the number of ads back to a volume that humans can oversee and check. Quotas could vary depending on the type of campaigner and size of the electorate (for details, please see <https://whotargets.me/en/a-goldilocks-zone-for-political-ads/>).

Consideration should also be given to implementing a minimum audience size for microtargeting. Appealing to more people at once could blunt negative and purely identity-appealing advertising. There would be more opportunities for other voters and researchers to call out disinformation and engage in counter speech, for instance. Counter speech could also be encouraged if political advertisers were granted to target the same group as an ad in an ad database by a different political advertiser (e.g., one candidate being allowed to reach the same group as their opponent). This could help alleviate voter segmentation and polarization linked to political microtargeting.

Q25.1 Complete all which apply:

Should targeting and amplification methods

- 1. be banned for political ads? Maybe
- 2. be subject to a user opt-in: **you don't get them unless you opt in** Maybe
- 3. be subject to a user opt-out: you get them unless you opt out Maybe
- 4. Other Maybe

Please specify:

Please see the response to Q25 for additional measures dealing with targeting and amplification methods.

If the goal is to give users more choice, an opt-in is preferable to an opt-out requirement (for details, please see pp. 46-47 in this report: <https://edri.org/wp-content/uploads/2021/03/Targeted-online-An-industry-broken-by-design-and-by-default.pdf>).

While enhanced user controls can be useful, limiting them to targeting issues misses important aspects of this practice, as collection of personal data and profiling of citizens would still occur. User controls in the form of opt-ins should therefore be considered for data collection and use, not just targeting of ads. If less data, especially less sensitive personal data, is being collected and used for profiling, ad targeting and ad delivery might be less focused on small, homogeneous groups and thus attenuate polarization and other potential adverse effects of voter segmentation.

In addition, there is a general danger of relying too much or exclusively on opt-in mechanisms, as exemplified by opt-in consent questions on web tracking via cookies. These cookie consent questions are often misleading or use other deceptive design practices **to get users' consent, even though many users might not even read or understand everything they are consenting to.** The risk of merely creating the veneer of transparency and consent via an opt-in mechanism therefore needs to be kept in mind.

If opt-in controls are chosen as a policy option, it would be useful to consider how consent can be made informed and free and how users can be encouraged to engage with the issues the consent question addresses, i.e., what data is being used for targeted advertising. As suggested by a number of researchers in a paper (please see here: <https://graphite.page/fair-targeted-ads/>), one option to consider would be a user **“avatar” that shows what data is being used for targeting and that allow users to turn off what data and data sources can be used to advertise to them.**

Q25.2 Complete all which apply:

Should EU rules control the following other amplification methods?

1. paid for likes: Yes
2. bot software: Yes
3. paid for influencers: Yes
4. Other: Yes

Please specify:

Transparency requirements should be in place for any paid-for political messaging, which should include paying for followers, likes and networks as well as paying for influencers. Such amplification methods rely on the characteristics of online platforms, social media and search engines, which underlines again the need for specific rules for online advertising (see response to Q17).

Q26. Provided relevant data protection rules are complied with (e.g. that explicit consent to the use of the relevant data was obtained) do you think the targeting of political ads could be allowed for certain criteria (eg by geographic location, income bracket, gender, age, political affiliation, and general preferences **and interests derived from a user's online activity**)?

- a. Yes
- b. Maybe

c. No

d. Don't know

Please specify which criteria could be allowed:

If this question implies that only a small set of personal data categories should be allowed to be used by political advertisers, this would be a welcome step. Such data could be non-behavioral, demographic data such as age (to reach first-time voters, for instance, based on declared ages) and general location (for example, on the scale of electoral district based on declared location). However, it seems possible that such restrictions on targeted advertising could run afoul of non-discrimination rules guaranteed by European law, specifically Article 10 of the European Convention on Human Rights.

Nonetheless, there are some limits to targeted advertising, even though it is generally legal. The way personal data is being collected and used for targeted advertising should be scrutinized under data protection law. Better enforcement of existing data protection rules, especially on explicit consent, privacy by design and by default, and purpose limitation, is necessary (see response to Q25). In addition, limiting the use of inferred data or assumed attitudes/personal characteristics should be considered.

Q27. Please share any additional comments or remarks you may have regarding the topic of this public consultation.

Key recommendations:

- Mandate meaningful transparency for all online advertising, including ad disclosures and ad databases
- Consider heightened accountability and transparency for political advertising, for instance, restrictions on targeting, ad quotes, minimum audience sizes
- To define “political advertising”, (1) define a list of advertisers whose paid messages are considered political by default, e.g., parties and candidates, as core political advertisers, (2) define those entities with financial connections and/or speaking out on behalf of core political advertisers as peripheral political advertisers
- To cover issue ads (i.e., ads on social topics not by core or peripheral advertisers), mandate self-reporting mechanisms at the platforms
- Improve data protection law enforcement

For an in-depth discussion on how to define political advertising and what challenges arise on that question, please **see the SNV policy paper “Defining Online Political Advertising: How Difficulties in Delineating Paid Political Communication Can Be Addressed”**, which can be accessed here: https://www.stiftung-nv.de/sites/default/files/snv_definingpoliticalads.pdf

For an in-depth discussion of the potential challenges for democratic societies related to online political advertising and what policy options could be pursued in this field, please see **the SNV policy paper “Rules for Fair Digital Campaigning: What Risks Are Associated with Online Political Advertising and What Reforms Are Necessary in Germany”**, which can be accessed here: https://www.stiftung-nv.de/sites/default/files/rules_for_fair_digital_campaigning.pdf

Q28. Would you like to participate in a phone interview to further discuss the topics of this open consultation? If yes, we may contact you through the email provided in the introduction.

Yes