



The implications of the proposed EU Political Advertising Regulation for freedom of expression

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Summary

In this analysis, ARTICLE 19 reviews the proposed Regulation on the transparency and targeting of political advertising (the Proposal)¹ with the right to freedom of expression as protected under international and European human rights standards.

ARTICLE 19 acknowledges that the Proposal pursues important goals, namely the increase of transparency of political advertising and the limitation of targeting techniques related to online political advertising. These are central to the election processes but also have impact on people's fundamental rights, notably freedom of expression, the right to make political decisions, and voting rights. However, as currently drafted, the Proposal is incompatible with international freedom of expression standards:

- The Proposal **fails to meet the legality requirement and is poorly drafted**. It is unclear which obligations it intends to impose on the different types of sponsors, service providers, and publishers. The Proposal further adopts an overly expansive scope that encompasses issue-based advertising and unpaid messages thereby risking inconsistent and arbitrary interpretation by public authorities.
- The Proposal falls short of the test of **necessity and proportionality**. It effectively seeks to regulate all types of content of political or public interest nature and thus poses significant risks to political discourse, although this type of speech enjoys the highest protection under freedom of expression standards.
- The extensive scope of the Proposal **grants authorities power to scrutinise public interest messaging and could significantly impact civic space in EU Member States**. The Proposal enables authorities to exert pressure on opposition parties and civil society by claiming that they have failed to comply with the obligations in the Proposal. This risk is further increased if sponsors are subjected to sanctions, as proposed by the Council of the European Union (the Council).

¹ Proposal for a [Regulation of the European Parliament and of the Council on the transparency and targeting of political advertising](#), COM/2021/731 final. The analysis is based on the "Latest state of play of the interinstitutional negotiations", 9 May 2023, Document No. 9184/23.

- The **Proposal creates a strong incentive for online platforms to over-remove political and public interest content.** This risk is further amplified if platforms are given a mere 48 hours during election periods to act upon user notices alleging that content is in breach of the Proposal provisions. In particular, content from smaller groups which may not hold financial relevance for online platforms could be susceptible to mass-reporting by bad faith actors, threatening the removal of the formers' perspectives and opinions.

Overview

The Proposal was published by the European Commission in 2021. After consideration by the Council of the European Union (the Council) and the European Parliament (the EP), the trilogues began in March 2023.

This analysis reviews the Proposal for its compliance with international freedom of expression standards, in particular Article 19 of the International Covenant on Civil and Political Rights (ICCPR), Article 11 of the EU Charter on Fundamental Rights (EU Charter), and Article 10 of the European Convention on Human Rights (ECHR).²

In a nutshell, the Proposal lays down transparency obligations in *paid* political messaging – regarding, for example, the political nature of the advertisement or the identity of the sponsor. These transparency obligations primarily bind providers of political advertising services, including political advertising publishers.³ The Proposal also places disclosure obligations on the sponsors of political advertisements.⁴ The proposed amendments by the Council add to the number of obligations on sponsors and even seek to impose sanctions on sponsors for non-compliance.⁵ The Proposal also regulates the use of targeting and amplification techniques involving the processing of personal data for political advertising purposes (whether paid or unpaid) and imposes obligations on all data controllers – beyond only providers of political advertising services – using such techniques.⁶

Consequently, the Proposal carries potential implications for the freedom of expression of various parties, such as political advertising publishers, political candidates, or civil society organizations sponsoring advertisements, as well as online users generating unpaid political content which may encounter closer scrutiny from online platforms and regulators. For each of these right-holders, the assessment of the Proposal from a freedom of expression perspective will be different and would go beyond the scope of this analysis. Instead, ARTICLE 19 focuses on the most concerning risks to freedom of expression arising from the Proposal, namely its scope and lack of clarity, the potential for excessive removal of political expression online, and the potential for sanctions to be imposed on sponsors.

Political advertising and freedom of expression

Any interference with the exercise of the right to freedom of expression as protected by international and European human rights standards needs to comply with so-called “three-part test” set out under Article 19(3) of the ICCPR and Article 10(2) of the ECHR.⁷

In *VgT Verein gegen Tierfabriken v. Switzerland*, the European Court of Human Rights (the ECtHR) found that political advertising is an exercise of the right to freedom of expression

² Article 11 of the EU Charter corresponds to Article 10 of the ECHR. See Article 52(3) of the EU Charter.

³ The amendments of the Council and the EP to Article 2.11. of the Proposal specify that political advertising publishers also fall under the general definition of political advertising services.

⁴ Article 5 of the Proposal provides that sponsors shall declare whether the advertising service they request constitutes a political advertising service.

⁵ See the amendments of the Council to Articles 5, 6a and 16.

⁶ Article 12 of the Proposal.

⁷ See e.g. Human Rights Committee, *Belichkin v. Belarus*, Communication No. 1022/2001, UN Doc. CCPR/C/85/D/1022/2001 (2005).

under Article 10 of the ECHR.⁸ Therefore, restrictions on political advertising must:

- **Be prescribed by law:** this means that a norm must be formulated with sufficient precision to enable an individual to regulate their conduct accordingly. Ambiguous, vague, or overly broad restrictions on freedom of expression are therefore impermissible;
- **Pursue a legitimate aim:** exhaustively enumerated in Article 10(2) of the ECHR and Article 19(3)(a) and (b) of the ICCPR, including the protection of the rights or reputations of others, protection of national security, public order, public health, or morals;
- **Be necessary and proportionate.** Necessity requires that there must be a pressing social need for the restriction. The party invoking the restriction must show a direct and immediate connection between the expression and the protected interest. Proportionality requires that a restriction on expression is not over-broad and that it is appropriate to achieve its protective function. It must be shown that the restriction is specific and individual to attaining that protective outcome and is no more intrusive than other instruments capable of achieving the same limited result.

To date, the case law of the ECtHR on political advertising – which commentators have evaluated as somewhat inconsistent⁹ – has primarily dealt with broadcasting prohibitions.¹⁰ No decision on online political advertising has yet been issued.¹¹ In contrast, the Proposal does not seek to ban any particular type of advertising. Instead, it imposes obligations on different actors. Furthermore, the Proposal extends its scope to encompass both online and offline political advertising – covering advertising “*on any medium*”.¹²

Despite this, a number of the ECtHR’s judgments offer guidance for the purposes of assessing the Proposal:

- The ECtHR has consistently emphasised that political expression enjoys the highest level of protection under Article 10 of the ECHR and that there is little scope under Article 10(2) ECHR for restrictions on political speech or on debate on questions of public interest.¹³
- In *TV Vest v. Norway*, the ECtHR ruled that information “with a view to influencing voters is an exercise of freedom of political expression”, and this is so, “[i]rrespective of the fact that it [is] presented as a paid advertisement”. Paid-for political advertising is therefore afforded the highest level of protection under Article 10 of the ECHR, and the margin of appreciation regarding the necessity of its limitations is accordingly limited.¹⁴

⁸ See ECtHR, *VgT Verein gegen Tierfabriken v. Switzerland*, App. No. 24699/94, 28 June 2001, para 48.

⁹ See e.g. Dobber, T. & Ó Fathaigh, R. & Zuiderveen Borgesius, F. J. (2019), The regulation of online political micro-targeting in Europe, *Internet Policy Review*, 8(4).

¹⁰ See ECtHR, *TV Vest As & Rogaland Pensjonistparti v. Norway*, App. No. 21132/05, 11 December 2008; *VgT Verein gegen Tierfabriken v. Switzerland*, *op.cit.*; *Murphy v. Ireland*, App. No. 44179/98, 10 July 2003; *Animal Defenders International v. UK*, App. No. 48876/08, 22 April 2013.

¹¹ See European Audiovisual Observatory, *New actors and risks in online advertising*, 2022, page 15.

¹² See Recital 21 of the Proposal “Advertisements include the means by which the advertising message is communicated, including in print, by broadcast media or via an online platforms service”.

¹³ See, among many other authorities, ECtHR, *Feldek v. Slovakia*, App. No. 29032/95, 12 July 2001, para 83.

¹⁴ See *TV Vest v. Norway*, *op.cit.*, para 64.

- In *VgT Verein gegen Tierfabriken v. Switzerland*, the ECtHR found that the broadcasting prohibition in section 18(5) of the Federal Radio and Television Act which referred to “political advertising” was formulated in a way that allowed the applicant to foresee that it would also apply to the broadcasting of a commercial related to the protection of animals which, according to the ECtHR, “reflected controversial opinions pertaining to modern society in general and also laying at the heart of various political debates”.¹⁵ In *Animal Defenders International v. the United Kingdom*, the ECtHR also stated that its use of “political advertising” in the said judgment included “advertising on matters of public interest”.¹⁶
- In *Orlovskaya Iskra v. Russia*, the ECtHR examined the imposition of fines on a newspaper for failing “to indicate the name of the political party or the candidate to the State Duma who had commissioned two publications in the newspaper, with or without paying a fee”. The requirement was based on a legislation which subjected the expression of comments to the regulation of “campaigning”. The ECtHR highlighted that it was necessary in its assessment to draw a distinction between paid-for political advertising and ordinary journalistic coverage. It further pointed to the impossibility of “ascertain[ing] whether [a piece of] content in relation to a candidate should be perceived as a mere “negative comment” or whether it had a “campaigning” goal”.¹⁷

Primary concerns with the Proposal from a freedom of expression perspective

In its current form, the Proposal presents several significant risks to freedom of expression:

1. *The Proposal lacks clarity and does not meet the legality requirements*

The Proposal covers online and offline political advertising and does not restrict its applicability to electoral periods. The definition of “political advertising” in Article 2.2 of the Proposal is particularly concerning.¹⁸ Article 2.2 of the Proposal defines “political advertising” as:

The preparation, placement, promotion, publication or dissemination, by any means, of a message (a) by, for, or on behalf of a political actor, unless it is of a purely private or a purely commercial nature; or (b) which is liable to influence the outcome of an election or referendum, the legislative process or voting behaviour.

The language used in Article 2.2 – in particular under 2.2(b) – effectively covers all messages that involve political speech or matters of public interest, such as abortion, animal protection, or human rights. This interpretation is explicitly recognised in Recital 17 of the Proposal, which provides that “messages on societal or controversial issues may, as the case may be, be liable to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour”. While the European Parliament and Council have made amendments to

¹⁵ *VgT Verein gegen Tierfabriken v. Switzerland*, *op.cit.*, para 57.

¹⁶ *Animal Defenders International v. UK*, *op.cit.*, para 99.

¹⁷ ECtHR, *Orlovskaya Iskra v. Russia*, App. No. 42911/08, 21 February 2017, paras 15, 94, 120, and 128.

¹⁸ See also Susanna Lindroos-Hovinheimo, [The Proposed EU Regulation on Political Advertising Has Good Intentions, But Too Wide a Scope](#), 22 February 2022; Joan Barata, [Regulation of online political advertising in Europe and potential threats to freedom of expression](#), 9 March 2023; Max van Drunen et. al, [The EU is going too far with political advertising!](#), 16 March 2023.

Article 2 and the relevant Recitals,¹⁹ they do not limit the scope of Article 2.2 in any meaningful way and at times even seem to broaden it.²⁰

Furthermore, the Proposal's definition of "political advertising" does not contain a requirement for the content to be paid for, thereby expanding the term well beyond the conventional understanding of what "advertising" means. This broad interpretation is counterbalanced by different provisions and Recitals,²¹ which appear to limit most of the Proposal's obligations to paid content. Overall, it is unclear which obligations the Proposal seeks to establish for unpaid political "advertising". In an important attempt to limit the Proposal's scope, the EP put forward amendments to clarify that the Proposal's application is limited to economic services.²² By contrast, the Council explicitly states that the restrictions on targeting and amplification techniques should apply "regardless of whether the political advertising involves a service or not",²³ bringing any sort of political expression – including unpaid expression - by political candidates, civil society organisations, or any other individuals within the Proposal's scope.

The Proposal fails to meet the legality requirement as required by the ICCPR, the EU Charter, and the ECHR. In its present form, it lacks clarity, not least due to its poor drafting. For example, the distinction between "political advertising" and "political advertising service", and the separate legal obligations assigned to these concepts in Chapter II and Chapter III respectively, is highly unclear and ambiguous. The inclusion of various exemptions from the Proposal's scope for specific types of unpaid political messages further contributes to the overall confusion. This lack of clarity, coupled with the Proposal's broad scope that encompasses issue-based advertising and unpaid messages, confers a wide discretion on public authorities and renders it susceptible to inconsistent and arbitrary interpretation.

To meet the legality requirement, both the lack of clarity and the Proposal's overly broad scope need addressing. The Proposal should aim to clearly and precisely define its scope and the obligations it imposes on the different parties involved in political advertising. The next section will discuss how the scope should be limited from the perspective of necessity and proportionality.

2. The Proposal is overbroad in its scope and does not meet necessity and proportionality requirements

The Proposal further fails to meet the necessary and proportionate requirements of the three part test on permissible restrictions of freedom of expression.

¹⁹ For example, the Council added language requiring a "substantial link" between the message and its potential to influence voting behaviour.

²⁰ For example, the European Parliament added language to Recital 17 that "the public opinion on societal or controversial issues at Union, national, regional, local or at a political party level" should also constitute political advertising and states in Recital 17(b) that commercial advertising may in some cases also be covered by the regulation if based on any type of "purpose-driven engagement" such as actions in the field of corporate social responsibility.

²¹ For example, the transparency obligations of the Proposal are applicable to paid political advertising only. In contrast, the Chapter III, which regulates the use of targeting or amplification techniques involving the processing of personal data for political advertising purposes, relies on the definition in Article 2.2. See for further Recital 16 which provides that messages by or on behalf of a political actor of "purely private or purely commercial nature", or Recital 19 according to which political views expressed in the programmes of audiovisual linear broadcasts or published in print media without direct payment or equivalent remuneration are not covered by the Proposal.

²² See its amendments to Article 1 of the Proposal.

²³ See the Council's proposed amendments to Recital 49.

ARTICLE 19 acknowledges that the Proposal may overall be pursuing a legitimate aim. The ECtHR has for instance accepted that transparency of elections and the voters' right to "impartial, truthful and balanced information via mass media outlets and the formation of their informed choices in an election"²⁴ may constitute such legitimate aim.

However, keeping in mind that "there is little scope under Article 10(2) ECHR for restrictions on political speech or on debate on questions of public interest"²⁵, the restrictions imposed by the Proposal on such forms of speech and the significant risk it poses to political discourse and content pertaining to public interest matters means that it fails in meeting these heightened requirements. The Proposal could indeed present significant challenges for civil society organisations and individuals engaging in public discourse.

The challenges are twofold. Firstly, they stem from the transparency obligations that the Proposal imposes on sponsors and the requirements it establishes regarding "targeting or amplification" techniques.²⁶ Secondly, the Proposal grants public authorities a potent tool to scrutinise all forms of political expression, whether paid or unpaid, for compliance with the regulation (and potentially under the pretext of ensuring such compliance).

Regarding the transparency obligations – which apply only to paid content - civil society organisations would be required, for example, to assess each advertisement to determine if it could potentially influence voting behaviour. This would mean that the advertisement would fall under the transparency requirements outlined in the Proposal, which introduces new rules for offline advertising at the EU level and which adds granularity – in particular regarding the source of funds used for the advertisement²⁷ - to the transparency requirements for advertising on online platforms in the Digital Services Act (DSA).²⁸ This assessment process would also involve determining if the advertisement could be regarded by platforms or regulators as linked to a specific election or referendum and thus information would have to be included to reflect that connection. This could result in increased administrative burden and higher costs that could prove problematic for smaller actors. It would also generally increase the risk of civil society organisations being perceived as partisan actors. Moreover, the lack of clarity regarding the specific obligations under the Proposal may deter political advertising services from collaborating with civil society organisations.

Regarding the requirements on targeting and amplification techniques – which apply to both paid and unpaid content - the Proposal prohibits the processing of special category data unless certain conditions are met²⁹ and imposes an obligation on data controllers to carry out a series of administrative action when and after targeting users using their personal data – for example to adopt and implement an internal policy describing the techniques used to target individuals

²⁴ See, e.g. *Orlovskaya Iskra v. Russia*, *op.cit.*, para 104.

²⁵ See *Feldek v Slovakia*, *op.cit.*, para 83. See similarly, among many other authorities, ECtHR, *Lingens v Austria*, App. No. 9815/82, para 42; *Castells v Spain*, App. no. 11798/85, para 43; *Wingrove v United Kingdom*, App. No. 17419/90, para 58.

²⁶ See Article 2.8. of the Proposal. See in this context also EPD, [Targeting and amplification in online political advertising](#), advocating for an alternative approach that considers 'targeting' and 'amplification' separately.

²⁷ According to Recital 39 of the Proposal, "information on the source of the funds used concerns for instance its public or private origin, the fact that it originates from inside or outside the European Union".

²⁸ See Article 26 of the DSA.

²⁹ Article 12.1 and 12.2 of the Proposal.

or amplify content.³⁰ Keeping in mind the Court of Justice’s expansive interpretation of the notion of data controller – and which may for example cover a user who administers a Facebook Group or Page³¹ – this provision is liable to imposing administrative obligations on civil society organisations or even private individual users running Facebook with entirely unpaid political content who may for instance be considered to apply “targeting or amplification” techniques. It is easy to imagine how this could stifle online civic space not least due to the increased compliance risks associated with these provisions.

Both the transparency obligations and the obligations on data controllers under Article 12 are in themselves problematic from a necessity and proportionality standpoint if applied to civil society actors. As explained earlier, political expression from these (and other) actors is afforded the highest protection under freedom of expression standards. Furthermore, there must be a pressing social need for the restriction. While there are valid reasons for imposing obligations along the lines of those in the Proposal on political parties and candidates, the same pressing social need does not apply when it comes to regulating activities of civil society actors. In addition, any potential benefit from such regulation needs to be weighed against the significant damage it could inflict on civic space.

Indeed, the most dangerous aspect of the Proposal irrespective of the specific obligations and administrative burdens it may impose, is that its extensive scope would create a powerful tool in the hands of public authorities to scrutinise all public interest messaging and to exert additional pressure on opposition parties or civil society organisations given the difficulty of proving that an advertisement is not liable to influence voting behaviour. The ECtHR observation in *Orlovskaya Iskra v. Russia* – albeit made in a journalistic context – highlights the difficulty of distinguishing between mere criticism and content with a campaigning objective and underscores the challenges civil society may face when confronted with allegations of non-compliance.³² As elaborated in the next session, the Proposal further creates strong incentives for online platforms to over-remove political speech.

The Proposal’s objective to address potential loopholes and encompass activities of all groups seeking to influence elections may be well-intentioned but responding with a regulatory approach that aims to control all forms of political speech, by all types of actors, is neither necessary nor proportionate. Such an approach would indeed be counterproductive, as freedom of expression and an open civic space are key to limit the impact of disinformation campaigns. In addition, imposing obligations on unpaid political expression, as envisaged in Article 12 of the Proposal, results in an excessively broad scope of application of this provision which lacks any justifiable pressing social need to support it.

To align the Proposal with the necessity and proportionality requirements under international freedom of expression standards, two key changes are thus necessary. First, the scope of the Proposal should exclude issue advertisements. Secondly, the application of the Proposal should be explicitly limited to paid messages.

3. The Proposal incentivises platforms to over-remove political speech

The Proposal provides that political advertising publishers, including online platforms, must

³⁰ Article 12.3 of the Proposal.

³¹ C-210/16 Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein v Wirtschaftsakademie Schleswig-Holstein GmbH ECLI:EU:C:2018:388.

³² *Orlovskaya Iskra v. Russia*, Application no. 42911/08, 21 February 2017, paragraphs 15, 94, 120, and 128.

label political advertisement as such and include a transparency notice that contains information such as the identity of the sponsor and the funding sources of the advertisement. The Proposal additionally mandates publishers under the threat of sanctions³³ to ensure that political advertisements are correctly identified and that they contain all required transparency information. Otherwise, they are required not to make the political advertisement available.³⁴

In addition, publishers have to put in place mechanisms for individuals to report a “possibly unlawful political advertisement”.³⁵ The Proposal refers to the notice-and-takedown mechanism for allegedly illegal content under Article 16 of the DSA and states that in case the advertising publisher is an online hosting service provider, the DSA’s notice-and-takedown mechanism shall “continue to apply for notifications concerning non-compliance of [political] advertisements with the regulation”.³⁶ Said notice-and-takedown mechanism is linked to the concept of conditional immunity from liability for hosting providers under Article 6 of the DSA under which providers may lose their immunity if they fail to expeditiously remove or disable access to the illegal content following a notice of illegality. And indeed, the Proposal appears to expand the categories of “illegal content” under the DSA by including any content that does not comply with the political advertising regulation.³⁷

The European Parliament and Council have proposed amendments that add additional detail to the relevant provisions. For example, both amendments require sponsors to be contacted – and given the opportunity for correction – as part of the assessment process. In addition, the amendments provide that in the month preceding an election or a referendum, large publishers³⁸ would be required to process user notices within 48 hours.³⁹

ARTICLE 19 has long maintained that mechanisms which effectively outsource the decision of whether users’ speech is legal or not to private companies are concerning from a freedom of expression perspective as only independent public authorities should be given the power to make such a determination.⁴⁰ The potentially severe sanctions under both the Proposal⁴¹ and the DSA will further create a strong incentive for companies to over-remove what they suspect to be in breach of the regulation.

This is particularly problematic, given the exceptionally broad scope of the Proposal, its lack of clarity and the previously mentioned challenge of determining whether a specific piece of content has been paid for or is “liable to influence” voting behaviour.

The 48 hours-window to address user notifications in the month before an election proposed

³³ Article 16 of the Proposal.

³⁴ Article 7 of the Proposal.

³⁵ Article 7 of the Proposal.

³⁶ Recital 45 of the Proposal.

³⁷ *Ibid.*

³⁸ While the Council amendments refer to very large online platforms as defined in the DSA, the EP amendments impose the time limit on all publishers “with the exception of publishers that are micro and small enterprises”.

³⁹ See EP Article 9.3.a; Council Article 9.3.b.

⁴⁰ See for example ARTICLE 19’s [recommendations](#) for the DSA which envisaged a notice-to-notice mechanism for private disputes as well as a requirement for service providers to notify law enforcement agencies of allegations of serious criminality.

⁴¹ See Article 16 of the Proposal. The amendments of the Council suggest a maximum amount of the financial sanction of up to 4% of the service provider’s annual turnover. The DSA provides for fines of up to 6% of the annual turnover.

by the EP and the Council increases the problem further and should be abandoned. Determining elements such as the actual identity of the sponsor of an advertisement or the entity ultimately controlling the sponsor might well require some investigatory steps that cannot be accomplished within 48 hours. It also does not give sufficient time to sponsors to correct or substantiate the information provided.

Finally, it is unclear how the 48 hours timeframe would relate to the obligation that the DSA places upon service providers to “act expeditiously” when obtaining knowledge of illegal content. The amendments appear contrary to Recital 32 of the Proposal which states that “the requirements of [the Political Advertising Regulation] leave unaffected the provisions of the Digital Services Act”.

Overall, there is a serious risk that political expression on online platforms will be removed despite enjoying the highest level of protection under freedom of expression standards, notably during election periods. In particular, content from smaller groups which may not hold financial relevance for online platforms could be susceptible to mass-reporting by bad faith actors, threatening the removal of the formers’ perspectives and opinions.

4. *The Proposal should not impose sanctions on sponsors*

The ECtHR has long held that excessive sanctions alone, even where speech may legitimately be sanctioned in accordance with Article 10(2) of the ECHR, may breach the right to freedom of expression, in part because of the chilling effect of such sanctions.

The Council has put forth a number of amendments to the sanctions provision in Article 16 of the Proposal, which mandates Member States to establish rules regarding sanctions applicable to providers of political advertising services. The proposed amendments by the Council expand the scope of Article 16 to also subject sponsors of political advertisements to sanctions if they fail to comply with certain obligations, including to truthfully declare that the advertisement in question is political, to make corrections on the information required for the transparency notice, or to communicate the relevant information to the political advertising publishers in a timely, accurate and complete manner.⁴²

This is deeply problematic, not least due to the Proposal’s failure to meet the legality requirement. The Proposal’s lack of clarity and overbroad scope makes it challenging for sponsors to fully understand the extent of their obligations and under what circumstances they could thus be subjected to sanctions. In addition, the Proposal fails to clearly indicate the specific conduct that might lead to sanctions, or whether intent is a prerequisite, leaving the responsibility to legislate – and a considerable discretion in doing so – to Member States.

As pointed out in a letter by ARTICLE 19 and more than 30 other civil society organisations, sanctions should be limited to providers of political advertising services. Subjecting sponsors to sanctions could have an important deterrent effect on civil society organisations and other political actors – in particular smaller ones – to use advertising services, thereby “reducing the means with which they can reach the public and contributing to further risks of the acceleration of closing space for civil society in Europe”.⁴³

⁴² Council amendments to Article 16 of the Proposal.

⁴³ [Civil society letter](#) on the Council’s proposed general approach to the Regulation of Political Advertising, signed by ARTICLE 19 and 33 other organisations, 28 October 2022.

Conclusion

The intentions behind the Proposal, namely to enhance democratic processes by introducing greater transparency in elections and imposing limitations on the methods employed in targeted online political advertising, are good. Of particular promise are the extensive restrictions on political microtargeting suggested by the European Parliament, namely the prohibition of processing observed or inferred personal data for political advertising purposes. However, it is crucial that the risks to freedom of expression highlighted in this brief be addressed. Failure to do so will inevitably lead to censorship of political speech and could significantly limit civil society's ability to operate.

About ARTICLE 19

ARTICLE 19 advocates for the development of progressive standards on freedom of expression and freedom of information at the international and regional levels, and their implementation in domestic legal systems. The Law and Policy team has produced a number of standard-setting publications which outline international and comparative law and best practice in areas including digital technologies and freedom of expression and access to information. On the basis of these publications and ARTICLE 19's overall legal expertise, the organisation publishes a number of legal analyses each year, comments on legislative proposals as well as existing laws that affect the right to freedom of expression. This analytical work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation.

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