

INCEPTION IMPACT ASSESSMENT

Inception Impact Assessments aim to inform citizens and stakeholders about the Commission's plans in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

TITLE OF THE INITIATIVE	<i>Proposal for an initiative on greater transparency in sponsored political content, and other supporting measures</i>
LEAD DG (RESPONSIBLE UNIT)	JUST
LIKELY TYPE OF INITIATIVE	<i>Legislative and non-legislative</i>
INDICATIVE PLANNING	Q3 2021
ADDITIONAL INFORMATION	-

The Inception Impact Assessment is provided for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the Inception impact assessment, including its timing, are subject to change.

A. Context, Problem definition and Subsidiarity Check

Context

As announced in the political guidelines of President von der Leyen, the Commission Work Programme 2021¹ includes a proposal for greater transparency in sponsored political content ('political advertising') for Q3 2021. The [European Democracy Action Plan](#) recognises the need for more transparency in political advertising and communication, and the commercial activities surrounding it, in order for citizens, civil society and responsible authorities to be able to see clearly the source and purpose of such advertising. The European Democracy Action Plan indicated that the Commission will adopt support measures and guidance for political parties and Member States alongside a legislative proposal².

This initiative builds in particular upon the relevant experience obtained by the Commission, other EU institutions and the Member States in the context of promoting free and fair elections in the EU³, and in combatting disinformation and other forms of information manipulation and interference in democracy in the EU⁴.

This initiative addresses all actors involved in financing, preparing, placing and disseminating political advertising (such as political and marketing consultancies and advertising and campaign organisations) and complements the proposal for the Digital Services Act⁵, which includes certain general transparency obligations for online

¹ https://ec.europa.eu/info/publications/2021-commission-work-programme-key-documents_en,
² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A790%3AFIN&qid=1607079662423>
³ In particular through the implementation of the Commission's September 2018 electoral package (https://ec.europa.eu/commission/presscorner/detail/en/IP_18_5681) which is described in the Commission's report on the 2019 elections https://ec.europa.eu/info/sites/info/files/com_2020_252_en_0.pdf and https://ec.europa.eu/info/sites/info/files/swd_2020_113_en.pdf
⁴ guided by the Action Plan against disinformation (https://eeas.europa.eu/headquarters/headquarters-homepage_en/54866/Action%20Plan%20against%20Disinformation) reported on in the Commission and High Representative's joint Communication, "tackling COVID disinformation" (https://ec.europa.eu/info/sites/info/files/communication-tackling-covid-19-disinformation-getting-facts-right_en.pdf), and in the Commission's assessment of the first year of operation of the self-regulatory Code of Practice on Disinformation (<https://ec.europa.eu/digital-single-market/en/news/assessment-code-practice-disinformation-achievements-and-areas-further-improvement>).
⁵ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12418-Digital-Services-Act-package-ex-ante-regulatory-instrument-of-very-large-online-platforms-acting-as-gatekeepers> and <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12417-Digital-Services-Act-deepening-the-Internal-Market-and-clarifying-responsibilities-for-digital-services>

intermediaries as regards the transparency of online advertising, and the wider EU framework for the digital services market⁶. It will cover both online and offline activities. It is also closely related to the work being done on the other initiatives in the transparency and democracy package of the Commission Work Programme.⁷

The organisation of elections in the EU is largely regulated at Member State level, and there are a variety of national laws affecting political advertising and communications, including on their transparency. There is also a significant body of EU law relevant in this context. This includes EU data protection rules⁸, the framework regulation on the screening of foreign direct investment⁹, and in the context of European parliamentary elections, also the 1976 European Electoral Act¹⁰ and the regulation on the statute and financing of European Political Parties and Foundations¹¹.

Partisan or political advertising is defined variously in the Member States. In some Member States, political advertising may only be placed by certain actors (e.g. political parties and candidates) and is strictly regulated, for instance as regards the period during which they may be disseminated. Other advertising with more general political messages, aims or effects (i.e. regarding more general political issues such as the environment or migration – ‘issues ads’) is also placed, including by other actors (such as interest groups, companies, civil society, citizens but also political parties) and during other periods than in the context of an election. The current impact assessment and the related consultation process will explore relevant definitions and assess the scope of any envisaged measures.

This inception impact assessment and the Commission’s subsequent impact assessment will build on the significant market and regulatory evaluation and evidence collection already done in connection to the Digital Services Act package and in the preparation of the European Democracy Action Plan¹². The Commission will also draw on the work of the European Cooperation Network on Elections, including its mapping of relevant national laws and procedures, as well as the report on the 2019 European elections, in particular to inform the evaluation of the status quo.

This inception impact assessment sets out a preliminary problem analysis and an initial range of possible options.

Problem the initiative aims to tackle

Political advertising and the services related to its financing, preparation, placement and dissemination, involve a number of different types of service providers, including political consultancies, advertising and marketing agencies, data brokerage and analysis firms, broadcast, print and other media companies (including online intermediaries), and banks and political and other organisations and foundations. Political actors including elected officials, candidates, political parties (including European political parties) and campaign organisations are the typical end-users of political advertising. Other actors, such as political party foundations, lobby organisations or other groups, also place, commission, finance and promote such adverts.

Political advertising and related services can be conducted across borders within the single market. They can involve actors from outside the EU. The activities of these actors are regulated on the basis of diverse rules, many of them national. These rules, relevant to political advertising, diverge in their scope, content and effect, and they involve a range of competent oversight bodies and authorities, including data protection, media regulators, electoral authorities, financial regulators and professional oversight bodies, for instance for advertising.

Relevant rules include transparency requirements such as for the labelling of political advertising, identification of the person or body placing the advert, registration or retention of adverts for public inspection, and disclosure of other information including the amounts spent, at least to a responsible or oversight authority. Other rules include prohibitions of political adverts during certain periods, limitations as to their content or circulation, and limitations as to the persons or bodies permitted to finance their placement.

Some of these rules cover only broadcast advertising or physical media, some include online advertising and relevant online activity. Oversight is equally heterogeneous in its scope and substance, and in many cases has not kept pace with innovation online.

Online political advertising brings its own additional problems. It can be circulated more easily outside of electoral and campaign periods. The speed and efficiency of online political ads means that its reach and scope, and hence the reach and scope of any associated negative impact, such as if an ad is manipulative or untruthful, can be very

⁶ This includes non-binding recommendations on tackling illegal content online <https://ec.europa.eu/digital-single-market/en/news/commission-recommendation-measures-effectively-tackle-illegal-content-online>; as well as a voluntary Code of Conduct against Hate Speech https://ec.europa.eu/newsroom/just/document.cfm?doc_id=42985

⁷ https://ec.europa.eu/info/sites/info/files/2021_commission_work_programme_annexes_en.pdf

⁸ Mainly [the General Data Protection Regulation \(GDPR\)](#) and [the Data Protection Law Enforcement Directive](#); see also https://ec.europa.eu/info/law/law-topic/data-protection/data-protection-eu_en

⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R0452>

¹⁰ <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A01976X1008%2801%29-20020923>

¹¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R1141-20190327>

¹² https://ec.europa.eu/info/files/report-public-consultation-european-democracy-action-plan-edap_en

large. New techniques to amplify and microtarget political advertising online vastly increase this potential impact. Furthermore, in the online environment, it is often difficult to recognise paid-for political material and distinguish it from other political content, not least because it can often appear as 'organic' content shared or created by other users. To address issues with the regulatory framework in political advertising and related activities, in particular online, some Member States have recently enacted, or are preparing legislation.

Recent elections, including the 2019 European parliamentary elections, have provided indications that online advertising and some dynamics associated with the overall digitalisation of political campaigning can have negative impacts on electoral processes and on the democratic debate. Disinformation is on the rise and attempts to interfere in elections and manipulate the democratic debate have intensified. Political advertising is one way that disinformation and other manipulated information, and divisive and polarising narratives can be disseminated, directed and amplified, and through which interference can be achieved. This has created new challenges for citizens, relevant political and private sector actors and the competent authorities.

The problems concern the following broad issues:

1) Problems related to cross-border differences in the relevant rules:

- **Legal uncertainty:** The cross-border potential of political advertising and related services, in particular online and in the context of a European elections, means that national measures cannot be completely effective, and leave gaps and uncertainty. Recent action by individual Member States to clarify relevant activities online and offline has added to the fragmentation of the internal market, which, combined with the absence of a common EU framework, erects obstacles to cross-border activity and leaves political actors and service providers exposed to risks. A lack of legal certainty can also be a barrier for less well-resourced political actors (political parties, campaign organisations, candidates and for citizens more widely) to access the debate. This undermines accountability and the incentives for parties to comply with high standards in their use of political advertising and how it is financed.
- **Regulatory fragmentation:** resulting in certain undertakings refraining from offering services within the internal market, including in the context of European elections. These divergences also create an uneven playing field for relevant service providers established in the Member States, and may place them at a disadvantage to service providers established outside the EU. Certain online intermediaries have attempted to address challenges related to online political advertising – including the compliance issues related to the fragmentation of the internal market – through their terms of service, for instance by refraining from providing services to actors established in another Member State, or from providing services for use in more than one Member State. Certain policies adopted by private sector actors are thought to have been incompatible with national relevant rules, or to have affected communications permitted by national rules. By taking such actions, private actors can become, in particular if they are gateway intermediaries, de facto enablers and/or quasi-regulators of political ads. These efforts are felt to have been ineffective, inconsistent and implemented non-transparently, and have had the effect of partitioning the internal market or otherwise undermining its functioning.
- **Costs and obstacles for economic actors wishing to trade across borders:** the diverse existing national regulatory context presents administrative and compliance obstacles to the freedom to provide relevant services within the internal market. The absence of harmonised rules and obligations results in the fragmentation of the single market that can negatively affect EU citizens and businesses seeking to use and provide relevant services. It can also hinder national service providers' ability to scale up their activity to the EU level.

2) Problems related to regulatory gaps and outdated rules in some Member States, affecting their scope, substance and enforcement:

- **Difficulties for national authorities to monitor and enforce relevant rules:** resulting from a lack of capacity, resources, awareness, capability and access to the online environment on the part of the competent authorities, as well as from relevant rules not being applicable online, or from a lack of the requisite powers to monitor and enforce safeguards in this context, especially across borders. Difficulties with the application of relevant rules online can also contribute to a number of further issues, including the use of financing to conduct political advertising in multiple Member States or across borders which might not be properly declared to the competent authorities, or which might be from sources which contravene relevant rules in certain Member States. Financing for political advertising is also generated online through anonymous donations or monetised content, which again might contravene relevant rules.
- **Outdated and inconsistent regulatory framework:** areas of the existing regulatory framework established nationally are not adapted to cross-border situations and the online environment. This contributes to legal uncertainty and deficiency in the respect of relevant rules. New techniques have emerged in this context which enable political adverts to be tailored to a citizen's or a group of citizens' specific profiles (causing problems which go beyond the proper use of personal data), and to be artificially amplified and directed online. They can be used for fostering divisive and polarising narratives, and leaving room for citizens to be manipulated and misled. It can also be difficult to identify official (often

sponsored) information about the details of elections, such as timing. Novel forms of offline advertising have also been observed, such as free “newspapers” disseminating COVID-19 related disinformation and anti-vaccination campaigns.

- **Misleading cross-border political advertising:** non-enforcement of relevant rules combined with regulatory inconsistency results in political advertising which is not properly notified to the competent authorities. This can mislead or manipulate citizens, and in other ways not comply with relevant national party and campaign financing rules or other standards, such as with respect to silence periods or content rules. It prevents journalists, civil society organisations and other relevant stakeholders from investigating expenditure in political campaigning and ensuring that the participants are held to account. It makes it difficult for citizens to recognise political advertising or paid for messages, and to distinguish them from news reporting or other type of online content, such as content which is created or shared ‘organically’ by other users. It enables citizens to be misled, restricts their freedom to make informed, un-coerced decisions, and undermines their confidence in political information. There is also a lack of awareness among citizens and other relevant actors about the techniques used in the dissemination of political adverts, how they work (e.g. increased use of personal data) and how to guard against their impact.

These issues can negatively affect the internal market in political advertising and democratic processes in Europe.

European political parties are subject to EU law, which in Regulation 1141/2014 includes provisions regarding the financing of campaigns in the context of elections to the European Parliament. Beyond that, many aspects of the political advertising activities conducted by European political parties (and the EU institutions) are not currently covered by EU law, and are subject to relevant national rules, which are divergent, at times incompatible and difficult to apply to EU level activities. This has been experienced as an obstacle to EU-wide campaign activity in the context of EU elections therefore hindering the development of the European dimension of European parliamentary elections. The lack of clarity regarding relevant national rules and the **absence of European standards for transparency in political advertising applicable to European parties** (and the monitoring and enforcement of such standards) also makes it challenging for them to implement a high standard of transparency and to run cross-border campaigns to promote the European dimension of the European parliamentary elections.

Basis for EU intervention (legal basis and subsidiarity check)

This initiative would be based on the competence to adopt measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their objective the establishment and functioning of the internal market under Article 114 TFEU. Insofar as it may be necessary to lay down regulations governing political parties at European level, this will be done under Article 224 TFEU. The initiatives envisaged affect a shared competence of the Union and the Member States. The need to adopt measures under Article 16 TFEU to ensure the protection of personal data will be considered.

Given the inherently cross-border nature of the relevant activities – particularly online political advertising and its financing, and the digitally supported dissemination techniques used in its preparation and dissemination – there are significant challenges to purely national regulation in this domain. It is unlikely that Member States acting independently would be able effectively to achieve the objectives set out below. In general, issues related to elections are governed by rules applicable only within a particular jurisdiction, though there is a body of EU law applicable in European Parliamentary elections, as well as to the single market for digital services, and on data protection. Compliance with the traditional national rules linked to political campaigning can be challenging in the online context. National rules may be difficult to enforce or be ineffective across borders, while competent authorities do not always have the powers and means to consider activities outside their jurisdiction.

As regards subsidiarity and proportionality, the initiative should only address activities where EU action appears necessary for the good functioning of the internal market and to specify the transparency requirements for European Political parties.

B. Objectives and Policy options

The **general objectives** are to:

- i. facilitate the provision of cross-border advertising and related services in the EU by providing for some common rules for the transparency of political advertising and defined requirements for economic operators, and other actors active in this market, to remove barriers resulting from the current regulatory context, where the relevant laws of the Member States are insufficiently clear, uniform and effective, where law-making continues to be divergent, and where private actors have been able to partition the internal market.
- ii. support resilient and fair democratic processes through the promotion of transparency as a driver of accountability and effective oversight;
- iii. specify common requirements for European political parties (and EU institutions) for political advertising and related activities.

Specific aims of the options under assessment are to:

- i. reduce costs and barriers to the cross-border provision of political advertising services;
- ii. improve legal certainty;
- iii. promote a level playing field for all relevant economic operators;
- iv. support the monitoring and enforcement of relevant rules. This concerns for instance rules governing expenditure, equality between candidates (e.g. regarding parity of resources and airtime during election campaigns), silence periods, the nature of participants (e.g. third-country corporate entities), the profiling and targeting of voters, the periods during which ads are permitted, and the modernisation of these rules to take into account the digitalisation.
- v. promote stronger transparency and compliance with relevant rules (including regarding financial or material political contributions) among economic actors involved in the preparation, placement, dissemination and financing of political adverts and discourage covert or otherwise manipulative interference in these activities, reducing the opportunities for citizens to be misled or misinformed, including as regards key information on electoral processes;
- vi. promote transparency in political campaigning among political actors, including European political parties, and their accountability in the use of political adverts;
- vii. strengthen the European dimension of European parliamentary elections through the establishment of clearer rules for cross-border political advertising;
- viii. reduce the potential for disinformation, manipulative techniques and other misuses of political advertising, and promote the ethical use and dissemination of political advertising.
- ix. promote public awareness of political advertising, the techniques associated with it and the applicable rules governing it.

Different options will be considered and analysed in the impact assessment against the background of the baseline scenario and the aims set out above.

In the **baseline scenario** current trends continue: political activity moves increasingly online and technology is used ever more intensively to produce, disseminate, target and fund communications with a political purpose, making cross-border service provision an emerging market, including in the context of European elections. At the same time, the move online causes relevant national rules to become increasingly difficult to monitor and enforce, and Member States will respond with diverging national solutions aiming to increase transparency and the possibility for oversight. Private actors will also continue their efforts to control their compliance risks in this context through practices which have the effect of partitioning the internal market in relevant services. Left unchecked, the regulatory environment will thus continue to fragment, the provision of services between Member States will be reduced, in particular for smaller enterprises, and regulation, including private-sector self-regulation, will not maintain its effectiveness. The problems outlined above affecting political advertising will continue to evolve, including as regards the power of citizens to inform themselves regarding political advertising, and hold political actors to account.

In the baseline, the evolution of the *status quo* will be also be affected by a series of measures in the Digital Services Act, once adopted, notably with regard to broader transparency obligations on all types of online advertising on online platforms, as well as the risk management and auditing obligations on very large online platforms with regard to their advertising systems and their impacts and risks on electoral processes and fundamental rights. The baseline also includes positive effects from the implementation of the proposals set out in the European Democracy Action Plan, which includes the strengthening of the Code of Practice on Disinformation¹³. Ongoing development of the monitoring and enforcement of EU data protection rules will continue, including following recent Guidelines of the European Data Protection Board on the targeting of social media users¹⁴.

Three main options will be considered against the baseline:

1. **soft law measures to promote and clarify** the currently applicable EU and national frameworks on the basis of recommendations and potentially professional and industrial codes and standards:
 - a. increase the implementation of the Commission's 2018 electoral package and in particular the Recommendation on transparency and combatting disinformation, including strengthening the sharing of best practice in the framework of the European Cooperation Network on Elections and its links to other relevant structures including the Rapid Alert System on disinformation and the Network and Information Security Cooperation Group;

¹³ Under Pillar 3 of EDAP, the Commission will issue guidance to strengthen the Code of Practice on Disinformation in spring 2021 and will subsequently convene the signatories of the Code of Practice and relevant stakeholders groups to strengthen the code according to the guidance.

¹⁴ https://edpb.europa.eu/sites/edpb/files/consultation/edpb_guidelines_202008_onthetargetingofsocialmediausers_en.pdf

- b. strengthen the implementation of the commitments set out in the Commission's report on the 2019 European elections and the Action Plan against Disinformation;
- c. New soft-law measures to promote the aims of the initiative, such as through:
 - i. codes of conduct applicable to other actors in the political advertising process (for instance political parties) to conduct campaigning fairly and, for example, limit the number of ads, or the targeting methods used, and support for the development professional standards and industry self-regulation contributing to enhanced transparency/accountability;
 - ii. funding e.g. to support capacity building, pooled resources, and joint exercises; as well as to support citizens getting transparent information (and being better informed) on political communications (including with better tools to deal with techniques like microtargeting), to participate in the political debate, hold actors to account, and to form political decisions un-coerced;
 - iii. information campaigns directed to citizens and to relevant groups, such as journalists, to increase media literacy and raise awareness on political advertising and the techniques associated with it;
 - iv. recommendations to Member States to support transparency, accountability and oversight, for instance by updating rules and investigatory powers, converging relevant rules and cooperating in monitoring and enforcement across borders;
 - v. recommendations to European and national political parties and foundations to adopt practices which support transparent political advertising, in its financing, preparation, placement and dissemination.
- d. Parties and campaigners could also voluntarily promote greater transparency in political advertising and meaningful, timely financial disclosure standards.

2. **targeted legislation to increase transparency** and establish the same standard for economic operators across the Union engaged in the preparation, placement, dissemination and financing of political advertising within the internal market, and to support the oversight of this standard, by introducing:

- a. Common definitions of certain key terms, such as political and issues-based advertising;
- b. An obligation to provide a minimum standard of specific transparency, tailored to all the various relevant economic actors (including those not in direct contact with citizens, and those not established in the EU). It would include complementary obligations to those addressed to online platforms in the proposed DSA. It would include more limited obligations for certain actors.

In aggregate this transparency obligation would enable at least the following to be known during a relevant period (and where appropriate and practicable, in real time according to a standardised electronic format) about every political advert circulated online to users:

- i. (where relevant) the campaign, issue or person the political advert is connected to;
- ii. who paid and how much, and what support services or material assistance (for instance behavioural profile targeting) were paid for;
- iii. targeting criteria (beyond GDPR);
- iv. relevant anonymised data about dissemination;
- v. further information to ensure fairness in the context of political advertising, for instant duration of circulation, numbers of interactions etc, specific additional transparency concerning the use of targeting and other techniques (origin of data, size of groups targeted etc).
- c. Additional obligations to retain and disclose on request certain data (obligations to keep records to enable audit/certifications, regulatory oversight);
- d. Further measures to ensure that prominence is given to official factual information of public interest (e.g. opening hours of the voting stations);
- e. The main competent body and out-of-court arrangements to settle disagreements about transparency;
- f. In the context of European elections, an obligation on European political parties to ensure that the political advertising they place is funded, prepared, placed and disseminated to a high standard of transparency, including:
 - i. through the durable labelling of political adverts placed through any medium; and

- ii. making publicly and timely (updated regularly during the campaign period) information available online regarding the advertising activities placed by the party, or directly on its behalf, detailing as a minimum each advert, its circulation, the amounts spent and the use of targeting and amplification.

3. **legislation harmonising specific conditions and criteria in the context of political advertising**, to establish a common basis for its use and its regulation within national and European electoral processes, including:

- a. Common minimum rules regarding the financing of political advertising, including access financing, banking services and disclosure requirements;
- b. Measures to enable the limitation and/or banning of:
 - i. political advertising during certain periods;
 - ii. certain techniques in targeting and amplifying political advertising.
- c. Measures to foster the development of co-regulation, for instance to provide a procedure and basic principles for establishing such standards, and a process for sanctions and a route for redress.

These options could be combined, and will include a component on how they will be monitored and enforced. All options will be considered in coherence with other relevant rules, including EU law and policies, in particular the *acquis* concerning elections and electoral rights, as well as the sector specific regulation including on data protection. Any intervention would complement and not duplicate or revise these other instruments.

Legislative intervention applicable to European political parties would be by regulation. Legislation binding on market actors could be by directive, though this would involve a lengthy implementation period.

Additional options could be considered in the framework of the impact assessment.

C. Preliminary Assessment of Expected Impacts

The impact assessment will assess, for each option, the following types of likely impacts:

Likely economic impacts

The specific interventions are expected to support the integrity of the internal market (including by removing legal barriers) and of electoral processes within the EU. They are in most cases expected to have a limited impact on the costs to be borne by the concerned entities. Increased legal certainty in this area could reduce the costs of offering services, especially for undertakings offering services in more than one Member State, and could encourage the growth of small and innovative companies in the EU single market. Reduced costs may encourage cross-border campaigns for smaller actors.

Binding measures to impose obligations to retain and disclose specific obligations to ensure transparency envisaged under option 2 could place a limited administrative burden on market actors engaged in the preparation and dissemination of political adverts. This could affect SMEs and the impact assessment will assess the need to establish specific thresholds or specific options for them.

Increasing transparency standards and introducing more detailed reporting obligations should make it easier and more cost efficient for journalists, researchers, civil society and national administrations to play their role also as part of the checks and balances of EU democratic systems.

The impact on economic actors located in third countries will be assessed in the framework of the impact assessment, as their activities would fall within the scope of the interventions considered under option 2.

Likely social impacts

The considered options are likely to reduce barriers to the provision of services linked to political ads in the internal market. They should enhance societal resilience to interference in democracy, and to increase the accountability of political actors engaging in political advertising. They should also increase citizens' access to information about the political advertisements they encounter, as well as that of the media and civil society organisations and also increase their trust in the political system, their government, and the democratic process as a whole. They should support public authorities in the monitoring and enforcement of relevant rules, including those which promote equality of access to the political sphere. They should promote transparency and fair campaigning online and offline, including by supporting the equal treatment of political parties. This will be analysed in the impact assessment.

Likely environmental impacts
Environmental impacts are likely to be marginal for all options compared to the baseline. The impact assessment will assess this in more detail.
Likely impacts on fundamental rights
A range of fundamental rights are affected. These include voting rights, the right to the protection of personal data, the freedoms of assembly and association and the freedom of expression and information, and the rights to an effective remedy and other procedural safeguards, the right to receive and impart information and ideas without interference, and the right to form a political decision un-coerced. The options considered should strengthen the protection of these rights. The impact assessment will pay particular attention to prevent any restriction or negative impact on fundamental rights.
Likely impacts on simplification and/or administrative burden
While the legislative intervention may have the result of increasing the volumes of material that national authorities are required to process and potentially act upon, it is likely that increased costs resulting from this effect will be mitigated by efficient and streamlined monitoring and analysis processes, appropriate supporting measures, and compliance with complementary obligations imposed on market actors to support such efforts. This will be further assessed in the impact assessment. The supervisory set-up will strengthen the single market and support the cooperation of authorities.
D. Evidence Base, Data collection and Better Regulation Instruments
Impact assessment
An impact assessment is under preparation, which will build on the existing work obtained through recent disinformation and electoral-related policies already described, as well as on the Digital Services Act package, to further define the problem analysis and elaborate on the evaluation of the current state, as well as the options for intervention and their impacts.
Evidence base and data collection
The evidence base is drawn from the following: <ul style="list-style-type: none"> • the implementation of the Commission’s September 2018 electoral package¹⁵, as described in the Commission’s report on the 2019 elections¹⁶; • the experience combatting disinformation and other forms of information manipulation and interference in democracy guided by the Action Plan against disinformation¹⁷, most recently reported on in the Commission and High Representative’s joint Communication, “tackling COVID disinformation”¹⁸; • the Commission’s assessment of the first year of operation of the self-regulatory Code of Practice on Disinformation¹⁹; • the preparatory studies and open consultation for the European Democracy Action Plan²⁰, the 2020 EU Citizenship Report²¹ and the Digital Services Act²², as well as an ongoing study on the use of digital tools in elections; • Standard Eurobarometer 94.1 (the fieldwork for which was conducted in December 2020), which included five specific questions on elections relevant to this initiative, and other relevant Eurobarometers²³;

¹⁵ https://ec.europa.eu/commission/presscorner/detail/en/IP_18_5681

¹⁶ https://ec.europa.eu/info/sites/info/files/com_2020_252_en_0.pdf and https://ec.europa.eu/info/sites/info/files/swd_2020_113_en.pdf

¹⁷ https://eeas.europa.eu/headquarters/headquarters-homepage_en/54866/Action%20Plan%20against%20Disinformation

¹⁸ https://ec.europa.eu/info/sites/info/files/communication-tackling-covid-19-disinformation-getting-facts-right_en.pdf

¹⁹ <https://ec.europa.eu/digital-single-market/en/news/assessment-code-practice-disinformation-achievements-and-areas-further-improvement>

²⁰ https://ec.europa.eu/info/sites/info/files/report_edap_public_consultation_final.pdf

²¹ https://ec.europa.eu/info/files/report-public-consultation-eu-citizenship-rights-2020_en

²² <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12418-Digital-Services-Act-package-ex-ante-regulatory-instrument-of-very-large-online-platforms-acting-as-gatekeepers> and <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12417-Digital-Services-Act-deepening-the-Internal-Market-and-clarifying-responsibilities-for-digital-services>

²³ Flash Eurobarometer 485 on EU Citizenship and Democracy <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/flash/surveyky/2260>; The 2019 post-electoral survey <https://www.europarl.europa.eu/at-your-service/files/be-heard/eurobarometer/2019/post-election-survey-2019-complete-results/report/en-post-election-survey-2019-report.pdf>; Standard Eurobarometer 90 – Media use in the European Union, December 2018

<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/86432>; Special Eurobarometer 477 Democracy and elections

<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/search/477/surveyKy/2198>; Flash

- Other material as necessary, including the substantial research performed by the Joint Research Centre within the Enlightenment 2.0 research programme²⁴

A dedicated study will also obtain a thorough backward-looking **baseline description of the status quo** and analysis, which will include a comprehensive legal and policy mapping of relevant national provisions determining political advertising in general, advertising in political campaigns, as well as the conduct and financing of political campaigning, and to inform the **impact assessment**.

Consultation of citizens and stakeholders

The consultation strategy would seek to supplement the considerable material already obtained. Target consultations will aim at gathering additional evidence and data on the specific problems addressed by the initiative, as well as stakeholder views on the policy approach and its impacts.

Relevant stakeholders include political actors including national and European political parties, political foundations and campaign organisations, market actors including media organisations, online intermediaries and relevant service providers such as political consultancies and advertising firms, national authorities and international bodies, the media sector, civil society organisations, academia and citizens.

The consultation activities will involve in particular the following:

- Dedicated sessions of the European Cooperation Network on Elections in order to obtain direct input from Member State competent authorities on specific points;
- Views sought from the representations of national parliaments to the EU;
- An online open public consultation on targeted issues will be launched early 2021;
- Targeted focus groups to obtain more detailed insight from specific groups.

Feedback from the public consultation on the European Democracy Action Plan could also feed into this work, as well as the consultation on the revision of Regulation 1141/2014 on the statute and funding of the European Political Parties and Foundations.

The online public consultation will be promoted through the Commission's website, as well as through specific stakeholders. Broad outreach to the wider stakeholder community will be organised.

Relevant work ongoing in the Council (including in the relevant working parties) and in the Parliament (including in the Committees in charge of Constitutional Affairs, Legal Affairs; Civil Liberties, Justice and Home Affairs and the Special Committee on Foreign Interference) will provide significant input to this process.

The ad hoc study that will support the preparation of the impact assessment will include specific consultations of relevant stakeholders.

Will an Implementation plan be established?

An implementation plan will be prepared, tailored to the policy option pursued.

Evaluation of implementation of measures before, during and following the elections will be conducted as a part of the usual reporting process (and should be foreseen in any legislation).

Eurobarometer 469 Illegal content online
<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/search/online/surveyKy/2201>; Flash Eurobarometer 464 Fake News and Disinformation Online
<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/search/online/surveyKy/2183> Special Eurobarometer 447 Online Platforms
<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/search/online/surveyKy/2183>.
²⁴ <https://ec.europa.eu/jrc/en/enlightenment-research-programme>