Opinion of the European Economic and Social Committee on Proposal for a Regulation of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations (recast)

(COM(2021) 734 final – 2021/0375 (COD))

Proposal for a Regulation of the European Parliament and of the Council on the transparency and targeting of political advertising

(COM(2021) 731 final – 2021/0381 (COD))

(2022/C 275/11)

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Outcome of vote	
(for/against/abstentions)	222/4/5

1. Conclusions and recommendations

1.1 The EESC welcomes the aims and motivation of the European election package. Being aware of the big challenges and dangers for democratic processes, the EESC suggests being more ambitious in the Regulations and putting them into action as soon as possible.

1.2 Enabling and promoting conscious political participation by citizens is critical, as are ensuring transparent, accessible and honest political activities and a clear and active role for civil society. This opinion proposes several amendments to the Regulations and some additional actions in this respect.

1.3 The EESC supports including all aspects linked to political campaigning in the election package. A stronger focus is needed on countering disinformation, as the latter has an increasing impact on elections and transparency. Fact checking and media literacy cannot address either the barrage of divisive and misleading content that citizens are exposed to, or what attracts some citizens to such content in the first place.

1.4 ***On the transparency and targeting of political advertising, the EESC suggests specific proposals for improvement (see part 3.1.):***

i. using a broad but clear definition of political advertising that goes beyond officially remunerated activities, including impacts via so-called 'bots' and 'trolls' and/or manipulative information;

ii. broadening the scope of penalties for wrongdoings;

iii. broadening the legal base to cover all legal and physical persons;

iv. limiting possibilities for non-EU players to exert influence;

v. providing directly visible information (not links) on key transparency issues;

vi. making information available and transparent;

vii. having the same rules for everyone;

viii. creating the possibility of complaining directly to competent national authorities, not only to the relevant online platform;

ix. making information accessible to every citizen without limitations;

x. prohibiting targeted political advertising based on pervasive tracking and processing of information concerning an individual's on- or offline behaviour;

xi. limiting or stopping targeting and amplification techniques in political advertising that involve the processing of personal data, due to risks linked to limited provision of consent;

xii. completely prohibiting targeting based on special categories of sensitive personal data;

xiii. providing full transparency on targeting techniques, even when not directly linked to a certain campaign;

xiv. considering special regulations for countries where the independence of public media is not properly ensured.

1.5 ***On the statute and funding of European political parties and European political foundations (recast), the EESC suggests specific proposals to (see part 3.2.):***

i. strengthen standards concerning gender balance;

ii. tackle discrimination and promote human rights;

iii. limit donations to parties from countries outside the EU;

iv. set a universal ceiling for citizen donations of EUR 18 000 per year;

v. regulate external service providers;

vi. limit the involvement of EU parties in national referendum campaigns;

vii. lower the cap of anonymous donations to EUR 1 000;

viii. continue the co-financing system for European political parties.

1.6 ***On resilience and strengthening the role of civil society in electoral processes (developed in part 3.3.):***

i. give citizens a meaningful say in shaping the EU's future beyond/between elections;

ii. hold an annual event to share best practices and draw up an annual plan to strengthen democracy, participation and civic dialogue and the implementation of Article 11 TEU;

iii. create a financial instrument for conducting impartial and inclusive 'get out to vote' campaigns;

iv. create a funding programme for journalists, researchers, fact-checkers and watchdog organisations;

v. support expert cooperation and work on campaign finance, online forensics, countering disinformation, and cybersecurity;

vi. remove remaining barriers and ensure inclusive participation in elections;

vii. Support mobile citizens;

viii. ensure barrier-free elections for EU citizens with disabilities;

ix. encourage individuals to become members of all European political parties;

x. ensure citizens have the right to know which political parties at national level have or plan links to European parties;

xi. harmonise legislation relating to European Parliament election conditions (voting age, election date, requirements for electoral districts, candidates, and political parties and their financing) and promote the importance of education.

2. **Background and general comments**

2.1 ***Background to the opinion, including the legislative proposal concerned***

2.1.1 The Reinforcing democracy and integrity of elections package was issued by the European Commission on 25 November 2021. It had previously been announced in the political guidelines of the European Commission president, Ursula von der Leyen, and in the European Democracy Action Plan, adopted in December 2020. The package contains the following, of which the EESC was only asked to address points i and ii in its opinion:

i. the *revision* of the Regulation on the statute and funding of European political parties and European political foundations;

ii. a *proposal* for a Regulation on greater transparency in paid political advertising;

iii. the *revision* of two Directives on the right to vote by 'mobile EU citizens' (citizens of the EU residing in a Member State of which they are not nationals);

iv. a *proposed* joint mechanism for electoral resilience.

2.2 ***General comments***

2.2.1 The EESC highlights the following:

i. The EESC welcomes the updates to the 2018 elections package ([1]).

ii. The EESC stresses the importance of action at EU level to promote democratic debate.

iii. The EESC agrees with the Commission's statement that '[it] must be clear for citizens that they are receiving political content and from whom. There should be meaningful transparency to allow for public scrutiny and accountability of relevant actors and reflect the inclusiveness and diversity of our societies.' ([2])

iv. In particular, aspects relating to enabling citizen participation and the inclusiveness and diversity of our societies need more and better proposals and joint EU action. Several points in this regard are included in the EESC opinion on the Democracy Action Plan ([3]).

([1]) COM(2021) 730 final, Protecting election integrity and promoting democratic participation.
([2]) COM(2021) 730 final, Protecting election integrity and promoting democratic participation.
([3]) EESC opinion on the Democracy Action Plan.

v. The EESC highlights the dangers that disinformation poses to democracy in the European Union, and stresses that a strong and decisive response is needed to prevent a situation in which the objectivity of elections and civic participation are being undermined.

vi. The digital revolution has transformed democratic politics. Online tools, consisting of a wide range of instruments, play a key role in political campaigns. Some of these campaigns aim to provoke distrust and frustration, and to distort thinking and understanding. The EESC agrees with the Commission that, as a result of this, the digitalisation of political campaigning, despite offering unprecedented means of reaching out to people, may have adverse impacts on democracy. In fact, according to Eurobarometer, half of Europeans say that while using the internet they have been exposed to disinformation and divisive online content. Furthermore, one third of those Europeans were exposed to content and could not identify whether or not it was a political advertisement ([4]).

vii. The EESC supports the vision that the EU's role in strengthening democracy should be considered at a global level, namely through external EU action by the EU, as stated in COM(2021) 730.

3. **Specific comments**

3.1 ***Suggested amendments to the proposal for a Regulation on the transparency and targeting of political advertising***

3.1.1 The EESC supports a broad but clear definition of political advertising, and suggests including appropriate actions on diverse means of campaigning/paying to exert influence on political processes, including impacts via so-called 'bots' and 'trolls' and/or manipulative information. Problems can occur if an unclear definition results in excessive leeway or differences in implementation on the various platforms.

3.1.2 The EESC considers that the current list of possible sanctions is very limited and suggests adding a new point in Article 15(5) which should read as follows: 'd. Act with the objective of applying criminal penalties e.g. for large scale fraud'. Furthermore, the EESC calls for European common criteria for penalties at national level.

3.1.3 At the moment, the legal base chosen is too narrow, which means that the Regulation primarily concerns services that are provided by economic actors and are paid for. The legal base should be expanded and rules on political advertising must apply to all legal and physical persons that de facto create and publish political advertising. Rules on physical persons should be clarified so that they do not apply to people who share their political opinions in a purely private capacity. Negative side effects on civil society and their engagement and participation in decision making should be addressed through an in-depth dialogue with the relevant organisations.

3.1.4 Point 14 of the preamble indicates that advertising 'entirely prepared, placed or published by service providers established outside the Union but disseminated to individuals in the Union' falls under the scope of the Regulation and thus is, in principle, permissible. However, the risk of foreign interference in elections is too serious a threat for democracy in the EU. A set of special provisions must be developed with the aim of preventing the dissemination in the EU of political advertisements or other campaign activities directly or indirectly financed by entities outside the EU.

3.1.5 For greater transparency, point 1(c) of Article 7 of the draft Regulation should be amended as follows: 'a transparency notice to enable the wider context of the political advertisement and its aims to be understood', deleting the following part of the text: ', or a clear indication of where it can be easily retrieved'. Point 40 of the preamble should be changed accordingly.

3.1.6 For greater transparency, Article 7 of the draft Regulation should also provide for the publication of the amount spent on the advertisement and the related campaign. Existing best practice in Member States demanding pre-election transparency on advertisement and service prices which apply to all political forces equally should be supported and included in the Regulation. A system for monitoring this should be established.

([4]) Special Eurobarometer 507: Democracy in the EU.

3.1.7 The right of citizens to receive transparent information about political advertising should prevail over the administrative burdens imposed on service providers by the reporting requirements. Accordingly, Article 8 of the draft Regulation (Periodic reporting on political advertising services) must apply to all advertising publishers, including those classified as micro, small and medium-sized enterprises. To this end, part 2 of Article 8 ('Paragraph 1 shall not apply to undertakings qualifying under Article 3(3) of Directive 2013/34/EU.') should be deleted.

3.1.8 Article 9 of the draft Regulation (Indicating possibly unlawful political advertisements) should be amended. Instead of leaving advertising publishers to deal with individuals' complaints that an advertisement they have published does not comply with the Regulation, there must also be the possibility to complain directly to competent national authorities. Otherwise, this may lead to a conflict of interest, whereby an advertising publisher may not wish to interrupt a certain advertising campaign for fear of losing revenue.

3.1.9 Information on political advertising must be available to all interested entities at no cost. To this end, we believe that narrowing down the categories of persons that may request information from providers of political advertising services, as discussed in point 2 of Article 11 of the draft Regulation, is unjustified. Moreover, parts 4 to 7 of this article should be deleted. The information should be easily accessible and usable.

3.1.10 The EESC strongly recommends prohibiting targeted political advertising based on pervasive tracking and processing of information concerning an individual's on- or offline behaviour. It is important to remember that that personal data that is not sensitive in and of itself can, in combination with other non-personal or personal non-sensitive data, by proxy provide the very same sensitive insights the Commission is trying to protect against. A separate point should be included on this issue in the Regulation.

3.1.11 The draft regulation allows for the use of targeting and amplification techniques in political advertising that involve the processing of sensitive personal data 'on the basis of the explicit consent of the data subject or in the course of their legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical or religious or trade union aim'. However, the notion of 'explicit consent' is highly problematic in this context, as there are no ways to ensure or verify, with a high degree of reliability, that the individuals who are targets of targeting and amplification techniques actually do take time to get acquainted with these techniques, fully understand the risk involved, and provide truly informed consent. Given the high degree of risk posed to EU democracy by the use of targeting and amplification techniques in political advertising, targeting and amplification techniques based on sensitive data should be completely prohibited.

3.1.12 Transparency on targeting technics should also be visible and clear on information not directly linked to a certain campaign. The information on why someone sees a certain advertisement has to be visible and easy to use, with a quick option to withdraw potential consent for being targeted this way.

3.1.13 Special regulations should be considered in countries where the independence of public media is not properly ensured. Furthermore, the loopholes and problems caused by the absence of regulation of issues-based advertising should be tackled.

3.2 *Suggested amendments to the proposal on the statute and funding of European political parties and European political foundations (recast)*

3.2.1 Point 1(j) of Article 4 of the draft Regulation ('its internal rules regarding gender balance') must be strengthened by setting out minimum standards concerning gender balance, such as quotas for gender representation in overall membership and in positions of responsibility, and demanding adherence to these.

3.2.2 Point 2 of Article 4 should be amended to provide that the statutes of a European political party also include provisions on the party's approach to tackling discrimination and promoting human rights in line with the EU norms.

3.2.3 The EESC believes that potential contributions or donations from countries outside the EU which benefit EU political parties or foundations may pose an excessive risk to the independence of the recipients, and thus also to the democratic system. To this end, points 9 and 10 of Article 23 of the draft Regulation should be amended, in order to strictly ensure that only contributions from political parties from Council of Europe countries that do not impose limitations on common EU values, and where these values can be freely promoted, are allowed. Another amendment concerns significantly lowering the permitted amounts of contributions and donations. This should also include possible loans and other commitments of a financial nature.

3.2.4 In the interests of transparency, point 11 of Article 23 of the draft Regulation should be amended, crossing out the statement that '[t]he ceiling laid down in the first subparagraph shall not apply where the member concerned is also an elected member of the European Parliament, of a national parliament or of a regional parliament or regional assembly'. Thus, the universal ceiling for citizen donations will be EUR 18 000 per year and per member.

3.2.5 In line with what has been said above, rules on political advertisements should fully apply to all instances in which European political parties engage in political advertising, and not only in cases where these rely on external service providers. Article 5 of the draft Regulation should be amended to reflect this.

3.2.6 The provisions of Article 24 on possible financing by European political parties and European political foundations of national referendum campaigns can create problematic situations due to possible misuse by populists or radical forces, and may give rise to allegations of 'foreign interference'. These risks are especially high in smaller EU Member States, where impactful campaigns can be carried out with relatively little funding and over short periods, while proceedings concerning the legality of funding from European political parties or foundations may take a long time. This proposal should be implemented only in coordination with referenda regulations at national level that mitigate the risks identified. Public debates with politicians from other EU Member States are in any case valuable.

3.2.7 In the interests of transparency, Article 36 should be amended to include stricter rules on publishing donations from natural persons. The maximum amount of any donation for which the name of the donor does not have to be published should be capped at EUR 1 000. This amount will be more proportionate to the relatively lower levels of income in certain EU Member States.

3.2.8 The Commission proposes amending Article 20(4) to reduce the co-financing rate from 10 % to 5 % for European political parties and to 0 % in the year of the elections to the European Parliament. The EESC does not support this proposal because even a low level of co-financing shows the commitment of the parties to the policies they advocate. In addition, the EESC points out that all money flows between national and European parties have to be transparent.

3.3 ***Resilience and special aspects for strengthening the role of civil society in electoral processes***

3.3.1 With populist and nationalist parties and networks gaining ground in Europe, with internal and external help, the EESC believes that fostering citizen participation in the European democratic process, as stated in its opinion on the *Democracy Action Plan* (DAP), has become more crucial than ever and should be addressed together with the regulation of electoral processes. Citizens need to be given a meaningful say in shaping the EU's future with regard to elections e.g. as stated below, and beyond/between elections (as stated in the EESC opinion on the DAP and in the Roadmap on the implementation of Article 11 TEU and its action plan ([5])).

3.3.2 The EESC stresses its suggestion that an annual event should be launched that brings together the highest level representatives of the EU institutions and civil society organisations/associations, as well as the social partners and representatives of sectoral dialogues and local, regional, national and macro-regional (transnational and neighbourhood policy) dialogues, in order to share best practices and draw up an annual plan to strengthen democracy, participation and civic dialogue and the implementation of Article 11 TEU. This event might also create synergies with the elections package. The Commission and the EESC should play a leading role in this process as organisers.

([5]) Action plan for the implementation of Article 11.

3.3.3 The European Commission must provide a dedicated financial instrument for conducting impartial and inclusive 'get out to vote' campaigns carried out by civil society and independent mass media, aimed at increasing participation in elections, especially in the great majority of EU Member States where participation in elections is not mandatory. Such campaigns should, in particular, focus on engaging underprivileged groups such as minorities and groups that are at a disadvantage due to their social or economic status, etc.

3.3.4 A funding programme for journalists, researchers, fact-checkers and watchdog organisations, as well as for monitoring and actions to counter the spread of disinformation, should be established on all aspects of the Reinforcing democracy and integrity of elections package. Adequate funding should be provided for developing and improving people's e-skills and bursting populist/radical 'bubbles', including those created through disinformation and other techniques employed by domestic political actors.

3.3.5 The planned joint mechanism for electoral resilience should provide for finances, support and the provision of tools for expert cooperation and work on campaign finance. Online forensics, countering disinformation, and the cybersecurity of elections are also key.

3.3.6 Further efforts should be made to remove the remaining barriers and ensure inclusive participation in elections. In particular, stronger efforts to improve the democratic participation of women, citizens with disabilities, younger citizens and other groups should be made. Barriers to voting for mobile EU citizens in certain Member States should be removed. Voting in one's country of residence or, where possible under national and EU law, in one's country of origin, should be facilitated and should result in higher participation rates for mobile EU citizens. It should not be forgotten that about 13,5 million EU citizens do not live in their own Member States.

3.3.7 The EESC notes that for people who have moved to another EU Member State, voting registration should be simplified and streamlined e.g. through a joint/shared voting registration platform (where necessary) available in all EU official languages. Voting rights for EU citizens should also be provided at regional level, and a helpdesk for cross-border voting should be established.

3.3.8 The EESC stresses that there is still no real right to vote for millions of EU citizens. The EESC information report *Real rights of persons with disabilities to vote in European Parliament elections* presents the many legal or technical barriers faced by EU citizens with disabilities in individual Member States who, despite the fact that they really want to vote, are unable to do so. The EESC reiterates its call, made in its opinion of 2 December 2020 on *The need to guarantee real rights for persons with disabilities to vote in European Parliament elections*, to urgently implement legal changes that will guarantee the real right to vote for all EU citizens during the elections to the European Parliament in 2024.

3.3.9 Encouraging individuals to become members of all European political parties would give them a chance to directly influence and contribute to debates at EU level.

3.3.10 Citizens should be able to clearly understand which political parties at national level have or plan links to European parties. This is of special importance prior to elections.

3.3.11 The EESC supports several proposals expressed by the second Citizens' Panel of the Conference on the Future of Europe working on European democracy and values, rights, the rule of law and security ([6]), such as the suggestion to harmonise European Parliament electoral conditions (voting age, election date, requirements for electoral districts, candidates, political parties and their financing) and placing a stronger focus on education and competences e.g. data protection, democracy, and identifying and countering populism.

Brussels, 23 February 2022.

The President
of the European Economic and Social Committee
Christa SCHWENG

([6]) Panel 2 — European Citizens' Panels — Conference on the Future of Europe.