

Brussels, 31 January 2022

## **EASA's feedback to the European Commission's on the proposal for a Regulation on the transparency and targeting of political advertising**

The European Advertising Standards Alliance (EASA) welcomes the opportunity to provide feedback on the proposal for a Regulation on the transparency and targeting of political advertising, as adopted by the European Commission, ahead of the discussions in the European Parliament and in the Council.

### **About EASA and advertising self-regulation**

EASA<sup>1</sup> is the single authoritative voice on advertising self-regulation in Europe and promotes high ethical standards in commercial communications by means of effective self-regulation. Established in 1992, EASA represents and coordinates the advertising self-regulatory systems across Europe. Its membership is composed of 28 independent advertising self-regulatory organisations (SROs), which enforce advertising self-regulatory codes of conduct at national level, and 14 stakeholders representing the advertising ecosystem (advertisers, agencies, media, and digital platforms) which are all committed to ensuring responsible advertising.

Considering the concerns of foreign influence and disinformation during elections and their potential impact on society and democracy, we understand the purpose driving the Commission in the development of regulation for enhanced political advertising transparency.

However, the definition of political advertising is of direct concern to the members of EASA. Indeed, it is of the utmost importance for the definition to unambiguously exclude all types of commercial advertising from its scope in order to avoid unhelpful duplication. The provisions of the proposed Regulation must prevent its scope from unintentionally encroaching on matters of commercial advertising, which are already properly and efficiently covered by existing frameworks.

### **EASA's concerns over the definition of political advertising in Art. 2(2)**

It should be noted that commercial advertising is already regulated by EU law, such as the Unfair Commercial Practices Directive (UCPD)<sup>2</sup> and Audiovisual Media Services Directive (AVMSD)<sup>3</sup>. These legal Acts are complemented by the advertising self-regulatory systems, which provide robust, flexible and consumer-friendly mechanisms to ensure responsible advertising. As the core of these systems, EASA's self-regulatory members (SROs) across Europe enforce advertising codes of practice at national level, as encouraged by the UCPD and AVMSD.

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<sup>1</sup> More information about EASA is available [here](#).

<sup>2</sup> [Directive 2005/29/EC](#), Unfair commercial Practices Directive, Consolidated text, 2019

<sup>3</sup> [Directive 2010/13/EU](#), Audiovisual Media Services Directive, Consolidated Text, 2018

The definition of political advertising, as currently spelled out in Art. 2(2) of the proposal, is a matter of serious concern to EASA, due to its paragraph (b) that would cover a wide array of issue-based advertisements, including commercial advertisements. For instance, purpose-driven marketing practices, in which a brand supports social causes aligned with its core values, would be covered by the definition of political advertising. This could be the case, for example, of a telecom operator advertising against hate speech, or a brand conveying some immigration-friendly or environment-friendly messages in some ads, which could be interpreted as politically connotated. Similarly, ads containing references to the defence of traditions could be deemed politically oriented as well.

It should be noted that consumers are becoming increasingly conscious about the products and services they purchase and want confidence that retailers and service providers adopt fair, ethical and sustainable business practices. As such, it is important for advertising be able to reflect this, for example through issue-based ads, without facing the extensive requirements meant for political advertising. Such ads will nonetheless have to comply with the above-mentioned legal provisions on commercial advertising, complemented by self-regulatory frameworks. Hence, to avoid legal uncertainty, “issue-based advertising” by commercial actors should not be covered by legal provisions aimed at regulating political advertising.

**Therefore, EASA stresses that commercial advertising<sup>4</sup>, including issue-based advertising with a clear commercial purpose, should be excluded from the scope of this proposal for a Regulation.**

#### EASA's suggestions to policymakers

**EASA calls on the co-legislators to adopt the following amendments**, as a necessary clarification to ensure that commercial advertising is neither caught by point (a) of Article 2(2), nor by its point (b).

##### Article 2

2. ‘political advertising’ means, the preparation, placement, promotion, publication or dissemination, by any means, of a message, **unless it is of a purely private or a purely commercial nature:**

(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, a legislative or regulatory process or voting behaviour.

For coherence, Recitals 15, 16 and 17 should be amended accordingly:

(15) There is no existing definition of political advertising or political advertisement at Union level. A common definition is needed to establish the scope of application of the harmonised transparency obligations and rules on targeting and amplification. This definition should cover the many forms that political advertising can take and any means and mode of publication or dissemination within the Union, regardless of whether the source is located within the Union or

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<sup>4</sup> In order to clarify the meaning of the expression “of a [...] purely commercial nature” in Article 2(2), EASA recommends to refer to the existing definition of “commercial communication” in the E-commerce Directive ([Directive 2000/31/EC](#)). Furthermore, a more precise wording than “liable to influence” in Article 2(2)(b) would help limiting the risk of legal uncertainty, currently inadequately mitigated by the factors listed in Recital 17.

in a third country. **This definition should not cover messages of purely private or purely commercial nature.**

(16) The definition of political advertising should include advertising published or disseminated directly or indirectly by or published or disseminated directly or indirectly for or on behalf of a political actor. Since advertisements by, for or on behalf of a political actor cannot be detached from their activity in their role as political actor, they can be presumed to be liable to influence the political debate, ~~except for messages of purely private or purely commercial nature.~~

(17) The publication or dissemination by other actors of a message that is liable to influence the outcome of an election or referendum, legislative or regulatory process or voting behaviour should also constitute political advertising. In order to determine whether the publication or dissemination of a message is liable to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour, account should be taken of all relevant factors such as the content of the message, the language used to convey the message, the context in which the message is conveyed, the objective of the message and the means by which the message is published or disseminated. ~~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.~~