

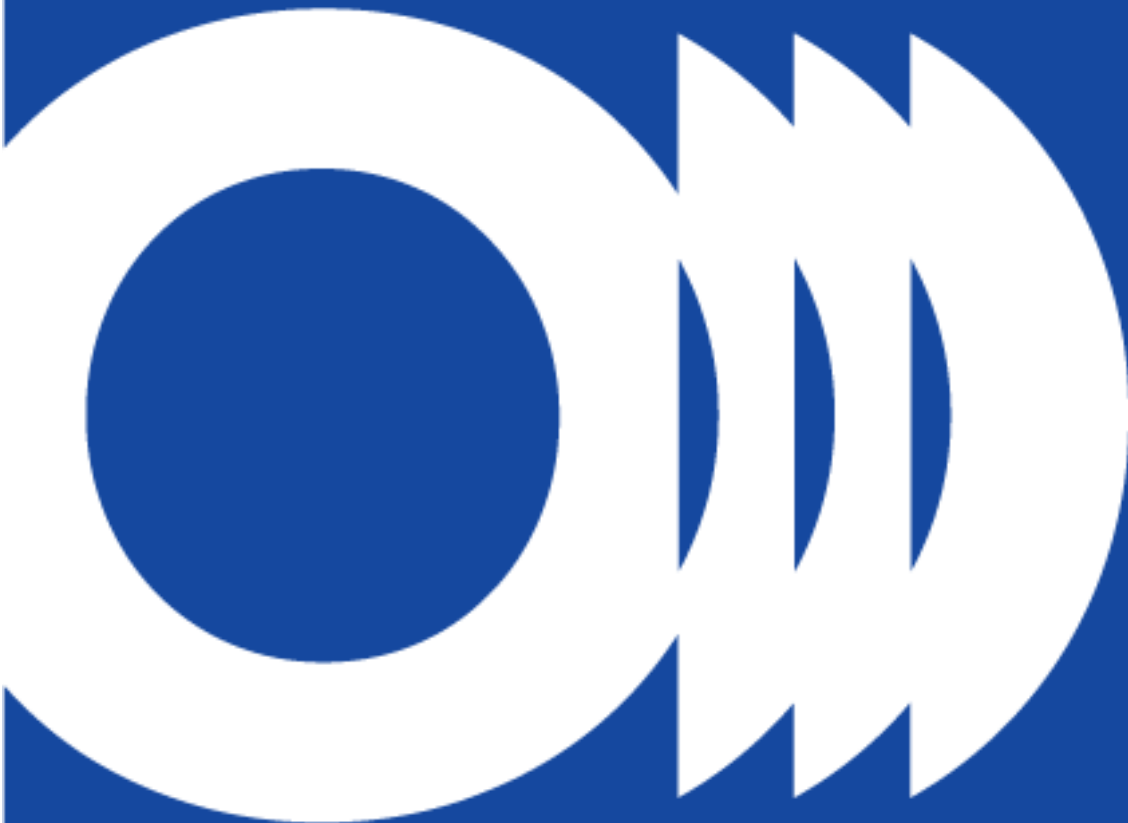
# EBU

OPERATING EUROVISION AND EURORADIO

## POSITION PAPER

EBU position on the proposal  
for a Regulation on the  
transparency and targeting of  
political advertising

09 MAY 2022



## EBU position on the proposal for a Regulation on the transparency and targeting of political advertising

### EBU POSITION

The massive expansion of political campaigns in the digital sphere requires new rules to ensure a level playing field between the online and offline world when it comes to the transparency of political advertising.

In this respect, the EBU welcomes the European Commission's proposal on political advertising. This draft legislation will help users to understand on whose behalf offline and online political advertising are being displayed.

Nevertheless, the EBU is alarmed about the proposed definition of political advertising which would cover much of editorial content. We therefore suggest below some wording improvements.

### EBU AMENDMENT PROPOSALS

<p>Article 2 – Definitions</p> <p>(2) 'political advertising' means the preparation, placement, promotion, publication or dissemination, by any means, of a message:</p> <ul style="list-style-type: none"><li>(a) by, for or on behalf of a political actor, unless it is of a purely private or a purely commercial nature; or</li><li>(b) which is liable to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour.</li></ul>	<p>Article 2 – Definitions</p> <p>(2) 'political advertising' means the preparation, placement, promotion, publication or dissemination, by any means, of a message:</p> <ul style="list-style-type: none"><li>(a) by, for or on behalf of a political actor, unless it is of a purely private or a purely commercial nature; or</li><li>(b) which is <del>liable</del> <b>intended</b> to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour.</li></ul> <p><b><i>This definition shall not cover messages expressed in the programmes of audio and audiovisual media service providers without direct payment or equivalent remuneration.</i></b></p>
--	---

#### Justification:

Political advertising must not be confused with political reporting. The current definition is confusing and should be improved.

Political advertising should be characterized as a message published by, for or on behalf of a political actor or as a message intended to influence elections or voting behavior in favor of a political actor, against direct payment or equivalent remuneration. For example, political actors publish their views, positions and comments on social media such as Facebook via paid advertising campaigns and thus spread their political messages directly and unfiltered. These types of content should not be confused with political reporting which aims to enable voters to make an informed choice. Political actors regularly have their say on television, be it in news, talk shows, documentaries, etc. However, these offerings are not direct political advertising by political actors. Their statements are embedded in an editorial program for which the television broadcaster is responsible, and which is committed to objectivity and impartiality.

Taking the above in account, we suggest amending Article 2 (2) to ensure that political messages included in the programmes of media service providers are not regarded as political advertising. The notion of “programmes” is defined in Article 1 (b) of Directive 2010/13/EU [AVMSD] as “a set of moving images with or without sound constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a media service provider” and the form and content of which are comparable to the form and content of television broadcasting.

The fundamental difference between political advertising and editorial content should be reflected in the regulation. The clarification made in Recital 19 is not sufficient. To guarantee legal certainty, the definition needs to be amended.

<p>(19) Political views expressed in the programmes of audiovisual linear broadcasts or published in printed media without direct payment or equivalent remuneration should not be covered by this Regulation.</p>	<p>(19) <b><i>The media contribute to the well-functioning of democratic processes and play a paramount role for the freedom of expression and right to information, particularly during election periods. They provide a space for public debate and contribute to public opinion-forming. This Regulation should therefore not affect the media’s editorial freedom and should not cover Political views any messages expressed in the programmes of audio and audiovisual linear and non-linear broadcasts or articles published in printed media without direct payment or equivalent remuneration should not be covered by this Regulation.</i></b></p>
--	--

**Justification:**

Recital (19) is amended to reflect EBU AM in Article 2 (2).

<p>(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.</p>	<p>(17) The publication or dissemination by other actors of a message that is <del>liable</del> <b>intended</b> 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 <del>liable</del> <b>intended</b> 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 <del>liable</del> <b>intended</b> to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour.</p>
--	---

**Justification:**

Recital (17) is amended to reflect suggested changes to Article 2 (2).

<p>(13) This Regulation should not affect the substantive content of political advertising nor rules regulating the display of political advertising including so-called silence periods preceding elections or referendums.</p>	<p>(13) This Regulation should not affect the substantive content of political advertising nor rules regulating the display of political advertising including so-called silence periods preceding elections or referendums <b>or programs devoted to the expression of political, trade union or professional groups and to the different currents of thought, during the election period or outside the election period, as well as to general interest communications, when these programs are part of the legal or regulatory obligations imposed on audiovisual media service providers in accordance with the rules promoting political pluralism and transparency.</b></p>
--	---

## Justification:

Broadcast media, including public service broadcasters, are subject to the highest level of regulation regarding advertising and political advertising, including during elections periods. They face a wide range of requirements on their linear and non-linear services to ensure a fair balance between fundamental rights such as the freedom of expression and media pluralism, and the need to secure fair elections. Rules imposed on broadcast media include, for instance, the requirement to cover elections in a fair, balanced and impartial manner, rules on the allocation of airtime for political parties/candidates, or rules on reflection/silence periods.

Member States competence to regulate such public interest communications in the context of elections and to impose standards that go beyond transparency obligations and that promote political pluralism and free and fair elections in their territories needs to be protected. It is crucial that political advertising rules are tailored to national election systems and to local and national contexts. The current Regulation should therefore not interfere with such requirements imposed at the national level.

Article 11 - Transmission of information to other interested entities	Article 11 - Transmission of information to other interested entities
(2) (...) Such interested entities shall also include journalists accredited in a Member State by national, European or international bodies.	(2) (...) Such interested entities shall also include journalists <del>accredited in a Member State by national, European or international bodies.</del>

## Justification:

In some EU countries, the work of journalists is not regulated by a public authority as part of media freedom. Journalists should not be subject to accreditation in order to insulate them against political pressure. Otherwise, journalists who are critical of the government might risk having their accreditation withdrawn. We therefore propose to delete the corresponding language.

---