

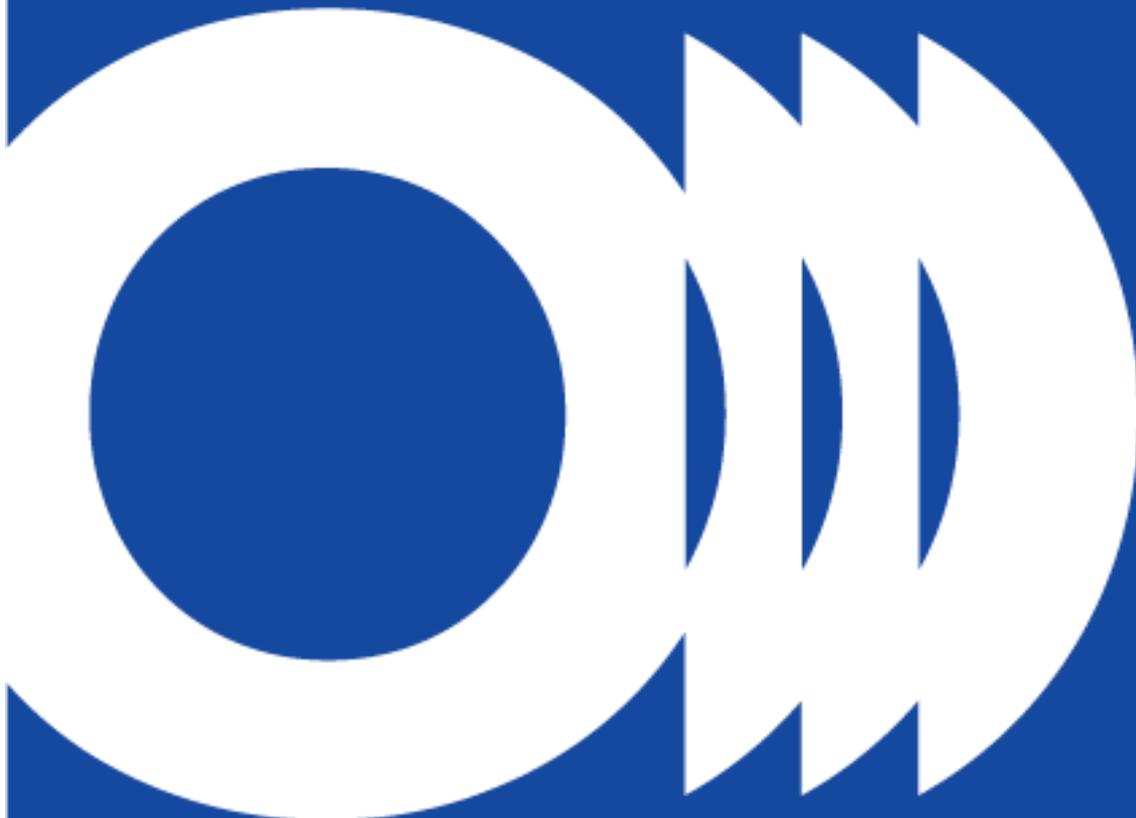
EBU

OPERATING EUROVISION AND EURORADIO

POSITION PAPER

EBU response to the EC
consultation on transparency of
political advertising

APRIL 2021



EBU reply to the consultation on Political Advertising

Q3.1 Should definitions of political advertising include the following:

Please explain your response (optional)

EBU members have been confronted on several occasions with the withdrawal and blocking of their political or social content due to it being incorrectly labelled as political advertising by online platforms. It is therefore imperative that public service media's news and current affairs programmes, that serve to educate and inform audiences, are in no way considered as political advertising. More generally, platforms should not be able to interfere with PSM content that is already regulated at national and EU level and subject to independent oversight. Furthermore, when editorial content is taken down by error by platforms, it needs to be reinstated immediately without undue delay. Online platforms should put safeguards in place to ensure that political advertising cannot be disguised as news or editorial content.

We also wish to point out that a clear distinction must be made between political advertising and advertising for journalistic/editorial content on political issues. Content on political issues which is produced by media organisations and for which editorial responsibility is exercised and its related advertisement must not qualify as political advertising under European rules.

Finally, rules on paid political advertising must not be confused with rules on the broadcast of political messages before elections.

Q10. Should there be rules set at EU level requiring all political advertising be clearly and specifically labelled as such? Please explain your response (optional):

- a. Yes
- b. Maybe
- c. No
- d. Don't know

Political advertising is not regulated on the European level. Therefore, there is no common approach in the EU on whether and how to regulate political advertising on broadcast media.

While some Member States have not regulated paid political communication, others have adopted rules on the issue either by completely prohibiting such practices (for example in Ireland, France and the UK) or by restricting political advertising to pre-election periods. When legislation exists, it imposes non-discrimination obligations and/or sets clear identification requirements like for example in Germany and Italy, where broadcasters need to provide airtime before elections on a non-discriminatory basis. ([Furnémont, Kevin, "Regulation of political advertising: a comparative study with reflections on the situation in south-east Europe", Council of Europe, September 2020](#))

European rules on political advertising must ensure minimum harmonization and should not jeopardize rules set by Member States as these are central to the democratic process. Member States must be able to adopt stricter standards in their territories to ensure that measures are tailored to national election systems and to local and national contexts.

Several studies have demonstrated a clear trend of political campaigns shifting to the digital world due to the growing proportion of citizens accessing information online (in particular, young users aged 18-24 using social media networks as their main source of news ([Reuters Institute Digital News Report 2020](#))). Consequently, advertising spend are increasingly moving online, and in particular to social network platforms. For the first time in 2015,

advertisers and political parties spent more on advertising online than on broadcast media. This trend has continued to increase in recent years. (Council of Europe study, "[Internet and electoral campaigns: study on the use of internet in electoral campaigns](#)", DGI (2017)11, 2017 and European Audiovisual Observatory, IRIS Special "[Media coverage of elections: the legal framework in Europe](#)", 2017)

The lack of rules applied to platforms on this matter biases the level-playing field and the effectiveness of existing regimes imposed at national level. The influence of online platforms and social networks on election processes should be acknowledged and binding minimum standards for political advertising displayed on online platforms should be established. In designing these rules, one could differentiate between advertisements that are marketed, sold or arranged by online platform providers and other advertisements for which they exercise limited control and establish higher standards in relation to the former.

At the very least, online platforms should clearly separate editorial from commercial content, allowing users to quickly identify political advertisements. Political advertisements should be presented as readily recognizable paid-for communication or labelled as such (see EBU's contributions to the public consultations on the [Digital Services Act](#) and the [European Democracy Action Plan](#)).

Q11. Should there be rules requiring all the sponsors of political ads to be disclosed within the ad itself? Please explain your response (optional):

- a. Yes
- b. Maybe
- c. No
- d. Don't know

As discussed under question 10, there is no common approach in the EU on whether and how to regulate political advertising on broadcast media. However, where rules have been established to regulate this type of communications, they outline non-discrimination and/or clear identification/transparency obligations.

Any future European initiative on political advertising must not jeopardize rules set by Member States and ensure minimum harmonization. Rules passed by Member States reflect their regional and local diverse political and electoral systems and should therefore not be circumvented. Member States' competence to regulate political advertising must be preserved.

Given the growing importance of online political campaigning, binding minimum standards for political advertising on online platforms should be established to ensure consistency with and effectiveness of existing national regimes applied to broadcast media.

At the very least, online platforms should be transparent about the identity of the political ads' sponsors and display this information alongside the advertisement. The disclosure of the amounts spent would also improve transparency and information to the recipients. (See EBU's contribution to the public consultation on the [Digital Services Act](#) and the [European Democracy Action Plan](#)).

Q15. Are you concerned that political advertising, especially online, can be used to intentionally spread false or misleading information (disinformation)? Please explain your response (optional):

- a. Yes

- b. Maybe
- c. No
- d. Don't know

Advertising systems pose certain risks in relation to illegal advertisements, manipulative techniques and disinformation.

In Europe, we have witnessed the damage that disinformation may cause during election times to our democracies (e.g. during the 2019 European elections) or to public health (during the ongoing international sanitary crisis). Disinformation coupled with secluded methods to target the electorate with political advertisements can have a devastating effect on elections' impartiality and integrity. In its 2017 Resolution, the CoE Parliamentary Assembly noted "with concern the number of online media campaigns designed to misguide sectors of the public through intentionally biased or false information, hate campaigns against individuals and also personal attacks, often in a political context, with the objective of harming democratic political processes" (Parliamentary Assembly of the Council of Europe, Resolution 2143 (2017), [Online media and journalism: challenges and accountability](#), 25 January 2017).

It is now clear that the way platforms design their services to benefit their advertising-driven business models can cause societal harm, including to democratic processes. Binding minimum rules, mirroring the impact online platforms have on citizens' opinion-forming and election outcomes, should thus be established.

Self-regulatory initiatives have failed and as highlighted by several studies, the Code of Practice on Disinformation has not offered any effective compliance or enforcement tool. We recognise the Commission's efforts to tackle the issue with its proposal on the DSA and welcome its ambition to increase transparency and accountability of online platforms towards their advertising systems and ultimately to citizens. The proposal is a step in the right direction and specific measures targeting paid political advertising should reinforce these objectives.

Q27. Please share any additional comments or remarks you may have regarding the topic of this public consultation. 3000 character(s) maximum

Broadcast media, including public service broadcasters, are subject to the highest level of regulation, including during elections periods where the respect of these rules is particularly important. They face a wide range of requirements regarding advertising and political advertising 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, rules on paid political advertising or rules on reflection/silence periods.

Although there is no common approach in the EU on whether and how to regulate political advertising, some Member States have regulated the issue at national level, either by restricting paid political communications (for instance by establishing non-discrimination rules or clear identification obligations) or by banning it completely.

Member States' ability to regulate on this issue and impose stricter standards in their territories should be ensured. It is crucial that political advertising rules are tailored to

national election systems and to local and national contexts. Any future European initiative on this matter must therefore not jeopardize rules set by Member States and ensure minimum harmonization.

Given the increasing and massive shift of political campaigns to digital (see answer to question 10), it is time that new rules are established to determine the responsibility and obligations of online platforms in this area. The lack of rules for platforms in this matter biases the level-playing field and the effectiveness of existing regimes.

As it is the case for broadcast media, online players should be subject to obligations regarding political advertising in general. This is even more important during the pre-election period and during the election period. The disclosure of the identity of the persons placing and paying for the advertising is essential, as well as the amount of money spent on such advertising. Platforms' users should also be provided explanations for the reasons why they see certain political commercial messages.

Self-regulatory initiatives or voluntary measures like the Code of Practice on Disinformation no longer suffice to ensure that citizens are properly informed about advertising they receive.

We therefore welcome the proposal put forward by the European Commission on a Digital Service Act and its ambition to enhance transparency and accountability of online platforms towards their advertising systems. This is a step in the right direction as it will help to ensure that users facing advertising online receive sufficient information to understand why they see certain advertisements and on whose behalf they are displayed. The future EU initiative on political advertising should build on these new requirements and impose binding minimum measures.