

## **AIG Response to Draft Guidelines on the Implementation of the Transparency and Targeting of Political Advertising Regulation (14 July)**

### **SUMMARY**

1. The Advertising Information Group (AIG) welcomes the opportunity to respond to the draft guidance to support the implementation of Regulation EU 2024/900 on the transparency and targeting of political advertising (“the Regulation”), published on 14 July.
2. The advertising industry recognises the need for the EU to regulate political advertising, particularly in terms of increasing transparency and ensuring users know who is behind an advert. To this extent, we believe it is of critical importance to establish clear guidelines that serve the public interest while protecting legitimate business communications.
3. However, we have significant concerns regarding the draft guidance that risk creating regulatory overreach and undermining legitimate commercial discourse:
  - **Scope expansion beyond legislative intent:** The guidance appears to expand the Regulation’s scope to capture organic social media posts by industry associations, contradicting the clear limitation to activities using targeting or ad-delivery techniques.
  - **Subjective assessment criteria:** The multi-factor analytical framework relies heavily on interpretative judgements that will vary significantly across Member States, creating regulatory uncertainty and inconsistent enforcement.
  - **Threat to issue-based commercial advertising:** The broad definitional approach risks creating a chilling effect on legitimate brand communications about societal issues, potentially reducing the diversity of voices in public discourse.
  - **Practical implementation challenges:** The guidance places unrealistic operational burdens on advertisers, agencies and media whilst failing to provide clear safe harbours for routine commercial communications.
4. These concerns centre on two fundamental issues: the failure to clearly distinguish between organic advocacy and targeted political advertising, and the absence of clear boundaries between political advertising and issue-based commercial communications. Without addressing these deficiencies, the guidance risks undermining both the Regulation’s objectives and the principles of proportionate regulation.

### **CONTEXT**

5. The Advertising Information Group (AIG) (transparency number: 11220347045-31) welcomes the opportunity to comment on the European Commission’s proposed guidance to support the implementation of Regulation EU 2024/900 on the transparency and targeting of political advertising.
6. By way of background, AIG is an informal pan-European network of European advertising and media associations that brings together various parts of the advertising industry: from advertising agencies, broadcaster (TV and radio) and publisher bodies to direct marketing and online advertising.

7. Advertising is a key driver of growth in the creative industries. It employs the services of other creative industries: from music, fashion, film production and special effects, to animation, games and photography. A study conducted by Deloitte showed that for every €1 spent on advertising it generated €7 for the wider European economy<sup>1</sup>. Advertising forms approximately 4.6% of the EU's GDP whilst helping SMEs to find new markets and charities to find new donors. Advertising also plays a key role in fostering brand competition, supporting product innovation while enabling a diverse and pluralistic media.
8. The advertising self-regulatory system covers 97% of advertisements seen by EU consumers and is coordinated by national Self-Regulatory Organisations (SROs) applying and enforcing codes that define advertising standards. The European Advertising Standards Alliance (EASA) serves as the umbrella organisation, maintaining standards across the network, sharing best practices and facilitating cross-border complaints. The system's effectiveness is demonstrated by national SROs handling over 55,000 complaints concerning more than 35,000 advertisements in 2023 – 96% of cases were resolved within one month.
9. This submission comments on the aspects of the draft guidance that are relevant to and affect the advertising industry.

#### SECTION 2.2.2 MESSAGES PROVIDED 'THROUGH IN-HOUSE ACTIVITIES'

10. The draft guidance under this section is confusing and appears to expand the original scope of the Regulation. Recall that Recital 24 states:

*“In-house activities, which should be considered as **solely relevant for Chapter III of this Regulation**, should be understood as activities carried out within an entity that comprise or substantially contribute to the preparation, placement, promotion, publication, delivery or dissemination, **by any means**, of a message which is liable and designed to influence the outcome of an election or referendum, voting behaviour or a legislative or regulatory process.” (emphasis added).*

11. The initial reference to Chapter III of the Regulation suggests that the scope is limited to online political advertising that utilise targeting and ad delivery methods. However, this is contradicted somewhat by the phrase “by any means” which suggests that all delivery and dissemination methods could be within scope of the Regulation.
12. The draft guidance (page 15) confirms the former interpretation as it states:

*“In-house activities, which do not involve the provision of a political advertising service, are therefore relevant only when using targeting or ad-delivery techniques in online political advertising. ...”*

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<sup>1</sup> <https://valueofadvertising.org/value-of-advertising/value-of-advertising-report/>

13. However, Example 27 states that:

*“An industry association prepares and shares, on behalf of its members, a position statement on its social media account to promote the views of its members designed to influence an ongoing legislative process”.*

14. This example does not indicate whether the statement being shared on social media is simply an organic post or a paid for advert. This is significant as the former does not utilise online targeting or ad-delivery techniques, whereas the latter does. We strongly believe that organic posts should not fall within scope of the Regulation. Put simply, an industry association publicising a statement via an organic post on social media should not be treated as political advertising. The guidance states in-house activities are relevant 'only when using targeting or ad-delivery techniques,' yet Example 27 provides no indication whether such techniques are employed.
15. This ambiguity is particularly concerning given that the guidance clearly states that in-house activities without targeting or ad-delivery techniques fall outside the scope of Chapter II transparency requirements.
16. If organic posts fell within the scope of the Regulation, it could mean that virtually all types of messages made public by industry associations would be subject to political advertising transparency requirements. This is overly bureaucratic and does not provide any additional transparency as it is clear what sector the industry association represents, and their membership is publicly available. It is worth emphasising that industry associations do not operate in the same way as think tanks or political action groups, whose membership and funding is not always transparent. Hence, we believe that a balance must be struck between ensuring transparency in targeted political advertising and preserving the ability of industry associations to communicate about issues affecting their industries.
17. Industry associations play an important role in political discourse. They act as coordinated voices for their members by advocating for policies and regulations that benefit their sectors. These organisations influence policy development by submitting evidence, meeting with officials, appearing before inquiries and commissioning research. Their input can be instrumental in forming effective public policy and ensuring such policies reflect the realities and priorities of the industries they represent, particularly as policymakers are not experts in the sectors that the associations represent.
18. As such, we recommend that the Example 27 be revised so that it is clear that organic, unpaid posts are not subject to labelling requirements. We propose that Example 27 should specify whether targeting features are used, for instance by stating: 'using paid promotion with targeting features' where applicable.
19. We believe that this is genuine drafting issue that could lead to regulatory overreach. The distinction between organic advocacy and targeted political advertising is crucial for maintaining proportionate regulation.

## **SECTION 2.3 PRACTICAL STEPS FOR THE IDENTIFICATION OF POLITICAL ADVERTISING**

20. On examination of Section 2.3, which outlines the practical steps for the identification of political advertising, several significant concerns emerge from our perspective regarding both the regulatory approach and its practical implications for the advertising industry.
21. The guidance attempts to provide clarity on the complex task of defining political advertising through a multi-factor analytical framework. However, this approach raises fundamental questions about regulatory overreach and creates substantial practical implementation challenges for the advertising sector. The reliance on subjective assessment criteria represents a particularly troubling aspect of the proposed framework. Many of the 'questions to consider' depend heavily on interpretative judgements rather than objective standards, such as determining whether a message 'relies on emotional appeals' or assessing whether the 'tone' is 'objective/neutral'. This subjectivity introduces significant variability that could lead to inconsistent enforcement across different jurisdictions and platforms.
22. The 'holistic analytical approach', whilst theoretically sound in principle, places a considerable operational burden on advertising platforms and agencies. These entities would be required to conduct complex multi-factor analyses for every potentially political message, which could significantly slow content approval processes and substantially increase compliance costs across the industry. This burden is particularly concerning given that many of the assessment criteria require specialised knowledge of political contexts and regulatory processes that advertising professionals may not possess.
23. Although political parties will publish their manifesto prior to an election or a referendum, it is largely unpredictable as to what topic(s) might likely become a salient issue during an election period. This unpredictability makes it extremely difficult for advertisers to assess in advance whether their commercial communications might inadvertently be classified as political advertising, creating significant regulatory uncertainty for routine business operations.

### **Cross-Border Subjectivity and Interpretive Challenges**

24. Whether a message includes political terminology or phrases commonly associated with political campaigns or societal issues can be subjective will vary across Member States. For example, Adidas offers a hijab and modest wear sports clothing range. However, we are aware that there is an ongoing social, political, and legal debate concerning the wearing of the hijab and other forms of Islamic coverings in public in France. Two decades ago, France introduced a law banning the hijab and other religious symbols in public schools and it prohibited female athletes from wearing hijabs during the 2024 Summer Olympics. From one perspective, Adidas has identified a market segment to service whilst showing its solidarity with religious freedom. An alternative narrative is that Adidas is trying to set the agenda, by promoting the salience of a politically relevant issue. We know that individual Member State positions towards hijabs vary, with some

like France banning them and other religious clothing, whereas others only ban the burqa but tolerate the hijab.

25. Similarly, the term ‘emotional appeal’ is highly subjective, and this subjectivity compounds the cross-border interpretation problems. All types of advertising rely on ‘emotional appeal’ to an extent, but the use of emotional appeal in marketing does not imply that a message is political in nature. Often commercial advertising uses emotions such as humour, excitement, nostalgia, fear of missing out etc to create appeal for the product or service that is being marketed. What constitutes an inappropriate ‘emotional appeal’ in a political context will likely be interpreted differently across Member States, further complicating consistent application of the guidance.

### **Chilling Effect on Issue-Based Commercial Advertising**

26. This regulatory uncertainty is likely to reduce the ability of brands to engage in issue-based advertising. This is significant because issue-based commercial advertising can highlight important causes such as sustainability, and diversity and inclusion. Brands are increasingly keen to connect with consumers in a range of ways, often taking on broader societal issues in their messaging and advertising in an effort to demonstrate their shared values. This ambiguity risks creating a chilling effect on public discourse, as brands fearing they may run afoul of EU regulation will retreat from participating in conversations about societal issues, thereby reducing the diversity of voices contributing to public debates and impoverishing the marketplace of ideas on critical topics.
27. For example: United Colors of Benetton has a long history of running creative, provocative anti-racism campaigns, including their ‘black, white and yellow’ hearts campaign for World Anti-Racism Day. These initiatives are more about promoting diversity and tolerance but have specifically referenced racism in Europe. In a 2019 Coca-Cola advertisement, Santa Claus was depicted as an immigrant being warmly welcomed by families and children.
28. While these adverts depict societal issues, they are not intended to *influence the outcome of an election or referendum, voting behaviour or a legislative or regulatory process*<sup>2</sup>. In our view, it is disproportionate to treat brands utilising their platforms to weigh in on certain societal and political issues as evidence that they are trying to influence an election or a legislative process. Ultimately, issue-based commercial advertising is not the same as advertising aimed at influencing political outcomes.

### **Technical Implementation Problems**

29. The guidance’s treatment of targeting techniques raises particular concerns about the potential capture of routine commercial advertising. The focus on targeting methods could inadvertently classify standard commercial communications as political advertising simply because they use demographic targeting whilst discussing policy-relevant topics. For instance, a bank advertising mortgage products during a period of housing policy

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<sup>2</sup> Article 3(2)(b) Regulation on the transparency and targeting of political advertising (2024/900)

debate could find its communications unexpectedly subject to political advertising regulations, despite the clearly commercial nature of the content.

30. Similarly, the broad approach to sponsor analysis lacks necessary precision. The characterisation of any 'organisation with a political agenda' as potentially subject to these requirements fails to recognise that many trade associations and business groups engage in policy advocacy as a legitimate aspect of their commercial interests. This engagement shouldn't automatically classify their communications as political advertising, particularly when such communications serve primarily to inform stakeholders about business-relevant policy developments.
31. The content assessment criteria present additional challenges by attempting to distinguish between 'purely factual' content and political messaging. This distinction proves problematic in practice, as much legitimate commercial advertising necessarily discusses the regulatory or policy environments that affect particular sectors. Companies have legitimate interests in communicating about regulatory changes, policy developments, and industry conditions that could significantly impact their operations and their customers' interests.
32. Furthermore, whilst the guidance states that political nature should not be 'established retroactively purely on the basis of the message's impact', the holistic analytical approach could still permit post-hoc reclassification of content. This possibility creates ongoing uncertainty for advertisers who may find that communications initially deemed acceptable become subject to political advertising requirements after achieving unexpected reach or engagement.

## **Recommendations**

33. To address these concerns, the guidance would benefit from
  - Establishing clearer objective criteria and more definitive thresholds rather than relying predominantly on subjective assessments.
  - The creation of explicit safe harbours for routine commercial communications and issue-based advertising would help ensure that legitimate routine business advertising does not become inadvertently captured by political advertising regulations.
  - Additionally, more extensive engagement with advertising industry bodies during the development process would help ensure that the final guidance reflects practical implementation realities and does not impose unworkable requirements on the sector.
34. The establishment of clear mechanisms for challenging political advertising determinations would also provide necessary safeguards against over-classification. Without such protections, the comprehensive nature of this guidance risks creating a chilling effect on legitimate commercial communication and could lead to the systematic over-classification of standard advertising content as political material, ultimately undermining both commercial speech and the regulatory system's credibility.



## CONCLUSION

35. The draft guidance, whilst attempting to provide clarity to identify political advertising, risks significant regulatory overreach that could fundamentally undermine legitimate commercial discourse and democratic participation by industry associations.
36. **Regarding in-house activities and organic posts:** It is essential that organic, unpaid posts, particularly those made by industry associations, are not inadvertently captured under the Regulation's transparency requirements unless they involve paid targeting or ad delivery techniques. The current ambiguity in Example 27 contradicts the guidance's own statement that in-house activities are relevant 'only when using targeting or ad-delivery techniques'. To address this issue, we recommend:
- Confirming that organic, unpaid posts, even if political in nature, are not subject to labelling requirements, unless targeting or ad delivery techniques are used.
  - Revising Example 27 to explicitly specify when targeting or ad delivery techniques are employed, thereby clarifying the boundary between organic advocacy and regulated political advertising.
37. **Regarding the identification framework:** Section 2.3 of the draft guidance risks extending the Regulation's scope far beyond its intended purpose by failing to adequately distinguish between political advertising and issue-based commercial communications. The subjective nature of the assessment criteria, combined with cross-border interpretive variations, creates an unworkable framework that threatens to chill legitimate brand participation in societal discourse. The potential capture of routine commercial communications—from banks discussing housing policy to fashion brands promoting inclusivity—demonstrates the framework's fundamental overreach. To prevent this chilling effect and preserve the diversity of voices in public debate, the final guidance should:
- Establish clearer objective criteria and definitive thresholds rather than relying on subjective assessments that vary across Member States.
  - Create explicit safe harbours for routine commercial communications and issue-based advertising to prevent inadvertent capture under political advertising regulations.
  - Draw a clear and unambiguous distinction between advertising designed to influence political outcomes and commercial communications that address societal issues.
  - Implement clear mechanisms for challenging political advertising determinations to provide necessary safeguards against over-classification.
38. The advertising industry supports the Regulation's transparency objectives, but implementation must be proportionate and targeted. The current draft guidance, if adopted unchanged, risks creating a regulatory environment that stifles legitimate commercial speech, reduces industry associations' ability to contribute to policy discourse, and ultimately impoverishes the marketplace of ideas on critical societal issues.

39. We urge the Commission to engage more extensively with industry stakeholders to ensure the final guidance achieves its transparency objectives whilst preserving the fundamental principles of proportionate regulation and democratic discourse. Only through such collaboration can the Regulation fulfil its intended purpose without creating unintended consequences that undermine both commercial freedom and public debate.

## **Advertising Information Group**

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