

FEDMA's comments on Political Advertising Regulation

The Federation of European Data and Marketing (FEDMA) strongly supports the general objective of the Regulation on the transparency and targeting of political advertising to protect election integrity and open democratic debate in the EU. However, FEDMA is concerned about some of the provisions ensuring compliance with this regulation. In particular, FEDMA believes that:

- (i) Issue-related advertising that pursues purely commercial purposes should be explicitly excluded from the definition of "political advertising",
- (ii) The status of non-commercial advertising for non-profit purposes, specifically, donation advertising by "non-profit organisations" should be clarified.

Definition of political advertising too far-reaching

FEDMA welcomes the decision to introduce a definition of "political advertising" at the Union level. In its current wording, however, the definition of issue-related political advertising (Article 2 (2)(b)) ¹ is too far-reaching, as a wide array of issue-based advertisements, including commercial advertising, could also fall under the scope of the regulation. **The suitability to "influence" political processes as defined in Art. 2(2)(b) indeed risks involving purely commercial advertising of companies taking up social topics to emphasize and present their own values and vision.** It should be recalled that, in order to meet the increasing consciousness of consumers to fair and sustainable practices, brands need to reflect their efforts and attention to these topics through issue-based advertising.

FEDMA would also like to point out that commercial advertising is already regulated by EU law, with the Unfair Commercial Practices Directive (UCPD) ² and the Audiovisual Media Services Directive (ADMSD) ³. This legal framework is also complemented by existing advertising self-regulatory systems that ensure responsible advertising within the EU coordinated by the [European Advertising Standards Alliance](#) (EASA), where FEDMA sits on the Board.

Thus, FEDMA advocates for excluding commercial advertising, including issue-based advertising with a clear commercial purpose, from the scope of the Regulation.

¹¹ Article 2(2): "the preparation, placement, promotion, publication or dissemination of a message by any means: (a) by or for a political actor or on its behalf, unless it is of a purely private or purely commercial nature; (b) which is likely to influence the outcome of an election or referendum, a legislative or regulatory process, or a vote"

² [Directive 2005/29/EC](#), Unfair Commercial Practices Directive, 2019.

³ [Directive 2010/13/EU](#), Audiovisual Media Services Directive, 2018.

The unclear status of non-commercial advertising for non-profit purposes

The definition of political advertising, as currently spelt out in Article 2(2), also comprehends within its scope advertising by “non-profit organisations” (NPOs) (e.g. associations, philanthropic organisations and foundations). Non-profit organisations advocate on societal issues such as climate change, poverty, human rights, etc. which are often part of a political debate. However, because of the societal nature of their activity with no commercial purpose, even when NPOs do not advertise to influence political outcomes, their advertising activity can still more easily be construed as political issues than issue-based advertising by commercial entities.

In other words, **the Regulation’s exclusion of “purely commercial” advertising is of little help to bring clarity around the status of advertising by non-profit organisations and assess when they fall under scope of Art. 2(2).** In the case of non-profit organisations, publishers are likely to be even more incentivised from taking a cautious approach and applying the definition of political advertising to any ads from these organisations. The resulting transparency obligations that would apply to NPOs’ advertising with no political intent risk to further burden non-profit organisations, whose resources are not comparable with large commercial companies.

FEDMA thus believes that the inclusion of non-commercial issue-based ads in the definition of political advertising should be clarified in regard to the advertising activity by non-profit organisations with no political intent by emphasising the “objective” of the message among the factors to take into consideration for the application of the definition of political ads (see suggested amendment below).

FEDMA welcomes any initiative to fight against any foreign influence and disinformation during elections. Nevertheless, EU legislators should reconsider some of the provisions proposed in order to ensure legal certainty and not go beyond the scope of the Regulation. FEDMA advocates for:

- excluding commercial advertising, including issue-based advertising with clear commercial purposes, from the scope of this Regulation.
- clarifying the status of issue-based advertising by non-profit organisations.

FEDMA'S RECOMMENDED AMENDMENTS

European Parliament's text: FEDMA suggests the changes below

- FEDMA calls for changes to Article 2(2):
 2. 'political advertising' means the preparation, placement, promotion, publication, delivery or dissemination, by any means, of a message, **unless the message is of a purely private or 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 **designed and** liable to influence voting behaviour or the outcome of an election or referendum, a legislative or regulatory process.
- FEDMA supports the proposed new Article 5a, especially 5a(g) "**The objective of the message**", and suggests giving more prominence to that point (g) by moving it up to the top of the list (point a)
- In Recital 17, the crossed part hereafter should be removed:

The promotion, publication, delivery 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 the public opinion on societal issues~~ at Union, national, regional, local or at a political party level should also constitute political advertising. [...]

Council's General Approach : FEDMA is strongly supportive of the following elements brought by the GA

- In Article 2(2): the wording "liable **and designed** to influence"
- The insertion of the new Article 2a (Identification of a political advertisement), in particular:
 - its paragraph 2, and we suggest the following change: "**A clear and substantial link should exist between the message and its potential objective to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour.**"
 - the point 2a(e) "**The objective of the message**", and suggests giving more prominence to that point by moving it up to the top of the list (point a)
