

What the Political Advertising Regulation Can Do for Researchers (and Vice Versa)

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Abstract

This chapter evaluates how the EU's Political Advertising Regulation empowers researchers to scrutinize political advertising. The Political Advertising Regulation is one of the main new EU regulations that explicitly aims to strengthen research into the (online) information ecosystem. The chapter first analyses why the EU empowers researchers to scrutinize political advertising, distinguishing between the limits of 'hard' regulation on political advertising, the need to enable political advertisers' accountability to the electorate, and the need for a better long-term understanding of the way political advertising is conducted. It then analyses the research opportunities the Political Advertising Regulation opens up. It provides an overview of the data the regulation makes available on all online political advertising, and the data researchers can request from service providers further back in the value chain, such as data analytics companies. It also evaluates the limitations of the newly accessible data, as well as the research opportunities it opens up. The chapter closes by evaluating the research opportunities opened up by the new obligations imposed on political advertising, focusing on which ads are considered 'political' in practice by platforms, which groups become harder to reach due to the regulation's new restrictions on targeting, and the Commission's new power to set binding rules on the design of political advertising labels based on insights from scientific research.

1. Introduction

The 2018 Cambridge Analytica controversy presented the EU legislature with a rather complex challenge. On the one hand, the ability to micro-target voters with political ads tailored to their personality seemed to pose a new technological threat to European democracy that called for legislative action. On the other hand, the lack of transparency in online

advertising made it difficult to determine the extent to which political advertisements were actually being targeted and with what effect. While platforms increased the transparency of online political advertising after 2018, these voluntary efforts have been widely criticised for failing to include sufficiently precise and comprehensive data needed for research into targeted political advertising (Ausloos et al, 2020; Dubois et al, 2022; Edelson et al, 2021, 2019; Kreiss and Barrett, 2020). In short, the EU was forced to regulate a problem that a lack of data prevented it from fully understanding. This issue was compounded by the fact that any regulation the EU does pass must comply with both freedom of expression principles that limit stringent restrictions imposed on political advertising, as well as EU Member States' hesitancy to regulate political advertising on the EU level.

Faced with these constraints, the EU has turned its attention to researchers. The Regulation on the Transparency and Targeting of Political Advertising (Regulation 2024/900) (commonly referred to as the Political Advertising Regulation, or PAR) is one of the primary pieces of new EU regulation specifically designed to enable research into the online information environment (Ausloos et al, 2023). Through this regulation, the EU aims to provide the transparency needed to hold political advertisers—and the companies that create and distribute their ads—accountable, while also supporting research that provides a more general understanding of the way political advertisements are being distributed (recitals 64 and 73 PAR).

This chapter evaluates how the PAR empowers researchers to scrutinise political advertising. Section 2 begins by discussing the kinds of political advertising activities covered by the PAR and why the EU aims to empower researchers to scrutinise political advertising. Section 3 then describes the new data the PAR makes available to researchers through ad libraries and data access requests. Finally, Section 4 evaluates what research is required to evaluate and apply the transparency and targeting restrictions the PAR imposes.

2. A brief introduction to the Political Advertising Regulation

2.1 What is political advertising?

Article 3(3) of the PAR provides the first definition of political advertising in EU law (for an analysis of existing national definitions, see van Drunen,

Helberger and Ó Fathaigh, 2022), covering both actor- and issue-based political advertising. First, a message falls within the PAR's definition of political advertising if it is "by, for, or on behalf of a political actor". Article 3(4) further specifies eight categories of political actors, including candidates for or holders of elected office at any level (from EU to local); members of local, regional, and national governments or EU institutions (excluding the Court of Justice of the EU, the European Central Bank, and the Court of Auditors), as well as individuals in leadership roles within political parties. However, purely private or commercial messages from political actors—such as an advertisement by a local councillor for their tax auditing business—are not covered.

Second, the PAR applies to messages that are "liable and designed to influence the outcome of an election or referendum, voting behaviour or a legislative or regulatory process, at Union, national, regional or local level" (Article 3(2)(b) PAR). A clear-cut example would be an ad by a fossil fuel group encouraging individuals to call their representatives to vote against an upcoming regulation or an ad by a climate NGO emphasising the need to address the climate crisis in the upcoming election. In more ambiguous cases, the PAR stipulates that there must be "a clear and substantial link" between the message and its potential influence on these outcomes (recital 23 PAR). The PAR lists a wide array of factors to determine this link, such as the timing, content, source, and intended audience of the message (recital 23 PAR). However, because these factors are so broad, they provide limited guidance on what is and is not political advertising. As a result, the practical scope of the PAR's definition of issue-based ads largely depends on how courts and regulators interpret and apply these factors.

The definition of political advertising also covers a wide range of activities, including the "placement, promotion, publication, [and] delivery" and even the "preparation" of political messages (Article 3(2) PAR). Concretely, the PAR refers to entities such as political consulting and PR firms, ad-tech platforms, data brokers, and data analytics companies as examples of organisations potentially providing political advertising services during the preparation phase (recital 1 PAR). Similarly, the PAR acknowledges a wide range of dissemination methods, including influencer endorsements, sponsored search results, and product placements, as well as newspapers, television, radio, mobile apps, websites, platforms, and computer games (recital 2 PAR). In short, the PAR covers nearly every activity associated with political messaging; the broad scope of its definition is perhaps best illustrated by the fact that legislators found it necessary to clarify that ancil-

lary services—such as cleaning and catering—do not qualify as political advertising services (recital 39 PAR).

The PAR only covers the preparation or publication of messages “normally provided for remuneration or through in-house activities or as part of a political advertising campaign” (Article 3(2) PAR). The regulation contains further exceptions for political opinions expressed in a personal capacity, for political opinions expressed without specific payment and in media under editorial responsibility (i.e., TV but not social media platforms such as YouTube (van Drunen, 2020; recital 8 EMFA), and for platforms (or other intermediaries) that allow users to upload content for free. As this web of exceptions suggests, the notion that political advertising constitutes paid-for political speech was surprisingly controversial during the political process (European Partnership for Democracy, 2023; van Drunen et al, 2023). On the one hand, a looser payment criteria would make it easier to address hidden advertising. It would also avoid creating an unfair advantage for large political actors, who do not need to pay external political service providers for tasks they can assign to in-house employees (hence the reference to in-house activities in Article 3(2) of the PAR). On the other hand, political speech that is unpaid benefits from the highest fundamental rights protections, and including it under the scope of the PAR would quickly run afoul of these protections (Dobber et al., 2019).

Finally, several exceptions should be noted. The PAR is only applicable to political advertising disseminated in the EU or directed at EU citizens (Article 2(1) PAR). It does not apply to official information regarding the organization of and participation in elections, official information disseminated to the public by, for, or on behalf of public authorities (as long as it is not liable and designed to influence voting behaviour), or the presentation of candidates in public spaces in the media (as long as it is provided for by law, free, and ensures equal treatment (Article 3(2) PAR).

2.2 Why does the Political Advertising Regulation empower researchers?

Government intervention in political advertising is a sensitive issue, as the right to freedom of expression affords considerable protection to political speech, even when it involves payment (*Animal Defenders International v United Kingdom*, 2013; *TV Vest v Norway*, 2008, para. 60). EU regulation of political advertising is particularly contentious due to the broad spectrum of approaches across Member States. Some countries, like Germany,

completely ban political advertising during certain periods or on certain media, while others, such as the Netherlands, have left political advertising largely unregulated (ERGA, 2021; van Hoboken et al., 2019). Any EU regulation aiming to set a uniform legal standard for political advertising must account for these national differences, as well as the historical hesitance of Member States to regulate speech at the EU rather than the national level (Bayer, 2024, pp. 87-106; van Drunen, Helberger and Ó Fathaigh, 2022).

In this context, transparency is an attractive proposition. It allows political actors to communicate freely with the public as they see fit while enabling Member States to impose stricter standards on the content of political advertising. At the same time, transparency can strengthen political accountability by ensuring that researchers have access to the data needed to scrutinise political actors and inform the public when political advertising is used in controversial ways (recitals 64 and 73 PAR). For example, following the 2024 European Parliamentary elections, the Belgian newspaper *De Tijd* worked with researchers to investigate how Belgian political parties targeted their advertisements. They found that the far-right party Vlaams Belang had systematically excluded individuals with an interest in African countries or Turkish football clubs from their ads, which often took an anti-migration stance. These practices skirted the EU's and Meta's ban on ethnic profiling (Verhaeghe, 2024). In this situation, EU law arguably strengthened journalists' ability to act as a public watchdog for powerful political actors by making additional data available to researchers. However, it is important to note that increased transparency does not necessarily change the behaviour of political actors. The effectiveness of transparency depends, among other things, on journalists and researchers making use of the newly provided data, as well as political parties being sensitive to the scrutiny they may face (Leerssen et al, 2021; Marchal et al, 2024).

Empowering researchers in the long term is necessary for fostering a deeper understanding of the political advertising landscape, which could inform the need for and design of future regulations of political advertising (Ausloos et al, 2023; Leerssen, 2023; van Drunen and Noroozian, 2024). Currently, the PAR, alongside other EU digital regulations such as the Digital Services Act (DSA)¹, aims to achieve two goals: regulating

1 For more information on the DSA, see Chapter 4 'The Digital Services Act: Online Risks, Transparency and Data Access' by Marie-Therese Sekwenz and Rita Gsenger and Chapter 5 'The Digital Services Act – an appropriate response to online hate speech?' by Pascal Schneiders and Lena Aulers.

perceived problems in the online information environment while ensuring researchers have access to the data necessary to understand what these problems are. In the case of the PAR, the Cambridge Analytica scandal triggered concerns over the ability of targeted advertising to manipulate and discriminate between voters, prompting EU legislators to restrict the use of (sensitive) data (recitals 6 and 74 PAR). However, much remains unclear about the ways and extent to which political advertisers engage in manipulative or discriminatory targeting practices, the actual effects of such practices on voting behaviour, and the conditions under which these effects manifest (Dobber, 2020; Kruikemeier et al, 2023; Votta, 2024). This uncertainty challenges regulators' ability to effectively govern the online information environment. One key benefit of the PAR is that it potentially improves our understanding of the specific ways in which political advertising can undermine democracy, enabling future regulations to address these challenges in a more empirical manner.

Finally, the reason why regulation is necessary to ensure the transparency required for accountability and a better understanding of the political advertising landscape is that the online environments in which political advertising occurs are in the hands of private actors. These actors have little incentive to provide access to the data needed for additional regulation or to hold their advertisers accountable (Ausloos et al, 2020, p. 88; Leerssen, 2023). Additionally, the personalised nature of targeted advertising limits researchers' ability to study these practices without the cooperation of the companies involved (Bodó et al, 2017). Unlike ads on TV or in newspapers, targeted ads are typically visible only to the person who receives them. As a result, researchers studying online political advertising have had to rely on challenging methodologies, such as data donations, or seek the cooperation of platforms to gain direct access to data. However, the data access regimes that platforms have voluntarily provided (e.g., voluntary ad libraries, Social Science One) have been limited in both scope and functionality (Edelson et al, 2021; Kirk and Teeling, 2021; Kreiss and Barrett, 2020; Leerssen, 2023). Regulation, at least in theory, offers an alternative solution by forcing private actors to provide data to researchers.

3. Research rights in the Political Advertising Regulation.

The PAR provides two kinds of transparency measures for researchers: making data available to everyone through ad libraries and making data

available to restricted groups submitting data access requests. This section discusses both measures in turn.

3.1 Ad libraries

The PAR requires that certain information (for a full overview, see Table 1) about political advertisements be available to everyone through publicly accessible databases (ad libraries). Article 39 of the DSA already required very large online platforms and search engines (defined in Article 33 of the DSA as having over 45 million monthly active users in the EU; henceforth referred to as large platforms and search engines) to create such ad libraries (Leerssen et al, 2021). The added value of the PAR is that large platforms and search engines must include political advertisements in their ad libraries in real-time, along with additional information regarding in particular the way these ads were funded and targeted. Moreover, it stipulates that the Commission will operate an ad library for all online political ads and has the authority to mandate the inclusion of further information in ad libraries based on scientific and technological developments (Articles 12(6) and 19(5) PAR).

Table 1. An overview of the information Article 39 of the DSA and Articles 12(1) and 19(1)(c, e) of the PAR require ad libraries to contain. Text in bold is only required under the PAR and, therefore, only applicable to political ads. Versions of this table based on earlier versions of the PAR have appeared in Buri et al. (2022) and van Drunen et al. (2024).

Type	Disclosure
Content	Content of the ad. Whether it is a political ad.
Identity	Name of the product/service/brand being advertised. Identity and contact details of (the entity ultimately controlling) the advertiser. Identity and contact details of (the entity ultimately controlling) the funder.
Timing	Dissemination period for the ad.

Type	Disclosure
	Referenda, elections, or regulatory processes with which the ad is linked.
Funding	Aggregate benefits all service providers received for the ad and ad campaign. Whether these benefits came from public or private sources and from inside or outside the EU. Methodology for calculating these benefits.
Reach	Number of individuals reached (in terms of the number of views and engagements with the ad per Member State and target group).
Targeting	Whether the ad was targeted. Targeting goals, mechanisms, and logic, including the main parameters used for targeting/exclusion and the reasons for choosing these. Categories of personal data used for targeting or ad-delivery. Meaningful information on the use of AI in targeting or ad delivery. A link to the internal policy describing how political advertising targeting or ad delivery techniques were used.
Moderation	If the ad has been removed, a statement of reasons why and how it was removed. Whether a previous version of the ad has been removed for violating the PAR.
Legal rights	How to participate in the elections/referenda with which the ad is linked. A link to the EU ad library. A link to the notice and takedown mechanism. A link to effective means to exercise GDPR rights.

The data made available through ad libraries is subject to a significant caveat: no single actor is under a strong obligation to verify whether it is complete and correct. Although political advertisers are legally required to truthfully disclose the political nature of their ad and supply the information listed in the PAR (Article 7(1) PAR), publishers are only required to ensure the accuracy of information regarding the reach of the ad, the money spent on it, how this amount was calculated, and how individuals can exercise certain legal rights (Article 12(2) PAR). For other information, including whether an ad is correctly identified as political, political advertising service providers are only required to check whether the infor-

mation advertisers have supplied is “manifestly erroneous”, meaning that it “is apparent from the content of the advertisement, the identity of the sponsor, or the context in which the relevant service is provided, without further verifications” (Article 7(4), recital 45 PAR). These relatively lax obligations appear ineffective at addressing researchers’ complaints regarding platforms’ efforts to ensure political ads are correctly labelled in ad libraries (Edelson et al, 2019, 2020; Kirk and Teeling, 2021).

The additional data made available in ad libraries under the PAR offers modest benefits to researchers. Notably, it requires more detailed information on the funding of political advertisements, including their source, the total amount spent on the campaign, and any non-monetary benefits. Additionally, the PAR mandates the provision of more specific data on the targeting and reach of political advertisements. For reach, platforms must disclose the number of views and engagements; for targeting, the additional data primarily concerns general information about the functioning, goals, and use of targeting. However, this is unlikely to provide researchers with a more fine-grained view of how political advertisements are targeted.

While the current data provided in ad libraries may be of limited utility to researchers, the PAR allows the Commission to adopt a delegated act that can expand the list of required information in response to “technological developments, market practices, relevant scientific research, developments in supervision by competent authorities, and relevant guidance issued by competent bodies” (Article 12(6) PAR). For researchers working with data from ad libraries, this means that it is valuable to explicitly identify concrete pieces of information missing from ad libraries that would better enable the scrutiny of political advertising. This feedback could help inform the Commission on how to exercise its power to adopt a delegated act. However, it should be noted that the Commission’s power to adapt ad libraries through delegated acts is not unlimited. The Council and Parliament have two months to veto any delegated act the Commission proposes and can strip the Commission of its power to adopt delegated acts at any time (Kaeding and Stack, 2015). Moreover, delegated acts cannot change “essential elements” of the underlying regulation, namely those that require political choices by the legislature and a balancing of the interests at stake (Chamon, 2018, p. 239; Schütze, 2011, p. 662). Finally, the Commission can only amend the list of information requirements if such changes are “necessary for the wider context of the political advertisement and its aims to be understood” (Article 12(6) PAR).

The Commission will also operate a central ad library that includes all political advertisements disseminated online, and large online platforms and search engines must send the advertisements published on their services to that database immediately. Other publishers (such as smaller platforms, influencers, online newspapers, and radio stations) must do so within 72 hours (Article 13(5) PAR). Moreover, the Commission is required to set out binding rules (an *implementing act*) on a common data structure, standardised metadata, and shared API to ensure that all online political advertisements can be researched through a single portal (Article 13(6) PAR).

The ad library operated by the Commission offers several potentially significant benefits for researchers. First, it facilitates cross-publisher research by aggregating all online political advertisements—whether from large or small platforms, search engines, influencers, online newspapers, and other sources—into a single database with a unified data structure. Second, outsourcing the operation of an ad library to the Commission may improve functionality. Platforms lack strong incentives to invest in a well-functioning ad library that allows researchers to scrutinise their advertisers. Conversely, both the Commission and researchers have a shared interest in enabling scrutiny of the electoral process, assuming that the independence of the Commission entity operating the ad library is safeguarded. This creates an opportunity for a more direct and efficient process through which the Commission's ad library can be adapted based on researchers' needs (van Drunen and Noroozian, 2024).

3.2 Data access requests

The PAR establishes two new rights to data access, as demonstrated in Table 2. Much of the information that can be requested is similar to the information included in the ad libraries. The added value of the PAR is that data can also be requested from political advertising service providers and controllers, which include actors further back in the political advertising value chain, as well as offline publishers and political parties themselves. The next section analyses from whom data can be requested and which researchers are empowered to request such data.

Table 2. Information vetted researchers can request from political advertising service providers (Articles 17 and 9 PAR), publishers (Articles 17 and 11-12 PAR), and controllers (Articles 20 and 19 PAR).

From whom data can be requested	What data can be requested	
Political advertising service providers	Ad context	<p>The ad or campaign with which their service was connected.</p> <p>The identity and contact details of the (entity ultimately controlling the) advertiser, and for legal persons, their place of establishment.</p> <p>The election, referendum, legislative or regulatory process with which the political advertisement is linked.</p>
	Service	<p>The specific service provided.</p>
	Funding	<p>The amounts they invoiced and the value of other benefits they received for their service.</p> <p>The private/public, EU/non-EU origin of these funds.</p> <p>Publishers: any information in the transparency notice they are required to have (see Table 1).</p>
Controllers using targeting or ad-delivery techniques	Internal policies	<p>The internal policy describing the use of targeting or ad-delivery techniques (must also be publicly accessible).</p> <p>An internal annual risk assessment of the use of targeting techniques or ad-delivery techniques on the fundamental rights and freedoms (must also be publicly accessible).</p>
	Records on the use of targeting	<p>Records on the use of targeting or ad-delivery techniques, the relevant mechanisms and parameters used.</p> <p>Whether AI was used to target or deliver a political ad.</p> <p>Targeting goals, mechanisms, and logic, including the main parameters used for targeting/exclusion and the reasons for choosing these.</p> <p>Categories of personal data used for targeting or ad-delivery.</p> <p>Meaningful information on the use of AI in targeting or ad delivery.</p>

3.2.1 From whom can data be requested?

Vetted researchers can request data from political advertising service providers (Article 17 PAR) and controllers (Article 20 PAR). Political advertising service providers are simply defined as any natural or legal person who provides services consisting of political advertising. Given the broad definition of political advertising, this covers a wide array of actors (e.g., influencers, data brokers, PR agencies). However, there are three main exceptions to the political advertising services from which data can be requested. First, intermediary services regulated under the DSA that are provided without payment (monetary or otherwise) (Article 3(g) PAR) are not covered. For the purposes of political advertising, this means that social media companies allowing users to post content for free are not covered (though their advertising services would be); although, if the users themselves receive payment to post political messages on such platforms, they do provide a political advertising service (for a broader discussion on political influencers, see Gregorio and Goanta, 2022). Second, “purely ancillary services” are not covered, as such services complement political advertisement but do not directly influence how it is prepared or distributed (Article 3(6) PAR). The examples listed in the PAR (e.g., graphic/sound design, financing, transportation, sales) indicate that the bar to qualify as an ancillary service is high. This interpretation is bolstered by the PAR’s goal of facilitating research into political advertising, which is broadly defined as covering anything from preparation to the ultimate dissemination of a political message. Finally, the information under Article 9 of the PAR (which is most of the information listed in Table 1) may not be requested from micro-undertakings, which can, at most, meet one of the following criteria: a total balance sheet of €350,000, net turnover of €700,000, and an average of ten employees during the previous financial year (Article 3(1) Directive 2013/34/EU).

Furthermore, some of the information researchers may request is only held by political advertising publishers (Articles 11, 12 PAR), a subcategory of political advertising service providers that bring a political advertisement into the public domain. The information that can be requested from publishers is identical to the information that must be included in the ad library. However, while the ad library only includes online political advertisements, researchers have the right to request data from any publisher, including, for example, TV, radio, press publishers, and influencers.

Article 20 of the PAR empowers researchers to request data from controllers that use ad delivery or targeting techniques. The PAR borrows the concept of *controller* from data protection law, where it is defined as the actor that determines the means and purposes of the way data is processed (EDPB, 2020; Finck, 2021). Although the scope of this concept is somewhat contentious, as it determines which actor is responsible for compliance with the GDPR, in the context of the PAR, it is important to note that the European Data Protection Board (consisting of all EU data protection authorities, commonly referred to as EDPB) has maintained that both the parties spreading political advertisements and the platforms distributing them can qualify as controllers (Blasi Casagran and Vermeulen, 2021; EDPB, 2021). Similarly, the PAR explicitly clarifies that in-house activities by political parties are covered by the chapter in which Article 20 PAR is included.

Both controllers and political advertising service providers must provide the requested information as soon as possible (within a month at the latest) and in machine-readable format (if technically possible). Companies may refuse requests that are manifestly unclear, excessive, or concerning information they do not have. They may also charge a reasonable and proportionate fee (at most, the administrative costs of providing the information) if processing the request involves significant costs. Companies bear the burden of proof when they refuse requests or argue providing the information involves significant costs (Article 17 PAR).

3.2.2 Who can request data?

The PAR's data access rights only apply to vetted researchers (as well as members of civil society organisations, political actors, electoral observers, and journalists), the criteria of which are laid out in Article 40(8) of the DSA. They partially cover the personal characteristics of the researcher, who must be affiliated with a research organisation (such as a university) and commercially independent. However, the criteria laid out in Article 40(8) of the DSA primarily concern the specific research that is carried out. While some of the criteria are relatively easy to satisfy, such as the need to disclose the funding of the research, make the results publicly available free of charge, and take appropriate data security and confidentiality measures, others impose substantive limitations. Most notably, research may only be carried out to better understand potential measures to mitigate systemic risks (defined elsewhere in the DSA as the dissemination of illegal content

and risks to issues involving fundamental rights, democracy, and health) and the data and timeframe in which it is provided is necessary and proportionate to the purpose of the research.

Though the criteria in Article 40(8) of the DSA were designed to establish the right to request data provided in Article 40(4) of the DSA, they are a poor fit for the data access right stipulated in the PAR. First, the PAR does not provide any mechanisms through which “vetted researchers” can be vetted. Under Article 40(4) of the DSA, this would be done by the Member State in which the platform from which data is requested is established. The PAR, however, applies to a much broader group of companies and, in any case, does not empower any public authority to vet researchers (a similar issue arises in the context of Article 40(12) of the DSA). Therefore, it seems likely that the company from whom data is requested may reject the request if the researcher does not appear to meet the criteria of Article 40(8) of the DSA, after which the researcher can resubmit their request or attempt to enforce their right to request data through litigation.

Fundamentally, it is questionable whether the limitations imposed on the research carried out by vetted researchers using the PAR are necessary at all. No similar limitations are imposed on civil society organisations, political actors, electoral observers, and journalists who may use the same access right. This indicates that the information covered by the PAR’s data access right is not of such a sensitive nature that access must be severely restricted. Pragmatically, it may be easier for researchers to collaborate with civil society organisations if their requests to access data are denied for failing to satisfy the criteria in Article 40(8) of the DSA.

4. How research can support the Political Advertising Regulation

In addition to providing new data for research, the PAR also increases the need for research into political advertising. Below, I highlight three specific areas where research could support political advertising governance.

4.1 Defining political ads

One of the main contributions of the PAR is its introduction of a new definition of political advertising. Introducing such a definition is important, as it reduces platforms’ discretion to determine which ads are political and, thus, subject to additional scrutiny and targeting limits. At the same

time, the PAR's definition of political advertising currently leaves much room for interpretation regarding when, exactly, an advertisement is liable and designed to influence voting behaviour or regulatory processes. For example, should a promoted fundraising post by a digital rights NGO, a Patagonia ad calling attention to climate change to sell sustainable jackets, or an ad by a fossil fuel company showcasing their green initiatives be classified as political advertising?

The new definition introduced in the PAR is too vague to provide a definitive answer to these questions. Determining where the line between political and non-political advertisements is drawn in practice is crucial, as this distinction determines what political speech is subject to legal targeting and transparency restrictions and what speech is not. Legal research is necessary to assess how regulators and courts categorise political advertisements. Legal scholars could, for instance, assess how widely courts and regulators apply the PAR's definition of political advertisements, which criteria (according to Article 8(c) of the PAR) are decisive in practice, and how the definition of political advertisements should be understood from a fundamental rights perspective. Equally as important, however, is empirical research into how publishers, particularly platforms, apply the definition of political advertisements. This can offer valuable insights into which aspects platforms prioritise when classifying an ad as political. More broadly, it is essential to assess the effectiveness of platforms' efforts to identify political ads. Since the PAR requires political ads to be labelled and included in the general ad libraries established by the DSA, researchers could potentially scrutinise how effectively platforms identify political ads by comparing the group of ads they classify as political with non-political ads in the ad library. Such an analysis could, for example, reveal how effectively platforms like TikTok—who do not allow political ads—enforce their ban and whether messages from certain types of actors are more often qualified as political advertising (and thus subject to more stringent rules) than those of others communicating about the same issue (e.g., NGOs and fossil fuel companies communicating about climate change).

4.2 When should political advertising be prohibited?

While the PAR mainly relies on transparency to limit the potential negative effects of political advertising, it also bans certain instances of political advertising. Specifically, it bans:

- In the three months before an election or referendum, political advertising by actors that are not EU citizens/permanent residents with voting rights in that election or referendum/companies owned by such citizens or permanent residents (Article 5 PAR).
- Targeting or delivering political ads using data not collected from the data subject by the controller (Article 18(1)(a) PAR).
- Targeting or delivering political ads using data for which individuals have not provided explicit consent for the specific purpose of political advertising (Article 18(1)(b) PAR).
- Targeting or delivering political ads using sensitive data, such as ethnicity, religion, or political opinions (Article 18(1)(c) PAR; Article 9 GDPR).²
- Targeting or delivering political ads using data of people whom the controller knows with reasonable certainty to be one year below the voting age (Article 18(2) PAR).

Since these bans change who can pay to communicate with which voters, it is critical that research scrutinises how they do so. At least two topics are particularly worthy of further consideration. First, researchers could assess how the regulatory burden imposed by the PAR strengthens political parties' dependency on platforms and weakens the ability of smaller parties to reach voters. Every party does not have the capability to comply with the PAR's obligations, especially the need to collect data directly from individuals and with their consent to use it for political advertising. Thus, the PAR may inadvertently strengthen the position of actors with the means to collect such data, most notably larger platforms and political parties. Research has already indicated platforms wield significant influence over the political advertising landscape (Dommett et al, 2024; Votta, 2024).

Second, researchers could assess how the PAR shapes individuals' access to political information. This is particularly important regarding prohibitions on using the data of young people and data that reveals an individual's ethnicity, religion, political opinion, or other attributes qualified as sensitive under Article 9 of the GDPR (Blasi Casagran and Vermeulen, 2021; Quinn, 2021). While these bans were imposed to prevent manipulation and discrimination, they may simultaneously make it difficult for political actors to reach out to and mobilise the political power of those groups. The Netherlands, for example, has several small parties representing ethnic or religious groups. Targeted political advertising can be an efficient way to

2 For more information on the GDPR, see Chapter 14 'EU data protection law in action: introducing the GDPR' by Julia Krämer.

reach and build the political power of these smaller groups rather than the general electorate. To better evaluate the proportionality of the PAR's measures to prevent manipulation and discrimination and assess how broad concepts, such as data revealing one's ethnicity or political opinions, should be interpreted, it is crucial that their impact on the access of the affected voter groups to political information is scrutinised.

4.3 Effective labels for political advertisements

In addition to ad libraries and data access requests, labels are an important transparency tool in the PAR's management of political advertising. Their primary function is to ensure the individuals exposed to political advertisements are empowered to make informed choices. To that end, Article 11 of the PAR requires that each political advertisement has a label that:

- Clarifies it is a political advertisement.
- Discloses the identity of (the entity ultimately controlling) the sponsor.
- If applicable:
 - Identifies the election, referendum, or legislative/regulatory process to which the ad is linked.
 - Discloses that the ad has been subject to targeting or ad delivery techniques.
- Links to a transparency notice with further information (see Table 1).

Existing research has clearly shown that the format of the label significantly affects its impact on individuals, particularly because individuals often do not pay attention to the information on the label (Dobber, Kruikemeier, Helberger, et al., 2023; Dobber, Kruikemeier, Votta, et al., 2023). Like other legislation, such as the GDPR, the PAR imposes general requirements that labels are clear and prominent. However, the PAR goes a step further by requiring the Commission to adopt specific, binding rules (an *implementing act*) for the format and template of labels (Article 11(3) PAR). These rules must ensure that labels are adapted to the specific characteristics of the medium on which the political advertisement is disseminated (e.g., radio, TV, or online). They must also account for “the latest technological and market developments, relevant scientific research, and best practices” (Article 12(7) PAR).

In the short term, the PAR creates a pressing need for further research into the best ways to design labels that ensure voters are made aware of the political and targeted nature of the ads they see. Ideally, such research

would also account for the different media platforms (e.g., online videos or text posts, TV, radio) on which users might encounter political ads. In the longer term, the PAR's reliance on labelling raises questions about the effectiveness of such labels as a safeguard against the manipulation of voters. Particular attention should be paid to the effectiveness of different combinations of information criteria and how labels impact different societal groups across various media or in different countries. By identifying where labels might fail to protect voters, such research could help policymakers assess where additional safeguards are needed.

5. Conclusion

The PAR expands our understanding of two key aspects of political advertising. First, the new data access rights provide (albeit limited) insights into the traditionally opaque value chain before a political ad is published. Second, improvements to ad libraries strengthen oversight of the distribution of online political ads by adding data on funding and targeting and by requiring that large platforms include political ads in real-time. Similarly, the ad library operated by the Commission may offer significant functional improvements and facilitate research not only into political ads distributed through large platforms' advertising systems but also into all online political ads, whether from smaller platforms, influencers, websites, or other sources.

Nevertheless, substantial aspects of political advertising transparency remain largely unregulated. No actor has a strong obligation to ensure the data provided to researchers is accurate or complete. Additionally, key aspects of the political advertising process remain hidden from view. For example, advertisers regularly upload datasets to platforms to either target individuals in that dataset (custom audience targeting) or have the platform target individuals that resemble those in the dataset (lookalike audience targeting). Platforms can also exercise significant influence over the way an advertisement is distributed within the target group by the advertiser. The PAR does not make much data available on either of these aspects of the ad distribution process. Therefore, it is crucial to ensure that the increased transparency of political ads, especially those online, does not draw attention away from these aspects of the political process.

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