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“Safeguarding Freedom of Expression and Freedom of Media in Ukraine – Phase II”
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LEGAL OPINION

On the Draft Law of Ukraine №8310
"On Amendments to the Electoral Code of Ukraine regarding the
improvement of the regulation of information provision for elections and
the conduct of pre-election agitation”

Division for Co-operation on Freedom of Expression

The role and responsibility of the Council of Europe in protecting freedom of expression has been underlined in the "Reykjavik Principles for Democracy", the [Reykjavík Declaration – United around our values](#).

Funded within the Council of Europe Action Plan for Ukraine “Resilience, Recovery and Reconstruction” 2023-2026, the Project “[Safeguarding Freedom of Expression and Freedom of Media in Ukraine – Phase II](#)” project aims to address urgent needs of major stakeholders and media players in the country. The Project’s objective is “Enabling a pluralistic media environment in Ukraine through harmonisation of legal and policy frameworks in line with European standards” and it is built around three main components:

(1) Alignment of Ukraine’s framework on media, freedom of expression and freedom of access to information with the European standards;

(2) Effective implementation of the legal framework governing the protection of journalists, public broadcasting and regulatory authority in line with European standards;

(3) Effective and efficient communication strategies governing a balanced media coverage and preventing information disorder.

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I. Introduction

This Legal Opinion has been prepared within the framework of the Council of Europe Project “Safeguarding Freedom of Expression and Freedom of the Media in Ukraine – Phase II” (hereinafter “the Project”). The subject of this assessment is the compliance [of the Draft Law of Ukraine "On Amendments to the Electoral Code of Ukraine regarding the improvement of the regulation of information provision for elections and the conduct of pre-election agitation"](#) (Draft Law No. 8310 of 27 December 2022) with European standards, namely the Regulation (EU) 2024/900 of the European Parliament and of the Council of 13.03.2024 on the transparency and targeting of political advertising.

The basis for this Legal Opinion is the text of Draft Law No. 8310, published on the official website of the Verkhovna Rada of Ukraine.

The request for this Legal Opinion was submitted on 13 October 2025 by Hanna Krasnostup, Director of the Department of Strategic Communications and Promotion of Ukrainian Culture at the Ministry of Culture of Ukraine. The request was made as part of the task of ensuring the implementation of the “Media in the Election Campaign” section of the Roadmap for the Functioning of Democratic Institutions, within Ukraine’s European integration process.

II. Background.

Reforming electoral legislation requires a careful and balanced approach that strengthens democratic guarantees while preserving the coherence and stability of the electoral system. Therefore, any changes made to the Electoral Code should be assessed not only in terms of their technical accuracy, but also through the prism of their broader implications for transparency, fairness and effective administration of elections. It is in this context that Draft Law No. 8310 is being considered, with particular attention to its compliance with constitutional guarantees and European electoral standards.

The Draft Law contains numerous amendments of both a technical and substantive nature. Among other issues, it revises provisions on the organization and functioning of election commissions, updates the requirements related to voter lists and candidate registration, adjusts procedures for voting and ballot counting, and introduces clarifications aimed at improving the transparency, accessibility, and legal certainty of electoral processes.

Given the significance of elections for the functioning of democratic governance, any reform of electoral legislation must ensure compliance with international standards, anticipate the practical implications of legal changes, and maintain the stability of electoral rules. In this context, the request for the present Opinion aims to support the Verkhovna Rada in ensuring that the proposed amendments contribute effectively to strengthening the integrity, transparency, and inclusiveness of the electoral process in Ukraine.

Free and fair elections constitute a fundamental component of a democratic society, a principle affirmed in Article 38 of the Constitution of Ukraine and further reinforced by commitments undertaken within the Council of Europe.

III. Overview of the relevant Council of Europe standards and legal opinions.

The assessment of Draft Law No. 8310 requires taking its provisions into account within the broader framework of Council of Europe standards governing the integrity of elections, freedom of the media and the regulation of political communication. These standards, developed by the Venice Commission, the Committee of Ministers and the Parliamentary Assembly, consistently emphasize the central role of transparency, neutrality and pluralism in ensuring the ability of voters to form an opinion free from manipulation.

1. [The Venice Commission's Code of Good Practice in Electoral Matters](#) emphasises that:

“State authorities must observe their duty of neutrality. In particular, this concerns: (i) media; (ii) billposting; (iii) the right to demonstrate; (iv) funding of parties and candidates.” (Code of Good Practice in Electoral Matters, p. 12).

This principle of neutrality, especially in relation to the media and campaign funding, provides an essential benchmark for assessing the amendments proposed by Draft Law No. 8310.

2. [The Committee of Ministers' Recommendation CM/Rec\(2022\)12 on electoral communication and media coverage of election campaigns](#) further underscores the need for states to ensure a transparent, pluralistic and accountable information environment during electoral periods, particularly in the digital sphere. It highlights that online platforms, through their algorithmic systems for content display, amplification and ad delivery, have become decisive actors influencing voters' access to political information. As the Recommendation stresses:

“Citizens should be able to easily identify political advertising and understand why they are targeted with such content” (CM/Rec(2022)12, para. 64).

It therefore calls on member States to promote robust transparency obligations for online political advertising, including clear labelling of sponsored content, disclosure of funding sources, and accountability for targeted or micro-targeted advertising practices. It also emphasises that measures to counter disinformation must respect freedom of expression while ensuring that manipulative techniques, especially those enabled by algorithms and undisclosed sponsorship, do not distort the free formation of political opinion. These principles provide an essential interpretative framework for assessing whether the Draft Law adequately addresses modern risks associated with digital campaigning and online political advertising.

3. The Parliamentary Assembly of the Council of Europe has likewise alerted to the increasing risks posed by digital manipulation in the political sphere. As stated in its [Resolution 2326 \(2020\) “Democracy hacked? How to respond?”](#):

“Manipulation of information, including through micro-targeted political advertising and opaque algorithmic processes, poses a direct threat to democratic integrity and the free formation of political opinion.” (PACE Resolution 2326 (2020), p. 2).

These concerns directly reinforce the importance of ensuring that the Ukrainian regulatory framework adequately addresses modern challenges related to digital campaigning, targeted advertising and the risks of disinformation.

The issue is also addressed in the recent legal opinions issued by the project - Safeguarding Freedom of Expression and Freedom of the Media in Ukraine – Phase II” (SFEM-UA – Phase II), namely the [Legal Opinion concerning the Draft Law “On Amending the Law of Ukraine ‘On Advertising’” \(LEX 2025 4\)](#), which identifies systemic challenges in regulating digital advertising, including: 1) transparency of online commercial communications, 2) responsibilities of video-sharing and information-sharing platforms, and 3) need for coherent safeguards against algorithmic amplification and targeting of content. These findings are directly relevant to the assessment of Draft Law No. 8310, which likewise addresses the regulation of information flows during election campaigns. Taken together, they illustrate a regulatory problem: Ukrainian legislation, while developing within the framework of traditional media regulation, still lacks effective mechanisms to address manipulation, micro-targeting and disinformation across digital platforms in electoral and non-electoral contexts.

IV. Assessment.

This conclusion contains a legal assessment [of the Draft Law of Ukraine "On Amendments to the Electoral Code of Ukraine regarding the improvement of the regulation of information provision for elections and the conduct of pre-election agitation,"](#) submitted by People's Deputies of Ukraine Poturaiev M.R., Kornienko O.S., Kravchuk Y.M. and other People's Deputies of Ukraine (reg. No. 8310 of 27 December 2022), hereinafter referred to as the "Draft Law", for its compliance with European standards laid down in Regulation (EU) 2024/900 of the European Parliament and of the Council of 13 March 2024 on the transparency and targeting of political advertising, hereinafter referred to as the "Regulation".

Having studied the changes proposed by the Draft Law, we assess them as generally improving the current electoral legislation. Thus, the Draft Law promotes greater transparency of elections through:

- expanding the rights of journalists to access public events and information related to elections (Article 23);
- increasing the openness of information on the registration of candidates submitted to the election commission and on the sources and use of election funds (Article 48);
- standardizing the principles of accuracy, completeness, balance and impartiality in the presentation of information by the media (Article 49);
- establishing requirements for the representativeness of public opinion polls (Article 50);
- regulation of pre-election agitation, including requirements for the content, form and labelling of campaign materials (Articles 51, 53, 54, 54-1, 55, 56, 56-1, 57).

The changes proposed by the Draft Law to be substantive and positive. However, they do not cover some of the current problems of political agitation related to the targeting of political advertising, which poses risks of manipulating voters and distorting their free expression of will. Of the above list, only the provisions on the regulation of pre-election agitation, including requirements for the content, form and labelling of such campaign materials (Articles 51, 53, 54, 54-1, 55, 56, 56-1, 57), coincide with the subject matter of the Regulation.

Ukrainian legislation, namely the Electoral Code of Ukraine, which the Draft Law aims to improve, does not fully address the current challenges in the field of disinformation and voter manipulation addressed by the Regulation. The provisions of the proposed Draft Law, although not contrary to the Regulation, do not fully reflect all of its provisions.

Below are the main comments on the scope and wording of the provisions of the Draft Law.

1. The relationship between the terms "*pre-election agitation*" and "*political advertising*."

The Electoral Code of Ukraine and the Regulation contain similar but not identical concepts: "*pre-election agitation*" and "*political advertising*" in the context of activities. It should be noted that the term "*political advertising*" is defined by the Electoral Code of Ukraine as information disseminated in various ways during elections. The Electoral Code amended the Law of Ukraine "On Advertising" by adding a definition of "*political advertising*" as information rather than activity. However, in 2023, this definition was removed from the Law of Ukraine "On Advertising" in the context of implementing European legislation into national law. Now, Ukrainian legislation does not contain a definition of the term "*political advertising*". As of now, the term "*pre-election agitation*" in the Electoral Code of Ukraine is the closest to the European term "*political advertising*" as an activity. **The difference in the scope of application of these terms significantly affects the effectiveness of safeguards against threats of violation of public interests specified in the Regulation, as shown below.**

Article 1 of the Electoral Code of Ukraine defines elections as the main form of expression of the will of the people, a means of direct exercise of power by the Ukrainian people. *Pre-election agitation* is defined in Article 51(1) of the Electoral Code of Ukraine as

"the implementation of any activity aimed at encouraging voters to vote for or not to vote for a particular candidate, party (party organization) - subjects of the electoral process".

Thus, according to national legislation, this phenomenon is limited only to the electoral process, and its purpose is limited only to influencing the electoral activity of voters during elections.

The term "*political advertising*" in the Regulation is much broader, both in terms of types of activity and objects of influence. According to Article 3 of the Regulation:

"'political advertising' means the preparation, placement, promotion, publication, delivery or dissemination, by any means, of a message, normally provided for remuneration or through in-house activities or as part of a political advertising campaign:

- (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 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;”*

As can be seen from the above, *political advertising* is considered to be activity not only in the context of elections (as in the case of *pre-election agitation*), but also in the context of referendums, as well as influencing voter behaviour outside the framework of election campaigns or referendums and influencing the legislative or regulatory process at all levels: EU, national, regional and local. In other words, *political advertising* influences not only voters in the context of elections, but also authorities, local governments, politicians, and officials at all levels outside the context of elections – during the legislative or regulatory process.

Those who commission *political advertising* may thus seek to influence not only the outcome of elections, but also to program the entire political system regardless of the electoral season, which is an obvious reality in the context of hybrid warfare.

Paragraph 22 of the preamble to the Regulation refers to *political advertising* as that which is prepared, placed, promoted, published, delivered or distributed directly or indirectly by a political entity, or prepared, placed, promoted, published, delivered or distributed by any means, directly or indirectly, for or on behalf of a political entity. It also states that *political advertising* is usually directly or indirectly controlled by a sponsor, which **may** be a political entity.

Thus, in the context of the provisions of the Regulation, it is recognized that *political advertising* may be initiated/commissioned not only by a political entity and not only at the latter's expense, in contrast to the approach of Ukrainian legislation to *pre-election agitation*.

An essential feature of *political advertising* under the Regulation is its purpose: to influence the results of elections or referendums, voting behaviour, or the legislative or regulatory process at Union, national, regional, or local level. Paragraph 23 of the preamble to the Regulation emphasizes the need for a clear and substantial connection between the message and its potential to influence election results, referendum outcomes, voting behaviour, or the legislative or regulatory process. Only if such a causal link exists can we say that we are dealing with *political advertising*. Even commercial advertising will fall within the scope of the Regulation if such advertising can and is intended to influence the results of elections or referendums, voting behaviour, or the legislative or regulatory process (paragraph 25 of the preamble to the Regulation). Ukrainian legislation, both the current one and the proposed Draft Law, does not emphasize the need to examine such a causal link in order to classify a message as *pre-election agitation*.

Both the current Electoral Code of Ukraine and the Regulation (para. 27 of the preamble to the Regulation) exclude from the concept of *pre-election agitation* and *political advertising* official communications from public authorities (public communication) that relate to their activities and do not contain agitation for a candidate.

The Regulation excludes from its scope political opinions expressed in any media under editorial responsibility, unless third parties provide special payment or other remuneration for their preparation, placement, promotion, publication, delivery or distribution or in connection with them (para. 29 of the preamble to the Regulation). Ukrainian positive law does not contain such an exception.

It should be noted separately that Part 2 of Article 51 of the Electoral Code of Ukraine allows Ukrainian citizens to conduct "*agitation for or against candidates or parties*". The Code does not contain an unambiguous conclusion as to whether such *agitation* is subject to the requirements for *pre-election agitation*, but there are no grounds for classifying such *agitation* as *pre-election agitation* (with its restrictions), as confirmed by current practice – statements by citizens' agitation for specific candidates have not been labelled as *pre-election agitation* without negative consequences for such citizens.

The Draft Law proposes to include in the cases of *pre-election agitation* the dissemination by media entities of *pre-election agitation* materials in any form, including on the Internet. At the same time, the draft law says nothing about such posting on the Internet by individuals. Such *agitation* can obviously be carried out by citizens, including by posting information on so-called "shared access platforms," as defined in paragraph 1 of Article 1 [of the Law of Ukraine "On Media"](#):

"A shared information access platform is a service that provides its users, at their request, with the ability to store and disseminate user information to an unlimited number of persons, if such storage and dissemination is not an insignificant and purely auxiliary function of another service and, for objective and technical reasons, cannot be used without such a service."

Thus, the placement of *agitation materials* by a public opinion leader with millions of followers on a platform for sharing information (a social network) can have a significant impact on elections, sometimes greater than the impact of television, and this is unlikely to be considered *pre-election agitation*. This primarily includes social networks such as Facebook and LinkedIn. All popular social networks in Ukraine are foreign. [As a social network overview \(the results of the gemiusAudience study for March 2025 on the use of social networks in Ukraine in general and by different age groups in particular\) shows](#), in the third month of 2025, *YouTube* topped the popularity rating among Ukrainian users, chosen by 57% of the internet audience. *Facebook* ranks second with a slightly lower share of 52%, and *LinkedIn* ranks third with 35%. *Instagram* and *TikTok* have a web reach of 18% and 4%, respectively. The simultaneous use of specific opaque mechanisms for forming user feeds on social networks can popularize this information among relevant focus groups. Ukrainian legislation does not address this phenomenon in any way, despite its obvious practicality for influencing citizens' decision-making.

This approach of the Electoral Code of Ukraine, which involves placing agitation carried out by citizens themselves outside the scope of *pre-election agitation* regulated by the Electoral Code of Ukraine, somewhat coincides with the approach of the Regulation. Thus, paragraph 30 of the preamble and paragraph 3 of Article 1 of the Regulation exclude the expression of political views by citizens in a personal capacity from the concept of "*political advertising*" and from the subject of the Regulation:

"30) Political opinions expressed in a personal capacity constitute a particular manifestation of the right to freedom of expression and information. It is not political advertising, and it is necessary that that distinction be clearly made. To do so, political opinions expressed in a personal capacity should not be covered by this Regulation."

"3. Political opinions that are expressed in a personal capacity shall not be considered to be political advertising."

Furthermore, as the Regulation states, its rules should not apply to content uploaded by a user of an online intermediary service, such as an online platform, and disseminated by an online intermediary service without compensation for the placement, publication, delivery or dissemination of a specific message, except where the user has received remuneration from a third party for political advertising (paragraph 47 of the preamble to the Regulation).

However, political opinion should not be considered to be expressed in a personal capacity if a specific reward from third parties, including benefits in kind, is provided for the expression of that opinion or in connection with it. However, Ukrainian legislation does not distinguish between paid agitation by citizens and the selfless expression of their attitude towards election subjects in the context of *pre-election agitation*.

The aforementioned a priori exclusion of personal statements by citizens from the context of political advertising or pre-election agitation creates an apparent loophole in both Ukrainian and European regulation of this area. Through existing or artificially promoted opinion leaders, it is possible to effectively conduct a disinformation and manipulation campaign, bypassing regulatory restrictions on *political advertising* and *pre-election agitation*, which can have a decisive impact on elections (example: [the impact of an advertising campaign conducted on TikTok on the last presidential elections in Romania](#)), referendums, legislative or regulatory activities. In the EU, this is mitigated by existing restrictions in the area of targeting/microtargeting. Thus, paragraph 77 of the preamble to the Regulation explicitly refers to the need for a ban in the context of online political advertising, targeting methods, and ad delivery methods that involve profiling using special categories of personal data specified in Regulation (EU) [2016/679](#) and (EU) [2018/1725](#).

The draft law also takes a certain step in counteracting such loophole activities. Thus, paragraph 5 of Article 51, as amended by the proposed Draft Law, introduces the term "hidden *pre-election agitation*," which refers to activities aimed at encouraging people to vote for or against a particular candidate, party (party organization) – subjects of the electoral process – but are carried out through forms and means that mislead voters about the existence of this goal. The Draft Law introduces a ban on such hidden *pre-election agitation*.

In addition, the current Electoral Code of Ukraine states that:

"pre-election agitation shall be carried out at the expense of the election funds of candidates, parties (party organizations) – subjects of the electoral process."

In essence, the Electoral Code of Ukraine prohibits the financing of pre-election agitation from other sources.

It is important to note that the Draft Law only mentions "*platforms for shared access to information*," while the Law of Ukraine "On Media" distinguishes these platforms from "*platforms for shared access to video*" as a separate entity with the following definition:

"a shared video access platform is a service whose main purpose, separate part or integral functionality is the dissemination to the general public, for informational, entertainment or educational purposes, of programmes and/or user videos over which the provider of the shared video access platform does not exercise editorial control (editorial responsibility), if such distribution takes place via electronic communications networks and is organized by such a provider, including through the use of automated means or algorithms, in particular with regard to the display, labelling (tagging) and ordering of the sequence of playback."

This definition clearly applies to YouTube, TikTok, Instagram, and Reels. Formally, *video-sharing platforms* are not mentioned in the draft law and are thus seemingly excluded from its scope of regulation, despite being the primary channels for distributing political advertising, which is an obvious shortcoming.

Instead, the Regulation uses the term "online platform," defined in accordance with [Regulation \(EU\) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on the Digital Services Act](#), as:

" a hosting service that, at the request of a recipient of the service, stores and disseminates information to the public, unless that activity is a minor and purely ancillary feature of another service or a minor functionality of the principal service and, for objective and technical reasons, cannot be used without that other service, and the integration of the feature or functionality into the other service is not a means to circumvent the applicability of this Regulation" and thus includes any service for storing and disseminating information, including videos.

2. Tools for preventing violations in the field of *pre-election agitation and political advertising*

For a better understanding of the Regulation's objectives, reference should be made to the justification for the need for regulation provided in the Regulation itself. The purpose of the rules proposed by the Regulation is, first and foremost, explained by the need to ensure transparency – a legitimate public objective that corresponds to the values shared by the Union and its Member States, in accordance with Article 2 of the Treaty on European Union. The Regulation is based on the recognition that it is not always easy for citizens to recognize political advertising and exercise their democratic rights in an informed manner.

The European Parliament explicitly points to the current risks of interference in democratic electoral and regulatory processes by third countries unfriendly to the Union through disinformation. This is achieved through the diversification of actors, the rapid development of new technologies, and the increased spread of information manipulation. These are identified as significant challenges for the Union and its Member States:

" Political advertising can be a vector of disinformation, in particular where the advertising does not disclose its political nature, comes from sponsors outside of the Union or is subject to

targeting techniques or ad-delivery techniques. A high level of transparency is necessary inter alia to support open and fair political debate and political campaigns, and free and fair elections or referendums, and to counter information manipulation and interference, as well as unlawful interference, including from third countries." (para 4 of the preamble to the Regulation).

The seriousness of such a factor as the interference of certain third-country economic operators or third-country nationals in elections by sponsoring political advertising in the Union is reflected in its assessment as

"a serious threat to democracy, which is a common value of the Union and the securing of which is of fundamental importance to the Union and its Member States" (para. 19 of the preamble to the Regulation).

It should be noted here that the current version of Article 57 [of the Electoral Code of Ukraine](#) expressly prohibits foreigners from participating in *pre-election agitation*, thereby partially addressing the above-mentioned risk. However, such a prohibition, which is not backed up by specific tools, is clearly ineffective in the context of the use of modern targeting methods through large online platforms, as described, for example, in paragraph 6 of the preamble to the Regulation.

Thus, the Regulation addresses the modern challenges of using targeting and advertising delivery methods based on the processing of personal data revealing political opinions and other special categories of data. Targeting political advertising only to a specific group of individuals through tailored content relies on the automated processing of personal data to increase the circulation, reach, or visibility of political advertising. Here, the Regulation points to the lack of transparency of the methods used by "very large online platforms" (in the terms [of Regulation \(EU\) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on the Digital Services Act](#)) and algorithms used to deliver political advertising to a target audience based on personal data and advertising content.

The Regulation identifies

"particular threats to legitimate public interests, such as fairness, equal opportunities and transparency in the electoral process and the fundamental rights to freedom of expression, to privacy and the protection of personal data and to equality and non-discrimination, and the right to be informed in an objective, transparent and pluralistic way" in the misuse of personal data through targeting, in particular through microtargeting.

Ongoing disinformation campaigns appear to have prompted the European Parliament to develop the Regulation. The European Parliament and the Council have undertaken significant efforts to define directions and specific measures to counter the influence of third countries, aligning with the challenges posed by the ongoing hybrid war.

In the context of the above, it can be concluded that the changes proposed by the Draft Law do not adequately address the issue of countering the aforementioned risks of disinformation campaigns and manipulation through political advertising, particularly

using the latest targeting/microtargeting techniques, primarily on large online platforms that are overtaking traditional information channels.

Despite the fact that modern disinformation and manipulative political influence, especially in the context of hybrid wars, is carried out precisely through the tools of popular online platforms, the proposed Draft Law contains rather vague wording on countering disinformation through online platforms, which is not backed up by clear responsibilities.

The Draft Law proposes to supplement paragraph 4 of Article 49 of the Electoral Code of Ukraine with a provision stating that

"The National Council of Ukraine on Television and Radio Broadcasting has the right to conclude agreements and memoranda of cooperation with foreign legal entities that are providers of shared access platforms to information. Such agreements and memoranda of cooperation may, in particular, provide for requirements and restrictions on information disseminated on platforms for shared access to information and available on the territory of Ukraine, co-regulation mechanisms, cooperation in countering the spread of disinformation during the pre-election period, ensuring the transparency of agitation on platforms, in particular through the introduction of agitation labelling and the introduction of special notifications containing information about the campaign's sponsor, the period of its placement, the funds spent for this purpose, and the possibilities for appealing against illegal agitation within the mechanisms provided by the platforms, compliance with other requirements of Ukrainian electoral law by users."

This provision contains language that is not typical of normative legal acts, as it does not clearly define the scope of authority of the state body and major players in the field of pre-election agitation and political advertising, but only indicates the possibility of taking actions that would enable relevant compliance with Ukrainian legislation on countering disinformation, ensuring transparency, in particular through labelling. This approach makes the proposed measures ineffective and their implementation uncertain.

The use of general phrases in the Draft Law, such as:

"users of the Internet and platforms for shared access to information are obliged to comply with the requirements of Ukrainian electoral law on information provision and election agitation when disseminating any materials about the electoral process in Ukraine" does not carry any effective regulatory weight.

The only obligation of information-sharing platforms directly established by law is contained in the amendment to Article 51(4) of the Electoral Code of Ukraine proposed by the Draft Law. Thus, information-sharing platforms are required to take measures to stop the dissemination of *pre-election agitation* materials that are not paid for from sources specified by Ukrainian law. It should be noted that such sources are limited to the election funds of candidates and parties (party organizations), which are subjects of the electoral process. This obligation of information sharing platforms arises in the event of receiving information about the dissemination of pre-election campaign materials paid for from sources not specified by Ukrainian law. In reality, it is difficult

to imagine how the platform will record the fact that it has received such information. This uncertainty clearly undermines the enforceability of this obligation.

Additionally, as one of the tools for detecting violations in the field of political advertising, the Regulation allows private individuals to file complaints with the competent authorities, informing them of circumstances that may constitute a violation of this Regulation (paragraph 105 of the preamble to the Regulation). However, the Draft Law does not provide for similar mechanisms of public control, which appear to be quite effective during election campaigns.

3. Provisions on the prevention of targeting and manipulation that should be included in the Draft Law

The central development of the Regulation can be considered to be the restriction of targeting. European experts have long concluded that targeting consumers with advertising can be used not only to deliver more relevant content to those who may be interested in the subject of advertising, but also to enhance the overall effectiveness of the advertising. Profiling advertising consumers opens up wide opportunities for manipulating their consciousness by providing them with specific, selected information at a particular time and in a certain context. Such presentation of information has a specific predictive effect on the consumer's future behaviour, which can be defined as manipulation. It is important to note that this tool does not necessarily involve misinformation – a properly formed flow/stream of information in a professionally selected context actively shapes the target audience's tendency to make decisions that are beneficial to the customer/sponsor of the targeting.

The authors of the Regulation demonstrate a good understanding of these technologies. For example, paragraph 74 of the preamble to the Regulation refers to the increasing prevalence of the collection of personal data of individuals, such as observed or inferred data, when grouping individuals according to their presumed interests, or during their online activity, behavioural profiling and other analysis methods, which are ultimately used to target political messages to groups or individual voters or persons, as well as to increase their influence.

" On the basis of the processing of personal data, in particular special categories of personal data under Regulations (EU) 2016/679 and (EU) 2018/1725, different groups of voters or individuals can be segmented and their characteristics or vulnerabilities exploited, for instance by disseminating the advertisements at specific moments and in specific places, designed to take advantage of the instances where they would be sensitive to a certain kind of information or a message."

The Regulation explicitly points to the negative consequences of such processing of personal data for the fundamental rights and freedoms of individuals, such as:

- the right to fair and equal treatment,
- **the right not to be manipulated,**
- the right to receive objective information,
- the right to form one's own opinion,
- the right to make political decisions and exercise one's electoral rights.

This poses a threat to the entire democratic process, as it leads to:

- fragmentation of public debate on important social issues,
- selective coverage and
- manipulation of voters,
- foreign interference.

In this context, the Regulation proposes to go further and impose additional restrictions and conditions beyond those set out in Regulation (EU) 2016/679 and (EU) 2018/1725.

As a specific measure, para. 77 of the preamble to the Regulation proposes, in the context of online political advertising, a complete ban on such targeting and delivery methods that involve profiling using special categories of personal data specified in Regulation (EU) 2016/679 and (EU) 2018/1725. Even the exceptions set out in Article 9(2) of Regulation (EU) 2016/679 and Article 10(2) of Regulation (EU) 2018/1725 cannot be applied to the use of these methods in the context of online political advertising. Only the existence of explicit consent given separately for the purposes of political advertising can justify the use of targeting and ad delivery methods involving the processing of personal data other than special categories of personal data in the context of online political advertising, and only when such personal data is collected from data subjects. Where personal data is obtained from third parties, data controllers are prohibited from using it for the purposes of targeting or displaying political advertising (para 78 of the preamble to the Regulation).

Separately, it should be noted that the Regulation proposes that individuals should be able to express their unwillingness to receive political advertising, which must be respected by online platforms (para 80 of the preamble to the Regulation).

It is worth mentioning here [the decision of the Court of Justice of the European Union of 4 July 2023 in Case C-252/21](#), Meta Platforms and Others (General Terms and Conditions of Use of a Social Network). The Regulation proposes to give data subjects the right to refuse, in the context of political advertising, to give their consent to certain data processing operations without being obliged to completely refrain from accessing the online service. As ruled by the EU Court, these users must be offered an equivalent alternative that does not involve such data processing operations.

The Regulation pays particular attention to people below voting age, whom it considers to be a particularly vulnerable group that can be exploited through the misuse of targeting and advertising methods (para 82 of the preamble to the Regulation). Despite not having the right to vote, such persons may be specifically targeted to manipulate the debate. Therefore, the Regulation expressly prohibits such targeting methods in the context of political advertising or advertising display methods that involve the processing of personal data of a data subject who is known with sufficient certainty to be at least one year younger than the voting age established by national rules.

The above is also supported by the position set out in [Commission Recommendation \(EU\) 2023/2829 of 12 December 2023](#) on inclusive and sustainable electoral processes in the Union and strengthening the European character and effective conduct of elections to the European

Parliament, which it is stated, in particular, that European and national political parties should consider ensuring, on a voluntary basis, that their political advertising is clearly identifiable as such, in particular when it includes material produced internally for dissemination via social media on the internet. Political advertising should be accompanied by information about the political party sponsoring the advertisement and, where possible, meaningful information about the target audience of the advertisement, as well as the use of artificial intelligence systems in the preparation of content or the dissemination of the advertisement.

All of the above considerations and provisions of the Regulation are particularly relevant in the context of current political advertising practices, where the latter is becoming not just a tool for domestic competition among elites, but is also being used by unfriendly third countries to destabilize the political situation and weaken the country's defence capabilities. Regulating these aspects of political advertising through Ukrainian legislation is, without exaggeration, a matter of national security.

V. Conclusions.

The changes proposed by the Draft Law interpret pre-election agitation narrowly, leaving a significant portion of political advertising outside the regulatory scope, as defined by the Regulation. Even in the context of postponing elections during wartime, this creates significant risks of hostile influence through disinformation campaigns and the manipulation of Ukrainian citizens' consciousness by the aggressor, as well as impact on legislative and regulatory activities.

The measures provided for in the current Electoral Code of Ukraine and proposed by the Draft Law, which consist in limiting the information field to traditional means of disseminating information (linear audiovisual media), are of dubious effectiveness in a situation where the lion's share of information, including official information from the authorities, is obtained through online platforms with non-transparent algorithms for forming feeds. The tools proposed by the Draft Law for interacting with online platforms through the conclusion of agreements and memoranda are clearly dispositive in nature, which is not effective in combating disinformation.

The draft does not address targeting or manipulation through the profiling of individuals using special categories of personal data, despite the obvious threat these tools pose to national security. This threat is realized not only through the influence of political advertising on elections or referendums, but also through its influence on legislative or regulatory activities. Thus, postponing elections during wartime does not entirely prevent hostile influence in the political sphere, which extends beyond elections and is more commonly manifested in daily legislative and regulatory activities.

Recommendations:

- To implement the legislative acts of the European Union, as well as for the purposes of harmonizing national legislation with the *acquis communautaire*, define the term

"political advertising" within the meaning of the Regulation, completely replacing "pre-election agitation".

- To outline accurately restrictions on the use of targeting and delivery methods for advertising based on the processing of personal data revealing political opinions and other special categories of data, using the EU acquis, in particular Regulation [2024/900](#), [2022/2065](#), [2016/679](#) and [2018/1725](#). Establish effective liability for online platforms that violate such restrictions.

- To rethink the role of opinion leaders – individuals with significant audience reach through online platforms – in the context of political advertising.

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