

WINNING ELECTIONS THE RIGHT WAY

Online Political Advertising Rules in Europe and Selected
Countries Globally



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Abbreviations

AI	artificial intelligence
DSA	Digital Services Act
KNAB	Corruption Prevention and Combating Bureau (Korupcijas novēršanas un apkarošanas birojs)
OECD	Organization for Economic Co-operation and Development
OPA	online political advertising
TTPA	Proposal for a regulation on the transparency and targeting of online political advertising
ÚDHPSH	Office for the Oversight of Financing of Political Parties and Movements (Úřad pro dohled nad hospo- dařením politických stran a politických hnutí)
UNESCO	United Nations Educational, Scientific and Cultural Organization

EXECUTIVE SUMMARY

As online political advertising has increased, regulation and oversight authorities have struggled to keep up.

As online political advertising (OPA) has increased, enabling parties to reach voters in unique and more efficient ways, regulation and oversight authorities have struggled to keep up. Problems have multiplied regarding opaque campaign communications and disinformation, tracking the funding for campaign advertisements online, and data security concerns where personal information is used in targeting ads. Only a few countries have explicitly regulated OPA. Reasons for this could be a limited technical expertise and capacity or political will, complicated further by concerns over the need to balance the fundamental right to free speech with safeguarding electoral integrity.

This Report is aimed at supporting legislators, oversight bodies and other regulators in developing national rules for the regulation and oversight of OPA. It addresses questions such as how to build on existing campaign regulation and the kinds of unexpected consequences and challenges that may occur; how to strike the right balance between implementing regulation and protecting fundamental freedoms; how soft-law tools such as codes of conduct can help enhance campaign integrity and where they fall short; what an effective oversight institution looks like and how it is coordinated; and what kinds of sanctions can be used to ensure effective enforcement.

Four scenarios have generally emerged at the country level regarding the regulation of OPA: (a) not regulated, both offline and online; (b) regulated on some forms of media but not online; (c) regulated through generic offline regulation that also applies online; or (d)

explicitly regulated. These scenarios will help readers to understand where certain country contexts may fall and what the steps forward may look like, including how regulations can be built and what oversight structure, capacity and mandate may be required.

Where formal rules for OPA have been established, the five common categories of provisions relate to: (1) defining what constitutes a political advertisement and the scope of application for new rules; (2) establishing standards for identifying political advertisements and who has purchased them; (3) creating expectations for transparency regarding advertising messaging, targeting and funding; (4) establishing responsibilities for platforms to appoint legal representatives, transfer certain categories of information to specific electoral stakeholders and communicate policies for moderation, adjudicating complaints and assessing risk; and (5) clarifying the extent to which the content of ads themselves will be regulated, by, for example, banning narrowly defined categories of content, placing editorial responsibility on advertisers or supporting trusted monitoring networks and civic education campaigns.

The Report outlines the common provisions of OPA regulation based on five cases of focus with the aim of clarifying what rules they tend to include and what topics they tend not to include, when rules may apply and which actors they target.

Regulation can be supported by soft-law mechanisms. The most common of these are codes of conduct, which help to strengthen transparency and accountability in online political campaigning by establishing voluntary behavioural standards for key actors in elections, including candidates, political parties and online platforms selling online ad space. The codes can help when establishing standards where none currently exist or where formal legal provisions may not be considered suitable, helping to bridge gaps in regulating OPA and protecting electoral integrity while upholding democratic values. However, as a voluntary measure, enforcing accountability for offences can be complicated, and reaching common agreement among electoral stakeholders on what constitutes fair standards can be difficult.

Regulation can be supported by soft-law mechanisms. The most common of these are codes of conduct.

Even the most well-written rules will not be effective if they are not supported by oversight bodies.

Even the most well-written rules will not be effective if they are not supported by oversight bodies with the requisite independence, mandate and technical capacity. It is important that oversight authorities actively cultivate relationships with key actors to help create a culture of integrity throughout the electoral ecosystem. Authorities should moreover be equipped with sufficient investigative and sanctioning powers or, where this is not possible, should work closely with oversight bodies that do possess these powers.

While there is much uncertainty about the future of the online sphere and how new and emerging technologies will affect political advertising, it is increasingly clear that the regulation and oversight of OPA will need significant attention and resources. It is recommended that authorities be mindful of the pace at which developments move online, incorporate flexibility, training and renewal into regulatory and oversight structures, help to close loopholes and address new challenges as they emerge. This publication and the evolving research by International IDEA aim to support this process by guiding future considerations and continuing to facilitate active discussion among authorities and other stakeholders in Europe and beyond.

METHODOLOGY

This Report was developed based on a survey conducted by International IDEA in June and July 2022 of national oversight authorities from 28 countries across Europe as well as 9 follow-up expert interviews and desk research. The research built on the findings of the survey and interviews by following up key case examples and identifying good practices. A webinar was also held in April 2023 (Heinmaa 2023) that brought together a diverse group of electoral management bodies, government ministries, anti-corruption bodies, civil society organizations and academic experts to garner feedback on this Report and gain further insight into how existing rules are applied in practice and where further support is desired.

On the back of this work, possible scenarios for countries were outlined across four categories, whereby political advertising is: not regulated, both offline and online; regulated on some forms of media but not online; subject to generic political advertising regulation that also applies online; or explicitly regulated online. A common provisions table with key points for discussion was created based on how rules offline were translated into the online sphere, countries' explicit rules for OPA and insights from both civil society and academia.

After establishing possible rules for the transparency of OPA and its funding, the survey, interview and desk research results supported an analysis of emerging oversight and enforcement bodies, structures and mechanisms. Oversight responsibilities and tasks are considered through the lens of co-regulatory frameworks and how they can be supported through communication and cooperation between

This Report was developed based on a survey of national oversight authorities from 28 countries across Europe, 9 follow-up expert interviews and desk research.

agencies, platforms and civil society, academia and the media. The implications of this are also explored in terms of the kinds of formal and informal structures that can be built throughout this ecosystem of actors to support compliance.

This publication is part of International IDEA's evolving research on regulating OPA. We invite readers to check back for upcoming policy papers, fact sheets and case studies or to get in touch if they would like to be notified of any upcoming webinars and other events.

Chapter 1

GROWING ONLINE CAMPAIGN SPACE: RATIONALE FOR REGULATION

Political communication is essential for citizens, political parties and candidates in order to fully participate in democratic life. To preserve our democracy, we also need strong rules to combat disinformation, voter manipulation and interference with our elections. We need to do more if we want to tackle the many risks surrounding the use of targeting and amplification techniques for political purposes. (Wojciech Wiewiórowski, [European Data Protection Supervisor \(EDPS\) 2022a](#))

The online space is the new go-to spot for political campaigning. Political parties and candidates can reach more citizens online and have two-way discussions on their political programmes. The amounts spent on online political advertising (OPA) increase year by year: for the 2019 European elections, the political advertising market spending in the European Union was EUR 100 million, with an 'ever greater share' of political advertising 'shifting away from traditional media and into the online environment' ([European Commission 2021b: 90](#)). A formalized industry has emerged offering professional tools to campaigners on the basis of massive amounts of personal data potentially worth billions globally ([Macintyre 2021](#)), but the hunt for voters online also brings new challenges.

Over the past decade, political advertising has transformed dramatically as the attention of voters is increasingly captured

The amounts spent on OPA increase year by year: for the 2019 European elections alone, EUR 100 million was spent.

through the use of online platforms.¹ OPA offers an effective method for parties and candidates to increase the reach of their messaging while reducing costs and allowing campaigners to reach citizens more efficiently ([International IDEA 2018](#)). However, traditional rules are increasingly unfit for regulating OPA. Problems continue to multiply as online communications become more opaque, enabling damaging mis- and disinformation to spread. The dissemination of OPA is moreover fuelled by targeting based on massive amounts of personal data, often with limited to no consent or understanding from users of how it is used ([Bashyakarla et al. 2019](#)). As the money used to pay for these ads is increasingly hard to trace, further vulnerabilities for malign manipulation of electoral campaigns are created ([Agrawal, Hamada and Gibaja 2021](#)).

Ultimately, unrestricted OPA can jeopardize the integrity of democratic debate and attract malign foreign interference.

Citizens increasingly find it difficult to recognize political ads online, as they lack crucial information about what messaging is placed by whom, which audiences it is targeting and how much has been spent. There is widespread appetite for this information: a public consultation by the European Commission in 2020 found that 96 per cent of respondents wanted increased transparency on the origin of political content and 91 per cent supported the creation of open and transparent political ad registries ([European Commission 2020b](#)). The lack of transparency has further facilitated the ability of actors to circumvent third-party² campaign rules by purchasing online ads, thus reducing the accountability of those that are responsible for the promoted campaign messages. Ultimately, unrestricted OPA can jeopardize the integrity of democratic debate and attract malign foreign actors to interfere in elections, with increasingly documented attempts to manipulate democratic elections by deepening polarization and eroding trust in democracy ([Albrycht et al. 2021](#); [Dunčikaitė, Žemgulytė and Valladares 2021](#)).

1 Online platforms are services that store and host information online based on interactions with and requests from users. These services frequently offer advertising in exchange for remuneration which may make use of user data in how and to whom the advertising is displayed.

2 Third parties are those individuals and organizations that may work to support the success of a political campaign or otherwise influence how people vote. These actors may or may not be formally associated with a campaign, and rules vary across jurisdictions as to how they are treated, with certain countries having little to no formal rules, and others elaborating reporting and registration requirements. In the EU, only three member states (Czechia, Ireland and Latvia) explicitly regulate third-party campaigning ([Shlyk, Stonestreet and Pârnu 2022](#)).

Targeting political ads at specific audiences online is more powerful and problematic than traditional forms of advertising. Online platforms use personal data to feed opaque algorithms and facilitate microtargeting of voters with adapted political messages, potentially based on sensitive personal information (Bashykarla et al. 2019). Microtargeted advertising is different from targeting in more traditional forms, as users are categorized based on an analysis of their personal data to form a profile of their specific interests, upon which users can then be targeted. Online tools therefore allow for more specific targeting than is feasible through traditional methods (International IDEA 2020).

This targeting can be done by exploiting exceedingly large amounts of collected data, often without users' active knowledge and understanding. By some estimates, the industries that deal in buying, selling and targeting personal data already possess data—including highly sensitive personal information—on almost every European citizen (Dachwitz 2023). Targeting techniques thus enable advertisers to send highly personalized and even entirely different messages to citizens to amplify their impact.³ This dynamic incentivizes campaigners and platforms to collect and misuse personal data and it becomes especially problematic if sensitive information, including users' political views, is used (noyb 2023).

The lack of transparency in what messaging is targeted at whom in OPA is made more concerning by difficulties in tracking who pays for ads and with money from which sources. Traditional campaign finance oversight structures frequently do not apply to the online sphere, and self-regulatory measures in countries with little to no traditions of formal campaign oversight are increasingly viewed as insufficient (Dunčikaitė, Žemgulytė and Valladares 2021). Similarly, prohibitions on the foreign funding of political campaigns are more difficult to enforce online.

³ Advertisers comprise a diverse set of online actors that pay for the targeting tools offered by online platforms to communicate their desired messaging to different segments of the population, possibly through microtargeting. Advertisements may be placed by a number of different actors with the intent of supporting a political campaign, ranging from candidates to their campaign staff and to individuals acting on their behalf.

The rules for political advertising on traditional media are insufficient to cover the online sphere.

It is now widely accepted that the rules for political advertising on traditional media are insufficient to cover the online sphere and that self-regulatory solutions are similarly not enough to protect electoral integrity. Despite growing awareness of these problems, only a few countries have regulated OPA. Limited legal and technical capacity, concerns over people's freedom of expression and political rights, and a lack of political will make regulating OPA complex.

In response to the difficulty of keeping up with online challenges, this publication sets out to address some of the questions that commonly arise in conjunction with the regulation of OPA. Those include:

- What kinds of campaign regulation currently exist, how can they be built on and what kinds of unexpected consequences and challenges might occur?
- How can the right balance be struck between implementing regulation and protecting fundamental freedoms?
- How can soft-law tools such as codes of conduct help to increase campaign integrity, and where they do fall short?
- What does an effective oversight institution look like, and how is it coordinated?
- What sanctions are needed to ensure effective enforcement?

This Report is aimed at supporting legislators, oversight bodies and other regulators in developing national rules for the regulation and oversight of OPA.

This Report is aimed at supporting legislators, oversight bodies and other regulators in developing national rules for the regulation and oversight of OPA. It begins by clarifying the complex issues and careful balances that must be struck when considering rules on OPA. The common provisions of OPA rules are outlined to clarify what regulations tend to include and what topics they tend not to include, when rules may apply and which actors they target. After clarifying what standards can be built and where, the Report turns to by whom and how, discussing key considerations for oversight independence, mandate and capacity, and outlining the actors with which relationships should be cultivated. Informal and formal mechanisms for supporting compliance are also discussed.

Chapter 2

REGULATING ONLINE POLITICAL ADVERTISING

When establishing formal rules for advertising online, it is important to address key challenges that lie at the heart of regulation targeted at the monitoring and oversight of OPA. Insufficient attention to issues such as balancing free speech and electoral integrity and the underlying motivations and dynamics behind OPA can reduce the effectiveness of new rules.

When navigating these issues, legislators, oversight actors and other relevant decision makers will also need to decide how best to balance regulatory and oversight responsibilities, from total self-regulation through command-and-control to co-regulation approaches. To support readers in appraising the situation in their own countries, four scenarios are provided for establishing 'starting points' upon which new rules can build, whereby political advertising is not regulated, both offline and online; regulated on some forms of media but not online; subject to generic political advertising regulation that also applies online; or explicitly regulated online.

When establishing formal rules for advertising online, it is important to address key challenges that lie at the heart of regulation.

2.1. KEY CONSIDERATIONS FOR OPA REGULATION

Regulating OPA is difficult because such rules affect sensitive political speech, thus they require careful consideration and justification, and there is often still significant disagreement over what rules are necessary in the first place. Many actors must also be considered when regulating OPA, in terms of both oversight authorities and subjects, as the online campaign may involve different authorities such as electoral, media and data protection

oversight bodies, and rules may apply differently to candidates, parties, platforms and other online services and campaigners. Finally, developments online are complicated and move at a fast pace, requiring a high technical capacity to regularly monitor and review the rules and how they are implemented.

Rules and restrictions for OPA require careful navigation of the tensions between limiting potential harms and protecting freedom of expression.

Rules and restrictions for OPA require careful navigation of the tensions between limiting potential harms and protecting freedom of expression, including the right to seek, receive and impart information and ideas. In Europe, this freedom is enshrined in Article 10 of the European Convention on Human Rights ([EC HR 2021](#)).⁴ Fundamental rights are particularly at risk when the content of political ads is impacted by regulation and if regulations entail any assessment of the truth and accuracy of messaging. Far-reaching bans and limitations on OPA or anonymity online more generally may also be seen as problematic.

The conflicting motivations behind political communications and commercial advertising contribute to challenges with regulating OPA, as regulators require strong justifications to place limitations on political freedom of expression. While political speech has traditionally been subject to few limitations, apart from anti-hate speech laws in certain jurisdictions, commercial advertising is subject to limitations that help to protect consumer choice and maintain fair competition ([Helberger, Dobber and de Vreese 2021](#)). OPA uses these same data-driven tools and marketing strategies to reach voters but without the same limitations required by commercial law.

There is still little agreement on the kinds of regulations that are necessary. While most observers agree more transparency is needed, the form and extent of this transparency is far from uncontentious, with some arguing that microtargeted political advertisements should not be permitted at all (see, for instance, [EDPS 2022b](#)). Moreover,

⁴ In its 2013 judgement *Animal Defenders International v the United Kingdom*, the European Court of Human Rights ruled that a ban on political advertising on broadcast media did not violate freedom of expression: the right to impart information and ideas of general interest that the public is entitled to receive must be weighed against the protection of the democratic debate and political process from distortion groups with advantageous access to influential media. This balance is also struck given that these groups will still have access to alternative forms of media. See European Court of Human Rights (2013).

opinions often differ over what constitutes a ‘political ad’, further muddling the application of rules online. An overly narrow definition limits the effectiveness of regulation, while a definition that is too broad may limit freedom of speech and encourage self-censorship among civil society and journalists (Krimmer et al. 2022). These issues mean that legislation is often slow to respond to technological change. This problem that is particularly acute when taking into account the rapid pace at which the online sphere moves and the strong desire among actors to avoid interfering with the electoral process.

The regulation of political advertising may involve a broad constellation of legislation, oversight agencies and regulatory bodies, including party and campaign finance regulations, electoral codes, media and other advertising rules and data protection regulations. It is moreover possible for different rules to apply at different levels of government or to fall under the mandate of different oversight bodies, resulting in potential overlaps, contradictions and gaps in the regulation and its implementation (Monti and de Stree 2022). Oversight agencies may also lack investigatory or sanctioning powers themselves, instead having to defer the decision to certain judicial bodies (Shlyk, Stonestreet and Pârvu 2022). Greater coordination and information sharing between agencies can be necessary when regulating OPA than may be the case in other areas.

The high degree of complexity involved in addressing challenges online also creates logistical barriers to rulemaking: the online sphere moves at a massive speed and scale, and significant information asymmetries exist between decision makers and online platforms. Especially in smaller countries and jurisdictions, the available expertise may be scarce, and there may be limited ability to influence large online platforms. This concern has frequently come up in discussions with agencies and at the EU level. In these areas, when rules diverge too much from those already in place elsewhere, online platforms may decide to disengage and disable political advertising entirely rather than comply with new requirements. However, even platforms banning political advertising may in practice not be able to consistently identify political ads and implement such a ban effectively.

The regulation of political advertising may involve a broad constellation of legislation, oversight agencies and regulatory bodies.

2.2. REGULATION, SELF-REGULATION AND CO-REGULATION

Due to the central role that online platforms play ahead of elections, political campaigning responsibilities are relevant not only for political parties and candidates but also for online platforms and other actors engaged in the buying and selling of personal data to facilitate targeting (Council of Europe 2018). Given the highly complex considerations involved, the broad number and types of actors concerned and the fundamental democratic values at stake, regulators need to strike an appropriate balance between protecting electoral integrity and respecting freedom of expression and information.

There is a high degree of public attention for elections and therefore criticism when rules fall short in protecting electoral integrity.

Interviews with oversight agencies highlighted another challenge in this area: given the centrality of elections to democracy, there is a high degree of public attention and therefore criticism when rules fall short in protecting electoral integrity. The public sometimes expects oversight agencies to directly oversee and monitor the content of online ads, but the agencies do not monitor this and do not want this responsibility. However, platforms already engage in content moderation and advertising approval, featuring publicly available content policies and, to varying degrees, the in-house capacity to keep up with the scale of content. With this dynamic in mind, some level of cooperation with platforms is often considered necessary and desirable.

In regulating the platform economy more generally, three regulatory models have emerged for regulators, as outlined by Michèle Finck (2017):

1. Regulation as the traditional command-and-control approach, whereby legislation is established that is accompanied by administrative or criminal sanctions for non-compliance.
2. Self-regulation, in which private actors agree upon a set of common standards that are enforced on a voluntary basis among themselves.
3. Co-regulation, in which both public and private actors come together to organize around a common policy goal. Private actors are responsible for developing self-regulatory instruments,

including monitoring compliance and ensuring enforcement. Governmental regulatory bodies act as the legal backstop. Elements of both command-and-control and self-regulatory systems are present, with legislation establishing certain legally binding elements supported by voluntary agreements where appropriate.

Platform self-regulation is increasingly perceived as insufficient for tackling the challenges of the online sphere. Due to challenges in regulating the fast-paced and opaque online environment, co-regulation is increasingly viewed as the ideal solution. The Organisation for Economic Co-operation and Development (OECD) and the Korea Development Institute (2021) identify two main benefits to co-regulation: first, co-regulation is more flexible, which can make it faster to adapt to technological change, and second, because co-regulation is mutually created between the private and public sectors, networks are established to help facilitate monitoring and influence compliance. Co-regulation also allows for legal boundaries to be set where necessary and for soft-law arrangements to fill in the gap where legislation might be an undue limitation on fundamental rights. Therefore, giving room to platforms to self-regulate allows them to tailor rules to their unique contexts (Suzor and Gillett 2022).

Co-regulation is also a useful solution for OPA when considering the barriers to legislating in this area. Dommett and Zhu (2022) identify three main challenges for legislation: political reticence, logistical challenges and conflicting policy proposals. A lack of political will and limited technical understanding of often highly complex processes can contribute to a situation in which all actors recognize there is a problem but none of them has sufficient confidence in a solution to take the first step. Given the central role and relative power of online platforms, enhanced flexibility and possibilities for context-specific rules and support in overcoming political reticence for new rules, co-regulation is increasingly perceived as the standard to pursue. Complementarity between how the formal standards and direction promulgated from the top are implemented by platforms and the voluntary standards upheld by stakeholders throughout the electoral process is crucial for co-regulation to be effective. Given the scale of online content and the technical resources of

Platform self-regulation is increasingly perceived as insufficient, whereas co-regulation is increasingly viewed as the ideal solution.

platforms, any regulation will necessarily need to rely on platforms to establish moderation policies and act on violating content while being transparent to oversight bodies and the public regarding these measures to ensure a legal backstop to the process. Emerging rules in the EU reflect this dynamic, with the recent Digital Services Act (DSA) (EU 2022) encouraging the uptake of codes of conduct to support the effective implementation of formal rules (see Chapter 3 for more details on the act and codes of conduct).

2.3. STARTING POINTS FOR REGULATION

Countries will usually find themselves in one of four scenarios with regard to the regulation of OPA, with political advertising being:

1. not regulated, both offline and online;
2. regulated on some forms of media but not online;
3. regulated through generic offline regulation that also applies online; or
4. explicitly regulated.

Most of the surveyed countries have no explicit OPA regulation in place.

A survey of national oversight authorities from 28 countries across Europe, conducted by International IDEA in June and July 2022, found that most of the surveyed countries have no explicit OPA regulation in place, therefore they fall within the first 3 regulatory scenarios. An impact assessment conducted by the European Commission in 2021 (European Commission 2021b: 125) to support the development of OPA rules at the EU level reflected similar conclusions for EU Member States: only 3 countries (Finland, Ireland and Spain) have rules specific to the use of microtargeting for the purpose of OPA, whereas 12 countries apply the rules for offline political advertising to the online environment.

A country's overall legal culture and traditions affect the potential for and scope of any legislation and oversight structures concerning OPA. An example can be drawn from the difference between the Canadian and US legal traditions. In the Canadian legal order, it is easier to justify regulations on political speech, whereas the legal culture in the United States is highly resistant to any kinds of limitations on political speech (Dawood 2020). This dynamic was

reflected in the interviews held with Canadian authorities, which indicated that the transition to new rules in Canada was eased by regulations being built on existing traditions, in terms of both where speech may be carefully regulated and an already detailed financial reporting regime. When evaluating a country's regulatory context, it is important to look past the rules on paper and consider the context holistically to understand how new rules will fit into the existing state of play and legal tradition.

Establishing legal restrictions for OPA can be more challenging where there is no tradition of legislating in this area, as has been highlighted in interviews and discussions with the Dutch Ministry of Interior. In the Netherlands, political advertising has traditionally been largely unregulated both online and offline, relying on self-regulation to uphold a mutual culture of integrity (Maasbommel 2023). The limited precedent for regulation complicated the ongoing legislative efforts to regulate OPA, as complex rules on the matter are being built from the ground up as part of a new Law on Political Parties (Wet op de politieke partijen) aimed at increasing the overall transparency of political party communications and financing and establishing a new oversight authority (Ministerie van Binnenlandse Zaken en Koninkrijksrelaties 2022). A Dutch Code of Conduct on the Transparency of Online Political Advertisements was negotiated between political parties and online platforms in the Netherlands by International IDEA in 2021 (International IDEA 2021). As an interim, voluntary measure, the code helped establish standards where formal rules were not yet in place and where legal restrictions may be considered inappropriate. More information on how codes of conduct can support ongoing OPA regulatory efforts is provided in Chapter 3.

The following scenarios are intended to provide some starting points for the discussion on OPA regulation. The information in the tables is drawn from the responses from oversight authorities to the International IDEA survey, the International IDEA Political Finance Database, election observation mission reports by the Organization for Security and Co-operation in Europe and its Office for Democratic Institutions and Human Rights, and other relevant civil society and media reporting on the online campaign.

Establishing legal restrictions for OPA can be more challenging where there is no tradition of legislating in this area.

Table 2.1. Sample of countries in which political advertising in general is (largely) unregulated

Country	Provisions
Iceland	Election advertising in Iceland is largely unregulated and features no spending limits. There is no requirement for political parties to submit separate reports on their election spending but only a requirement to submit yearly financial reports. Candidates are required to submit financial reports of their income and expenditure.
Luxembourg	Election advertising in Luxembourg is formally unregulated. There is no official campaign period, no spending limits and no rules on media coverage. Financial reporting is limited to a yearly submission (regardless of whether it is an election year) of a party's income and expenditure. Voluntary rules are agreed between parties through self-regulatory frameworks.
Sweden	Election advertising in Sweden features little to no regulation. There is no official campaign period and no campaign spending limits. Financial reporting is limited to revenue statements. Political advertising was deregulated in 2006.

Sources: International IDEA n.d.; Office for Democratic Institutions and Human Rights (ODIHR) 2018a, 2021a, 2022a; Luxembourg Times 2018; van Hoboken et al. 2019.

2.3.1. Scenario 1: Political advertising is (largely) unregulated both offline and online

In scenario 1, the electoral campaign is allowed to run with few to no formal rules on advertising across all media, and in many cases it is limited to self-regulatory solutions. Oversight is limited or non-existent, and campaign communication channels and media have few reporting requirements. In this context, online regulations would need to be drafted from scratch, and stakeholders would first have to become acquainted with limitations on political speech, rules on the use of different communication channels, and the effort required to comply with new transparency and reporting requirements. Competent oversight authorities need to be created; alternatively, existing oversight bodies can be designated and equipped to take on additional and entirely new tasks.

2.3.2. Scenario 2: Political advertising regulation is limited to selected media; online advertising is not covered

In scenario 2, political advertising is regulated on broadcast or other traditional forms of media, for example, with rules that specify equal

airtime on television for all parties. Campaign advertising may also be restricted or completely banned on broadcast or other traditional forms of media. Oversight bodies that either monitor traditional media or investigate breaches of the regulation are in place. However, difficulties with OPA arise where these offline rules either do not apply or are not effective online. Campaigners can then potentially exploit the situation to serve political ads to voters without limitations and effective oversight, thus creating an uneven playing field in different media, particularly as political advertising is primarily regulated in traditional broadcast media in many countries ([Civil Liberties Union for Europe 2022b](#)). When considering how offline rules may apply online, it is important to consider how existing oversight bodies may be equipped to cover online media or whether a new agency should be created.

2.3.3. Scenario 3: Generic political advertising regulation covers all media and implicitly includes OPA

In this scenario, the same rules are applied to both online and traditional media through electoral, political finance, campaign advertising or other media regulations. These rules may often include financial reporting and disclosure requirements, spending limits or guidelines for written contracts and ad pricing.

Financial reporting and oversight of political advertising is increasingly common across Europe and elsewhere, thus helping to ensure an even playing field and preventing malign or undue influence ([Wolfs 2022](#)). However, generic rules designed for traditional media and its financing are often insufficient or translate poorly to the online advertising sphere.

Gaps in this scenario may include a lack of advertising transparency requirements for online platforms; lack of transparency for citizens seeing political advertising; the untransparent use of personal data; few limitations for or monitoring of targeted campaigning; a lack of granular information about online spending; or limited coverage of third-party campaigning. In addition, rules for traditional media, such as requirements for equal airtime or pricing, may not be applied effectively in the online sphere.

Generic rules designed for advertising on traditional media and its financing often translate poorly to the online advertising sphere.

Table 2.2. Countries in which political advertising regulations apply only to selected media

Country	Provisions
Denmark	Campaign rules for media are limited to a prohibition on political advertising on television during the campaign period. No rules are applied to the press, including online, and there are no rules for online platforms. There are no spending limits. Reporting requirements are limited to party and candidate annual accounts, which also require submission of election expenditures in an election year.
Greece	There is a ban on paid political advertising on television, with extensive regulations governing the conduct of public and private broadcasters. Fewer rules apply to print, and no specific rules apply to social media during elections. Financial reporting does not require a detailed breakdown of online spending.
Italy	Paid political advertising is prohibited on national broadcast media and is only allowed to a limited extent on local broadcasters. There is an electoral silence period, but it does not extend to the online sphere. Although online campaigns are unregulated, online platforms are expected to adhere to a code of conduct.
Norway	Buying television advertising is prohibited. Election advertising in Norway is otherwise largely unregulated, with no spending limits or formal media requirements. Media during elections in Norway is mostly self-regulated.
Slovenia	All political messages and advertising must be labelled to indicate by whom it was placed, and there is a 24-hour silence period on election day. However, observers note that compliance with both provisions is lacking online. There is no systematic monitoring of campaign media, however the oversight body can follow up on complaints. Online expenses may be provided by parties and candidates or requested by the oversight body and a detailed breakdown is not required.
Switzerland	Political advertising is prohibited, except for print media and on social media. The media landscape is largely self-regulated, and there are no spending limits on parties or candidates. As of 2021, a statement of revenues and donations is required from campaigns that spend more than CHF 50,000.

Sources: International IDEA [n.d.](#); Office for Democratic Institutions and Human Rights (ODIHR) [2019a](#), [2019b](#), [2021b](#), [2022b](#), [2022c](#), [2022d](#); Furnémont and Kevin [2020](#); Shlyk, Stonestreet and Pärnu [2022](#).

A designated oversight body usually already exists. However, the oversight body may not have the resources and capacity to implement its mandate effectively online.

Table 2.3. Generic political advertising regulations also apply to the online sphere

Country	Provisions
Belgium	Belgium has a well-developed campaign finance reporting regime, but detailed information on online spending is not required: parties must report how much was spent on maintaining their website and on online ads. A ban on paid political advertisements online was abolished in 2015.
Croatia	Croatia has detailed provisions for campaign finance reporting and imposes a campaign silence period on the day before an election. However, social media is not covered by the legal definition of electronic media and is therefore not explicitly supervised along with other traditional media. A separate reporting category is required to report on social media spending, but no further detail is required.
Czechia	The definition applied to political advertising established in 1995 was sufficiently broad to cover all forms of political advertising, including OPA. Therefore, financial rules that apply to offline advertising also apply online. Despite reforms in 2016 to improve financial oversight of election campaigns, attention was mainly given to solving offline issues, leaving the online campaign unaddressed. Moreover, observers note that the shift to online advertising in electoral campaigns has resulted in the underreporting of advertising spending.
Estonia	While political advertising on Estonia's public broadcaster is prohibited, private media, radio and online media are largely unregulated. Reporting requirements for OPA are limited to reporting how much was spent on 'Internet advertising', without a more detailed breakdown.
Portugal	Portugal bans paid political advertising on TV from the day the elections are called. Furthermore, there is a silence period on election day and preceding elections, including online. In the 2022 parliamentary election, a ban on paid political advertising, including advertising online, was in place from the day the elections were called. However, election observers noted that there were isolated cases of political ads appearing online, and concerns have been raised about the organized use of unpaid online content to bypass campaign media regulations.

Sources: International IDEA [n.d.](#); Office for Democratic Institutions and Human Rights (ODIHR) [2019c](#), [2019d](#), [2020](#), [2021c](#), [2022e](#); Political Parties Financing Surveillance Committee [n.d.](#); Havlíček and Rajtr [2020](#); Duncíkaitė, Žemgulytė and Valladares [2021](#); Stonestreet and Baldassarro [2021](#); Eynde [2023](#).

2.3.4. Scenario 4: OPA is explicitly regulated

In this scenario, OPA-specific regulation exists. The following chapters cover the common provisions of such regulation, oversight and enforcement structures and key considerations, and the role soft law and codes of conduct can play in supporting transparency and countering manipulative or inauthentic behaviour in campaigns.

Chapter 3

COMMON REGULATORY PROVISIONS TO INCREASE THE TRANSPARENCY OF ONLINE CAMPAIGNING

The previous chapter established the starting points for regulation. This chapter will zero in on the common regulatory provisions used to increase the transparency of online campaigning, to support oversight actors in enforcing accountability for OPA. The common provisions fall under five categories:

1. defining OPA and the scope of the application of rules;
2. setting standards for the identification of ad purchasers and political ads;
3. defining requirements for transparency of advertising messaging, targeting and funding;
4. establishing platform responsibilities for legal representatives, information transfer and policies for moderation, adjudicating complaints and assessing risk; and
5. clarifying the extent to which the content of ads themselves will be regulated, by, for example, banning narrowly defined content, placing editorial responsibility on advertisers or supporting trusted flagger networks and civic education campaigns.

Examples from current or developing regulations are given, followed by key considerations and a discussion of how codes of conduct can support these efforts.

3.1. CURRENT AND DEVELOPING RULES IN CANADA, IRELAND, UNESCO AND THE EU

Instituting common rules on labelling ads, collecting them in libraries and reporting to an oversight body are important components in regulating OPA. Without standards directed from the top, platforms are left to decide for themselves, resulting in different standards of transparency, record-keeping and reporting for different platforms. These standards may differ in the kinds of advertisements that are considered political and which actors they keep detailed information on, for how long and in what form such records are kept.

Rules are typically oriented around the common goals of providing transparency about what messaging was communicated, to whom, using what data and with what funding from which sources. Given these goals, new rules often focus more on online platforms than on political parties and candidates. While new rules on political parties and candidates generally build on more traditional forms of electoral regulation, creating new categories of financial reporting and media regulation adapted to the online sphere, new requirements must be placed on platforms where there are frequently no existing standards. With online platforms acting as the new gatekeepers of electoral communications, rules must tackle significant information asymmetries between platforms and oversight bodies, as platforms alone possess the technical access and capacity to monitor and report on what was communicated and with what financing.

The case examples for common provisions featured in Tables 3.1 to 3.5 were selected based on survey and interview responses and the significant amount of progress that has been made in contrast to the relatively low level of OPA-specific regulation in Europe ([European Commission 2021b](#)). Canada's Elections Modernization Act ([Government of Canada 2018](#)) established transparency requirements for OPA during defined electoral periods on online platforms, including maintenance of advertising libraries and collection of information on who paid for the ad. Clearer sanctions for certain categories of false information were also established. The Electoral Reform Act in Ireland ([Government of Ireland 2022](#)) vested responsibilities for oversight of OPA and elections more broadly in a newly established Electoral Commission, while also outlining rules for

Without ads standards directed from the top, inconsistent and divergent standards result from platforms themselves.

Rules must tackle significant information asymmetries between platforms and oversight bodies.

online electoral information and manipulative/inauthentic behaviour. The new OPA rules outlined requirements for a transparency notice, including information on who paid for the ad and other relevant details, and placed expectations on platforms to verify the identity of buyers.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) is currently developing its own guidelines on OPA. Entitled 'Safeguarding Freedom of Expression and Access to Information: Guidelines for a Multistakeholder Approach in the Context of Regulating Digital Platforms' ([UNESCO 2023](#)), the guidelines are targeted at safeguarding freedom of expression in the digital sphere, and they outline regulatory measures and standards for content platform moderation. The text is intended to support digital regulation, including through the mandates of electoral management bodies.

The EU has developed significant regulation intended to maintain a free and fair online sphere. The General Data Protection Regulation ([EU 2016](#)) was a landmark piece of regulation establishing some of the first formal standards for personal data in terms of its collection and use for targeting ads. In 2020, the European Commission announced an ambitious plan for trustworthy and democratic technology, the most relevant pieces of which for OPA and online ads more broadly are the DSA and the proposed regulation on the transparency and targeting of political advertising (TTPA) ([European Commission 2020a](#)).

The EU DSA, passed in 2022 ([EU 2022](#)), does not focus on OPA specifically but places obligations on online platforms to give better protections to users and protect fundamental rights online ([European Commission 2023](#)). Most relevant for election campaigning online are increased transparency requirements for terms and conditions and targeting algorithms; clearly communicated and available policies for users to challenge content moderation decisions; data access for researchers; and risk-based assessment and action against illegal content on and abuse of their platforms, including disinformation and election manipulation.

The EU TTPA proposal, published in 2021 ([European Commission 2021c](#)), is aimed at addressing OPA in elections in the EU. It seeks to establish a new common definition of political advertising and harmonize EU Member States' minimum standards for transparency of advertising messaging, funding and personal data use for ad targeting. For increased transparency of messaging and its funding, the proposed EU TTPA places expectations on platforms to accompany ads with 'Transparency Notices' to communicate certain information to users.

Standards are also placed on the use of personal data for targeting ads, including requirements to adopt and communicate relevant internal policies, maintain records on the use of targeting and allow users to object or withdraw consent to the processing of their data. Member States are expected to designate oversight bodies vested with certain responsibilities to ensure sufficient oversight of these provisions. EU-level regulation focuses mostly on transparency and not on the content of messaging, as regulating content can open the door to undue restrictions on freedom of speech and assembly. Neither the EU DSA nor the EU TTPA defines what constitutes illegal content online; instead they refer to existing national- and EU-level legislation regarding risk-assessment frameworks and removal of illegal content.

The issues listed in Box 3.1 were highlighted as being especially disputed during the development of the EU TTPA in a document clarifying the status of interinstitutional negotiations between the European Commission, European Parliament and the Council of the European Union. As such, it provides an overview of the key issues that may arise in any country when legislating on OPA.

To help combat disinformation online, Canada's Elections Modernization Act ([Government of Canada 2018](#)) clarified offences for online- and social media-based impersonation. Previous prohibitions and offences that used the word 'induce' or 'influence' were updated to include 'attempt to influence' and 'attempt to induce', thus broadening the scope of application. Similarly, language that prohibited 'knowingly' making false statements about a candidate was removed to allow the law's application where false statements

EU-level regulation focuses mostly on transparency and not on the content of messaging.

Box 3.1. Examples where more discussion was needed in negotiating the EU regulation on the transparency and targeting of political advertising

- The definition and scope of OPA, particularly in terms of whether it should be tied to elections and referendums or simply if it is 'liable to influence public opinion'.
- The definitions and scope of OPA delivery and amplification in terms of how it is described and what advertising techniques are included. The discussions include the extent to which certain tools may be applied, such as microtargeting and other targeting and marketing techniques rooted in human psychology that may be perceived by some as too manipulative for election campaigning.
- The definitions and scope of private, purely commercial and other excluded content and the extent to which third parties should be included.
- What should be required in terms of the display and content of the transparency notice.
- What due diligence measures are to be applied and regarding what categories of risk. Discussed risks include foreign interference (particularly regarding disinformation and societal fragmentation, freedom of expression and data protection and personal privacy). The discussions include whether language should require additional safeguards with regard to certain categories of risks and whether certain infringements should be considered particularly serious.
- What response should be required of platforms and in what time frame after being notified or made aware of violating political ads, including in communications with advertisers, and language that would target the correction, completion or removal of an ad and its associated information. There is also discussion over whether additional expectations should apply to platforms in the lead-up to elections.
- The extent to which research access and other data transparency for users should be included, including measures that could support a European repository for advertisements. The discussions include the extent to which information exchange between European authorities should be included and through which mechanism(s), such as the European Cooperation Network on Elections.

Sources: European Commission, Proposal for a Regulation of the European Parliament and of the Council on the Transparency and Targeting of Political Advertising, COM(2021) 731 final, 25 November 2021c, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021PC0731>>, accessed 6 December 2021; Asktheeu.org, 4CT of the trilogue negotiations on 2021/0381(COD) (transparency and targeting of political advertising)/17.5.2023, 17 May 2023, <https://www.asktheeu.org/en/request/4ct_of_the_trilogue_negotiations_4>, accessed 3 October 2023

are made, regardless of whether the individual making them was knowingly doing so.

Some observers regarded these limitations as justified, as applicable false statements under the act are limited to statements about citizenship, birthplace, education, qualifications, group membership

and where a candidate has committed a crime (Dawood 2020). The act also requires that the person making the statement intends to influence electoral outcomes. In 2018, the Commissioner of Canada Elections, Yves Côté, testified before the Canadian Senate that the narrow scope of statements covered is ‘unnecessarily restrictive’ (Senate of Canada 2018). Nonetheless, a judge from the Ontario Superior Court of Justice in 2021 struck down the removal of ‘knowingly’ from the act, finding it to be an unconstitutional limitation (Ontario Superior Court of Justice 2021). It is important to think critically about the implications of new limitations on political speech, where they may be considered proportionate and where they may draw more criticism.

Challenges in regulating content were also illustrated with Germany’s Network Enforcement Act (Netzwerkdurchsetzungsgesetz, NetzDG) (Bundesgesetzblatt 2017), which places a legal obligation on platforms to remove or block unlawful content within 24 hours of it being reported, regardless of whether or not it is reported during an electoral period. The regulation outlines sizable fines for non-compliance. The regulation’s critics claim that its vague definitions threaten freedom of expression online (Council of Europe 2020; OHCHR 2017; Rudl 2021). For example, the Institute for Strategic Dialogue reported that the regulation was being abused in the lead-up to the 2019 European elections. Far-right actors abused Twitter’s mechanisms for reporting disinformation, leading to the suspension of anti-alt-right accounts and Jewish-interest newspapers (ISD 2019). However, the law also enabled the German Government to fine Facebook EUR 2 million in 2019 for a lack of transparency in its reporting on its handling of hate speech and other unlawful content on its platform (Bontcheva et al. 2020). This example illustrates the careful balance that needs to be struck when placing any additional rules based on the content of messaging, as the positive effects of the rule must always outweigh the negative impact on freedom of speech.

It is also not recommended for regulators to broadly limit anonymity online, as anonymity is essential to the right to privacy. However, when combined with automation, online anonymity can increase the ability of malign actors to abuse online platforms and generate inauthentic reach (Kofi Annan Foundation 2020). Competent authorities are instead encouraged to increase the transparency of

The positive effects of OPA regulation must always outweigh the potential negative impacts on freedom of speech.

accounts that use automation so that it is immediately clear to users that the technique was used.

3.2. COMMON PROVISIONS OF RULES ON OPA

Tables 3.1 to 3.5 set out some common provisions for bringing greater transparency to online political campaigns, in terms of both what is communicated and with what money. The tables are meant as a starting point with illustrative examples from existing legislation from Canada, Ireland and the EU that is either already in place or in a late stage of development, as well as the detailed text released by UNESCO for regulating online platforms. The common provisions are followed by a discussion highlighting some key considerations or elaborating on certain possible requirements.

The following discussion elaborates on areas where there is still disagreement, where there is little political will for new rules or where issues are more difficult to navigate due to uncertain risks or the potential for unintended consequences. These issues are illuminated in the next section with some guiding steps.

Legal definitions of political advertising run the risk of being either too broad or too narrow.

3.3. ADVERTISING DEFINITIONS, SCOPE AND IDENTIFICATION

Legal definitions of what constitutes political advertising, and to what extent additional transparency and verification rules apply online to different electoral actors, run the risk of being either too broad or too narrow. Overregulation could result in self-censorship in public discussion itself, thus potentially moving discussions into private spaces that cannot be monitored as easily (Zinnbauer 2021). It is important to balance the administrative burden imposed against the capacity for groups to comply and participate equally in crucial democratic debate. Research suggests that oversight agencies can remove some of the administrative burden on identity verification procedures by establishing registries of individuals who have been authorized to post political ads or providing verified lists of candidates and associated third parties to platforms (Dunčikaitė, Žemgulytė and Valladares 2021; Zinnbauer 2021).

Table 3.1. Common regulatory provisions of emerging rules on online advertising, descriptions and illustrative examples: [Definition and scope](#)

Provision	Description
<p>Qualifying political advertisements</p>	<p>Effective OPA regulation will need to define what is considered a political advertisement. This requirement can be deceptively simple, as too broad a net can run afoul of free speech, while a definition that is too narrow will miss large parts of the campaign, resulting in an incomplete picture.</p> <p>In establishing a definition for a political ad, it is also relevant to consider for issue advertising: To what extent should advocating for or against an issue be considered a political advertisement? Which issues are relevant? Particular consideration should be given to any unintended consequences for speech, for example, self-censorship by civil society due to new administrative burdens.</p> <p>The Elections Modernization Act (2018) in Canada defines qualifying ads as ‘the transmission to the public by any means during an election period of an advertising message that promotes or opposes a registered party or the election of a candidate, including by taking a position on an issue with which a registered party or candidate is associated’. By including ads that take a position on associated campaign topics, the act also includes issue advertisements. The EU TTPA text (2021) also includes issue advertising but links it less directly to party platforms, with advertising that is placed ‘by, for or on behalf of a political actor’ and is ‘liable to influence the outcome of an election’.</p> <p>Ireland (2022), on the other hand, links its definition to the digital sphere and for political purposes during the election period, defining qualifying ads as ‘any form of communication in a digital format for political purposes purchased for placement, display, promotion or dissemination on an online platform during an electoral period and for which a payment or payment in kind is made to the online platform concerned’.</p>

Table 3.1. Common regulatory provisions of emerging rules on online advertising, descriptions and illustrative examples: Definition and scope (cont.)

Provision	Description
<p>To whom does the regulation apply? Who and what is exempted?</p>	<p>Key decisions must be made on issues such as the thresholds of minimum platform size for the regulation to apply, as well as rules for other actors such as civil society, third parties and the other players in the growing industry that buys and sells personal data. A balance must also be struck in this case, as onerous rules can result in self-censorship, which damages political speech and association, while a scope that is too limited can open loopholes.</p> <p>For example, when considering to which online platforms the rules should apply, the EU TTPA proposal (2021) establishes no minimum number of users and is ‘applicable to economic actors providing political advertising and related services (i.e. activities that are normally provided for remuneration)’.</p> <p>Minimum numbers of users are established in Canada and Ireland: Ireland’s Electoral Reform Act (2022) establishes expectations for purchasers of political ads, as well as online platforms offering paid political advertising that have no fewer than 100,000 unique monthly users in Ireland for a period of not less than seven months during the twelve months preceding election day. Similar standards are established by the Elections Modernization Act (2018) in Canada, with the minimum number of users in Canada set at three million unique visitors per month for English-language platforms; one million for French-language; and 100,000 for platforms mainly in a language other than English or French.</p>
<p>During what defined period do additional rules apply?</p>	<p>Different levels of transparency can be defined during different periods, including the official election period, a defined pre-election period and non-election periods. These periods may also affect the degree to which violations will be punished, for example, by defining harsher sanctions for violations during the election period.</p> <p>In the Irish Electoral Reform Act (2022), for example, OPA rules only apply between the date on which elections are officially announced and the polling day. In Canada, the Elections Modernization Act (2018) limits election periods to a maximum of 50 days before polling day, with a ‘pre-election period’ commencing on 30 June preceding the election period.</p>

Sources: Government of Canada, [Elections Modernization Act, S.C. 2018, c. 31, 2018](#); Government of Ireland, [Electoral Reform Act 2022](#); European Union, Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and Amending Directive 2000/31/EC ([Digital Services Act](#)); European Commission, Proposal for a Regulation of the European Parliament and of the Council on the Transparency and Targeting of Political Advertising, [COM\(2021\) 731 final](#); United Nations Educational, Scientific and Cultural Organization (UNESCO), [Safeguarding Freedom of Expression and Access to Information: Guidelines for a Multistakeholder Approach in the Context of Regulating Digital Platforms](#).

Table 3.2. Common regulatory provisions of emerging rules on online advertising, descriptions and illustrative examples: Identification

Provision	Description
<p>Identifying and verifying the identity of individuals purchasing advertisements</p>	<p>To what extent will advertising providers be responsible for verifying the identity of individuals placing advertisements on their platforms, and what will platforms be required to collect? This can also include preregistration of approved campaigners and social media accounts that will be used by parties. Purchasers of ads may also be designated with the reciprocal responsibility to fully comply and to provide honest and truthful information and genuine supporting documentation.</p> <p>For example, Canada’s Elections Modernization Act (2018) requires purchasers of political ads to provide all necessary information to platforms for them to be able to fulfil ad registry requirements, including the name of the person authorizing the ad. It does not, however, specify how platforms should confirm their identity.</p> <p>The EU DSA (2022) requires that those who purchase online ads can be traced, thus obliging platforms to provide users and authorities with information that enable them to be identified. To ensure that no ‘disproportionate burden’ is imposed, platforms are instructed ‘to assess the reliability of the information provided ... in particular by using freely available official online databases and online interfaces ... or request the traders concerned to provide trustworthy supporting documents’. The regulation specifies that platforms ‘should not be required to engage in excessive or costly online fact-finding exercises or to carry out disproportionate verifications’.</p>

Table 3.2. Common regulatory provisions of emerging rules on online advertising, descriptions and illustrative examples: Identification (cont.)

Provision	Description
<p>Correctly identifying the advertisements that qualify as 'political'</p>	<p>Given the massive volume of content in the online sphere, it would be impossible for any oversight agency to monitor every single advertisement a party places online. This means that platforms must generally decide whether an advertisement qualifies for additional transparency requirements. Oversight agencies must decide how they will monitor whether platforms are correctly applying these standards.</p> <p>For example, Canada's Elections Modernization Act (2018) requires purchasers of political ads to declare them as such when engaging with an online platform. Oversight authorities do not engage in any systemic monitoring of how this is applied. They rely instead on a complaints-based system. The EU TTPA proposal (2021) sets a similar standard requiring that platforms be responsible only for ads that have been declared as political by the purchaser.</p> <p>Draft UNESCO guidelines (2023) state that platforms 'that accept advertising designed to impact the political process should clearly identify such content as political advertisements' and should also 'ensure in their terms of service that to accept the advertisement, the funding and the entity are identified by those that place them'.</p>

Table 3.2. Common regulatory provisions of emerging rules on online advertising, descriptions and illustrative examples: Identification (cont.)

Provision	Description
<p>Identifying foreign purchasers or funding</p>	<p>Election oversight bodies increasingly seek to limit or prevent the use or influence of foreign money in election campaigns. Platforms are frequently left with the responsibility of determining whether the purchaser of an ad is based in or is the citizen of another country or the money used to place the ad came from foreign sources.</p> <p>For example, the Elections Modernization Act (2018) specifies that people who are neither a citizen nor a permanent resident of Canada, or that otherwise constitute a foreign entity, may not ‘unduly influence an elector to vote or refrain from voting, or to vote or refrain from voting for a particular candidate or registered party, at the election’. Spending any money to directly promote or oppose an election result falls under the definition of ‘unduly influencing’.</p> <p>Similarly, Ireland’s Electoral Reform Act (2022) states that online political ads ‘shall not, directly or indirectly, be placed, displayed, promoted or disseminated in the State by a person resident at an address outside the State’ unless that person is an Irish citizen or otherwise has ties to Ireland explicitly defined by the act. Platforms are deemed responsible where ads are placed by such persons ‘if there are reasonable grounds for concluding that the online platform so knows’ based on information within their possession collected when verifying the buyer’s identity or that should have been collected, or widely available public information.</p>

Sources: Government of Canada, [Elections Modernization Act, S.C. 2018, c. 31, 2018](#); Government of Ireland, [Electoral Reform Act 2022](#); European Union, Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and Amending Directive 2000/31/EC ([Digital Services Act](#)); European Commission, Proposal for a Regulation of the European Parliament and of the Council on the Transparency and Targeting of Political Advertising, [COM\(2021\) 731 final](#); United Nations Educational, Scientific and Cultural Organization (UNESCO), [Safeguarding Freedom of Expression and Access to Information: Guidelines for a Multistakeholder Approach in the Context of Regulating Digital Platforms](#).

However, drawing very narrow definitions of political advertising and regulated electoral actors can leave room for loopholes. It is important to consider the broad range of paid online communication that aims to influence public and voter opinion on matters of interest, including issue advertising and identity verification regarding ads placed by third parties. However, issue-based advertising and third-party campaigning remain underregulated across Europe ([Shlyk,](#)

Table 3.3. Common regulatory provisions of emerging rules on online advertising, descriptions and illustrative examples: Transparency

Provision	Description
<p>Political advertising libraries</p>	<p>Advertising libraries are increasingly common, as they can enable crucial insight into all advertisements run during a campaign, including what was communicated, by whom, to which groups and how much was spent. The libraries are also required to be maintained for a set number of years, often with a requirement for how long they must be publicly maintained and a separate obligation for how long the platform is required to keep the data themselves.</p> <p>Canada (2018) and Ireland (2022) both place expectations on platforms to establish libraries containing specific details on political advertisements. Platforms must maintain the information in Canada publicly for a period of two years and on their servers for a period of five years; in Ireland, such information must be publicly maintained for a period of seven years.</p>
<p>Transparency notice (digital imprint, tagline) requirements and visual differentiation of political advertising</p>	<p>It may be required to include within or with the political ad itself information on who paid for the ad, in support of which party/candidate and that the ad is political. The requirement can also include a link to a transparency notice, or to the ad itself in the ad library, which will give the user more information behind the advertisement and its related political campaign. Regulators may also define the minimum size of the imprint, what information must be contained and specifications on what the link to more information should look like.</p> <p>In terms of how users should be shown the notice, the EU TTPA text (2021) states that ‘the information to be included in the transparency notice should be provided in the advertisement itself or be easily retrievable on the basis of an indication provided in the advertisement’. Similarly, the Irish Electoral Reform Bill (2022) requires ads to be visibly labelled with the text ‘political advert’ and a link included to where a user can read the accompanying transparency notice on the platform’s ad library. Examples of specific provisions that may be required in the notice and therefore displayed in platform libraries are given on pages 30–31.</p>
<p>Targeting and amplification requirements or limitations</p>	<p>Regulators may consider placing transparency requirements where targeting or amplification techniques are used, or place limitations on the types of data that qualify for use of these tools. Obligations on targeting labels could include a description of any targeting and amplification techniques and upon which data they were based. Personally sensitive data or inferred data may be forbidden, or targeting can be limited to a minimum audience size, ensuring that ads are targeted at broad group characteristics instead of personal specifics.</p>

Table 3.3. Common regulatory provisions of emerging rules on online advertising, descriptions and illustrative examples: Transparency (cont.)

Provision	Description
Advertising pricing requirements and limitations	Oversight bodies may require online platforms to communicate their pricing requirements publicly in advance of election season to ensure that everyone has equal expectations and access to advertisements. In addition to overall spending limits, they may also place limitations on how much may be spent on individual ads.

Sources: Government of Canada, [Elections Modernization Act, S.C. 2018, c. 31, 2018](#); Government of Ireland, [Electoral Reform Act 2022](#); European Union, Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and Amending Directive 2000/31/EC ([Digital Services Act](#)); European Commission, Proposal for a Regulation of the European Parliament and of the Council on the Transparency and Targeting of Political Advertising, [COM\(2021\) 731 final](#); United Nations Educational, Scientific and Cultural Organization (UNESCO), [Safeguarding Freedom of Expression and Access to Information: Guidelines for a Multistakeholder Approach in the Context of Regulating Digital Platforms](#).

[Stonestreet and Pârvu 2022](#); [van Drunen, Helberger and Ó Fathaigh 2022](#)). Regulators should carefully consider the scope and thus wider implications when introducing new OPA regulation, as illustrated by the following two examples.

The transparency requirements established on qualifying ads in France's 2018 Law on Combatting the Manipulation of Information ([Republic of France 2018](#)) and Ireland's Electoral Reform Act of 2022 ([Government of Ireland 2022](#)) had unintended consequences, leading to an increased risk of self-censorship by non-governmental organizations. In France, all paid 'content relating to a debate of general interest' on online platforms is subject to the new requirements, and in Ireland all paid content 'for political purposes' qualifies. This potentially overly broad definition risks self-censorship, as things that are even only tangentially related to elections may be subject to the new rules ([van Drunen, Helberger and Ó Fathaigh 2022](#)).

In Ireland, civil society and international organizations have also argued that the scope of the rules is too broad, as additional financial reporting requirements and limitations on paid content 'for political

Potentially overly broad definitions of political advertisement risk self-censorship.

Table 3.4. Common regulatory provisions of emerging rules on online advertising, descriptions and illustrative examples: Platform responsibilities

Provision	Description
Legal representative	Oversight bodies may require platforms to have a legal representative as the designated point of communication or the individual vested with responsibility for monitoring implementation of the regulation within the platform itself.
Public-facing notification and complaint mechanism for violations	<p>Regulators may require that political ads be accompanied by a clear and easy mechanism for the public to notify platforms of non-compliant ads. These mechanisms can include requirements for following up with the notifier of the outcome of their investigation into the complaint.</p> <p>Draft UNESCO guidelines (2023) state that '[d]igital platforms should also engage with the regulatory systems and relevant civil society groups prior to and during an election to establish a means of communication if concerns are raised by the administrator or by users/ voters'.</p> <p>The EU DSA (2022) requires that platforms 'put mechanisms in place to allow any individual or entity to notify them of the presence on their service of specific items of information that the individual or entity considers to be illegal content. Those mechanisms shall be easy to access and user-friendly, and shall allow for the submission of notices exclusively by electronic means'. The notices should include an explanation of why the content is illegal, the location of the alleged content, the name and email of the individual submitting the complaint and a declaration that the information is complete and correct. Where action is taken on violating content, platforms must provide a statement of reasons to affected parties explaining why the content is in violation and what measures have been taken in response.</p>

Table 3.4. Common regulatory provisions of emerging rules on online advertising, descriptions and illustrative examples: Platform responsibilities (cont.)

Provision	Description
<p>Response in the event of violations</p>	<p>When a platform is notified of a non-compliant ad, either by the public or by the oversight bodies themselves, regulators may define guidelines for their response. This process could include features such as immediate takedown of the ad until it is resolved, or guidelines for content demotion or deletion. A key aspect is also the timeline in which this must be completed: it is important that timelines are not too short to be unduly burdensome to comply with while also ensuring that they are not so long that non-compliant ads continue to be seen by voters. It is also important to consider processes for appeal when deciding on timelines.</p> <p>Where platforms gain knowledge of illegal content being displayed, the EU DSA (2022) requires that they ‘act expeditiously to remove or to disable access to that content’. Both the DSA and EU TTPA explicitly state that the rules should not be interpreted to impose a ‘general monitoring obligation’ or a ‘general active fact-finding obligation’.</p> <p>Where platforms are notified by authorities of illegal content, they should respond ‘without undue delay, specifying if and when effect was given to the order’. Platforms may set their own internal processes and standards for responses to illegal content with different timelines for different categories defined based on the ‘facts, circumstances and types of illegal content at hand’.</p>

Table 3.4. Common regulatory provisions of emerging rules on online advertising, descriptions and illustrative examples: Platform responsibilities (cont.)

Provision	Description
<p>Record-keeping of content policies and measures taken</p>	<p>Platforms may be required to maintain clear and publicly available policies for content moderation and removal. The regulator may also require minimum standards for content moderation (such as anti-hate speech rules) or for platforms to keep a record of any measures that were applied.</p> <p>The EU DSA requires that platforms ‘include information on any restrictions that they impose in relation to the use of their service in respect of information provided by the recipients of the service, in their terms and conditions’. This information should outline ‘any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making and human review, as well as the rules of procedure of their internal complaint handling system’. The policy is to be described in ‘clear, plain, intelligible, user-friendly and unambiguous language, and shall be publicly available in an easily accessible and machine-readable format’. Platforms must also publish ‘at least once a year, clear, easily comprehensible reports on any content moderation that they engaged in during the relevant period’.</p> <p>Draft UNESCO guidelines stress the importance of ensuring that terms of service are provided in the official and primary languages of the countries in which they operate, including in their responses to users and capacity to moderate and curate content. The terms and conditions should take human rights and due process considerations into account, with platforms publishing information outlining how they did so.</p>

Table 3.4. Common regulatory provisions of emerging rules on online advertising, descriptions and illustrative examples: Platform responsibilities (cont.)

Provision	Description
<p>Transmission of information</p>	<p>Platforms may be required to make information available upon request from certain actors, including authorities, researchers, civil society organizations, political actors and other observers. This rule can help to reduce the information inequalities that have undermined electoral integrity, as platforms will no longer be able to keep relevant information to themselves and will need to share it with observers that can help to enforce accountability.</p> <p>Draft UNESCO guidelines (2023) state that platforms ‘should provide access to non-personal data and pseudonymous data for researchers, vetted by statistical agencies, that is necessary for them to undertake research on content to understand the impact of digital platforms. This data should be made available through automated means, such as application programming interfaces (APIs), or other open and accessible technical solutions allowing the analysis of said data. Platforms should build reliable interfaces for data access. The independent regulatory system should determine what is useful, proportionate and reasonable for research purposes’.</p> <p>The EU DSA requires that platforms provide access to ‘vetted researchers’ associated with a university research organization, specifying that such requests should be ‘proportionate and appropriately protect the rights and legitimate interests, including the protection of personal data, trade secrets and other confidential information, of the very large online platform or of the very large online search engine and any other parties concerned, including the recipients of the service’. Where technically possible, publicly accessible data should also be provided to wider groups of researchers to help facilitate monitoring of ‘societal concerns’. This requirement is similar to that in the EU TTPA proposal, as vetted researchers can qualify as ‘interested entities’ to whom information on political ads should be provided ‘upon request and without costs’.</p>

Table 3.4. Common regulatory provisions of emerging rules on online advertising, descriptions and illustrative examples: Platform responsibilities (cont.)

Provision	Description
<p>Risk assessment</p>	<p>Rules may require that platforms conduct systematic and regular risk assessments to define threats to electoral integrity and outline measures for their mitigation. These risk assessments may be required yearly or per number of years or may be aligned with the electoral cycle.</p> <p>The EU DSA requires that platforms ‘diligently identify, analyse and assess any systemic risks in the Union stemming from the design or functioning of their service and its related systems, including algorithmic systems, or from the use made of their services’. The platforms are also required to ‘put in place reasonable, proportionate and effective mitigation measures, tailored to the specific systemic risks ... with particular consideration to the impacts of such measures on fundamental rights’. The text suggests a number of such mitigation measures.</p> <p>The EU DSA categorizes risks according to four tiers, ranging from the most serious to the least serious. The first category concerns the spread of illegal content, such as hate speech, the sale of illegal products or child sexual abuse material; the second concerns the ‘actual or foreseeable impact of the service on the exercise of fundamental rights, as protected by the Charter’, such as free speech and media, and privacy; the third concerns the ‘actual or foreseeable negative effects on democratic processes, civic discourse and electoral processes, as well as public security’; and the fourth concerns risks relating to how the design, or manipulation thereof, by platforms can have serious negative consequences for a person’s physical and mental well-being or on gender-based violence. Examples are given for each category of what platforms may consider as qualifying under each category.</p>

Sources: Government of Canada, [Elections Modernization Act, S.C. 2018, c. 31, 2018](#); Government of Ireland, [Electoral Reform Act 2022](#); European Union, Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and Amending Directive 2000/31/EC ([Digital Services Act](#)); European Commission, Proposal for a Regulation of the European Parliament and of the Council on the Transparency and Targeting of Political Advertising, [COM\(2021\) 731 final](#); United Nations Educational, Scientific and Cultural Organization (UNESCO), [Safeguarding Freedom of Expression and Access to Information: Guidelines for a Multistakeholder Approach in the Context of Regulating Digital Platforms](#).

Table 3.5. Common regulatory provisions of emerging rules on online advertising, descriptions and illustrative examples: Content

Provision	Description
<p>Content bans</p>	<p>Certain types of content may be banned in online advertising: for example, in most countries under observation, anti-hate speech laws are already in place that can be more effectively implemented in online campaigns. However, content bans must be narrowly defined, proportionate and sufficiently justified, as they constitute a significant limitation on protected political speech.</p> <p>For example, the EU TTPA text (2021) is clear that the regulation ‘should not affect the substantive content of political advertising’ and is instead geared towards raising transparency obligations.</p> <p>The EU DSA (2022), on the other hand, focuses on the ‘dissemination of illegal content online and the societal risks that the dissemination of disinformation or other content may generate’. Illegal content is described as ‘information, irrespective of its form, that under the applicable law is either itself illegal, such as illegal hate speech or terrorist content and unlawful discriminatory content, or that the applicable rules render illegal in view of the fact that it relates to illegal activities’. The regulation includes illustrative examples of what should and should not be considered illegal content. Moreover, any orders made regarding illegal content on a platform should be ‘limited to what is strictly necessary to achieve its objective’.</p>
<p>Editorial responsibility for political ads</p>	<p>Regulators may seek to make parties, candidates or other purchasers of ads formally responsible when they knowingly spread false information or information that may undermine an election’s integrity. While this can help to counter mis- and disinformation surrounding an election, the question remains as to who will judge what constitutes ‘false’ information ‘knowingly’ spread.</p> <p>For example, in Canada (2018), ‘no person or entity shall, with the intention of affecting the results of an election, make or publish, during the election period’ certain categories of false information, including about a candidate committing or being under investigation for an offence; falsely representing a candidate’s place of birth, education, qualifications or group memberships; or falsely claiming that a candidate has withdrawn from the race. In Ireland (2022), the Electoral Commission is vested with monitoring responsibilities for and capacity to act against disinformation online, including issuing notices or orders for takedown, correction, labelling and blocking access.</p>

Table 3.5. Common regulatory provisions of emerging rules on online advertising, descriptions and illustrative examples: Content (cont.)

Provision	Description
<p>Support and funding of researchers, trusted flaggers</p>	<p>Rules may foresee the involvement of researchers or trusted flaggers that will help to spot and initiate takedowns of mis- and disinformation. This could involve in-house staff trained for continuous monitoring or monitoring conducted in collaboration with qualified academic experts or civil society.</p> <p>The EU DSA (2022) specifies the expected response from platforms where ‘trusted flaggers’ make use of notification mechanisms for violating ads, requiring that they ‘are given priority and are processed and decided upon without undue delay’. Any entity may apply to the relevant authority for this status, so long as they have the requisite expertise, are independent of any online platforms and commit to diligent, accurate and objective activity under this banner. Platforms are also required to publish yearly reports, to be made publicly available, on the notifications submitted, including the number of notices categorized by the identity of the provider, the type of illegal content notified and the action taken by the provider in response.</p>
<p>Voter education and media literacy campaigns</p>	<p>Electoral oversight bodies can engage in campaigns for voter education or to help raise media literacy, which can help raise awareness and understanding of what voters see online and help citizens engage in oversight and accountability of campaigns themselves.</p> <p>The Irish Electoral Reform Act (2022) accords the new Election Commission with an education function to ‘promote public awareness of, and participation in, the State’s electoral and democratic processes and encourage the public to vote at electoral events’.</p> <p>Draft UNESCO guidelines note that platforms should ‘demonstrate their overall strategy related to media and information literacy and online safety education, and the actions they have taken to advance it’. Platforms should make digital literacy a ‘specific focus’ across their product development teams and make clear resources available for improving media and information literacy, including about their own products.</p>

Sources: Government of Canada, [Elections Modernization Act, S.C. 2018, c. 31, 2018](#); Government of Ireland, [Electoral Reform Act 2022](#); European Union, Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and Amending Directive 2000/31/EC ([Digital Services Act](#)); European Commission, Proposal for a Regulation of the European Parliament and of the Council on the Transparency and Targeting of Political Advertising, [COM\(2021\) 731 final](#); United Nations Educational, Scientific and Cultural Organization (UNESCO), [Safeguarding Freedom of Expression and Access to Information: Guidelines for a Multistakeholder Approach in the Context of Regulating Digital Platforms](#).

purposes' continue to apply between elections.⁵ Some civil society and international organizations claim that the limitations can be interpreted in such a way as to prevent any person or organization in Ireland from accepting large domestic donations or international support. Furthermore, additional tracking and reporting requirements apply even to small donations, thus creating what can be considered an undue administrative burden and therefore as being unduly limiting for freedom of political speech (Devitt, Herrick and O'Gorman 2017; European Commission 2022a; Kennedy 2022; ODIHR 2018b).

Moreover, there is increasing discussion of how to treat organic or unpaid content, especially in terms of the grey areas where organic content may be artificially amplified, for example, through influencers that have been paid, as such payments do not qualify as regulated political advertisements under the current definitions (Helberger, Dobber and de Vreese 2021). Interviews with authorities in Latvia indicated that campaigners are given the opportunity to declare their use of free tools and platforms online. While it is difficult to enforce full disclosure of such tools, collecting such information and sharing it publicly in the first place can help lend transparency to the online campaign.

Identifying which advertisements are considered political within a given legal definition is difficult. Leaving this responsibility to online platforms alone can create gaps, as studies have shown that some platforms identify political ads inconsistently or are more likely to misidentify political ads than identify them correctly (Kirk and Teeling 2022; Le Pochat et al. 2022). Requirements for political advertisers to register the accounts from which they run their campaigns and to declare their ads as political can close this gap. For example, in Czechia, the Office for the Oversight of Financing of Political Parties and Movements (Úřad pro dohled nad hospo-dařením politických stran a politických hnutí, ÚDHPSH) supports online platforms with this responsibility by maintaining a registry of actors engaged in political campaigning, including a third-party registry (Shlyk, Stonestreet and Párvu 2022). The oversight body monitors all

There is increasing discussion of how to treat organic or unpaid content, especially when artificially amplified.

⁵ This issue has been raised by various civil society and international bodies since the language was established by the Electoral Act 1997, as amended in 2001. For the definition of political purposes, see Government of Ireland (2001).

Available and regularly updated data on online campaigning is recognized as important for improving the transparency and accountability of electoral campaigns.

registered actors, with parties first self-declaring and any other actors associated with their campaign added later by the oversight body.

3.4. PLATFORM RESPONSIBILITIES, TRANSPARENCY REQUIREMENTS AND CONTENT MODERATION

Once it has been determined what constitutes a regulated ad and which actors must be subject to additional verification and transparency requirements, decision makers should consider what kinds of information maintenance requirements are to be established. Granular, openly available and regularly updated data on online campaigning is recognized as important for improving the transparency and accountability of electoral campaigns (Dunčikaitė, Žemgulytė and Valladares 2021). These requirements frequently include labelling standards for political ads, mandatory platform advertising libraries for political ads run during a campaign, maintaining documentation of who paid for what ads, and clear and publicly available moderation and advertising policies.

Boxes 3.2, 3.3 and 3.4 give some more detailed examples of what kinds of information maintenance requirements may be considered, what labelling requirements for ads can be included and what may be expected of advertising libraries.

Ad libraries contribute to transparency by ensuring that there is a record of what ads were run, for how long, by whom and with what funding. Ideally, the libraries should be centralized, provided in real time, searchable and machine-readable.

Despite more and more platforms offering ad libraries, studies consistently conclude that, while useful, the information translates into little in terms of practical accountability and consequences, particularly due to limited detail in the information provided (Dubois, Arteau-Leclerc and Giasson 2021; Leerssen et al. 2023; Mehta and Erickson 2022; Serrano, Papakyriakopoulos and Hegelich 2020). Moreover, platforms themselves tend to rely heavily on external organizations to help identify, prioritize and take action on harmful content, thus showing that platforms themselves lack the capacity to enforce rules without outside assistance (Suzor and Gillett 2022).

Box 3.2. Sample information maintenance requirements

- requirements on labelling of political ads;
- maintaining an advertising library;
- standards for internal documentation on the verification of who paid for what ads;
- a clear content moderation policy;
- publicly available and equal pricing standards for all electoral actors;
- in what form the documentation should be kept (for example, if it must be machine-readable and searchable);
- how detailed the records should be (for example, whether specific targeting parameters should be used and on what personal data should be disclosed);
- whether the information should be publicly available or not;
- for how long the information is to be maintained; and
- what information should be communicated with which actors and along what timelines.

Source: Dunčikaitė, I., Žemgulytė, D. and Valladares, J., *Paying for Views: Solving Transparency and Accountability Risks in Online Political Advertising* (Berlin: Transparency International, 2021), <<https://www.transparency.org/en/publications/paying-for-views>>, accessed 2 February 2022; Zinnbauer, D., 'Nurturing the integrity of political communication in the digital era: An open government perspective', Open Government Partnership, 27 May 2021, <<https://www.opengovpartnership.org/documents/nurturing-the-integrity-of-political-communication-in-the-digital-era>>, accessed 2 February 2022.

Box 3.3. Sample labelling requirements

- the ultimate sponsor of an ad;
- who authorized an ad (by whom the ad is endorsed, on whose behalf);
- the ad generation method used by the platform;
- user profile criteria if targeting is used; and
- verification of the identity of all individuals involved: sponsor, advertiser and beneficiary.

Source: Dunčikaitė, I., Žemgulytė, D. and Valladares, J., *Paying for Views: Solving Transparency and Accountability Risks in Online Political Advertising* (Berlin: Transparency International, 2021), <<https://www.transparency.org/en/publications/paying-for-views>>, accessed 2 February 2022; European Commission, *The Strengthened Code of Practice on Disinformation 2022* (Brussels: European Commission, 2022b), <<https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation>>, accessed 3 March 2023.

Given the limitations of platform-maintained ad libraries, where these significant issues are accompanied by an unengaged regulator, media and public, the extra access to information alone may contribute little to the integrity of elections without careful guidance and encouragement from the authorities.

There are increasing calls for oversight agencies themselves to host centralized ad libraries to allow for more accessibility and consistency.

There are increasing calls for oversight agencies themselves to host centralized ad libraries, as collecting ads displayed across platforms and making them publicly accessible in a consistent format can provide a more complete picture of the online political campaign across platforms. As content and advertising online is increasingly fuelled by artificial intelligence (AI), further amplifying its already massive scale, inconsistent and potentially incomplete ad libraries may not be enough to ensure meaningful transparency of the ads run during a campaign. Platforms may also delete their ad libraries or remove access after a number of years, while a government-provided platform can be better maintained to enable comparison of advertising across successive elections.

Mandatory transparency can also be targeted at the pricing of ads. While almost two thirds of countries globally have mandated free or subsidized access to mass media channels or other equal access for traditional forms of political advertising, these standards have

Box 3.4. Sample ad library requirements

- a sample of the displayed ad;
- identity of the individual that paid for the ad;
- identity of who authorized the ad (by whom the ad is endorsed, on whose behalf);
- the reach of the ad (number of impressions for the ad, potentially including impressions per targeting parameter);
- duration for which the ad was displayed;
- targeting criteria, if used, including the data source and inferred profiles used;
- disclosure of if and how A/B testing, also known as split testing, was used;
- cost of the single ad, and total cost of the campaign to which it is attributed (includes rebates and discounts);
- price lists for advertisements;
- that ad libraries are machine-readable;
- for how long the information is to be publicly maintained; and
- for how long the information is to be privately maintained, available upon request from oversight authorities.

Sources: Dunčikaitė, I., Žemgulytė, D. and Valladares, J., *Paying for Views: Solving Transparency and Accountability Risks in Online Political Advertising* (Berlin: Transparency International, 2021), <<https://www.transparency.org/en/publications/paying-for-views>>, accessed 2 February 2022; Zinnbauer, D., 'Nurturing the integrity of political communication in the digital era: An open government perspective', Open Government Partnership, 27 May 2021, <<https://www.opengovpartnership.org/documents/nurturing-the-integrity-of-political-communication-in-the-digital-era>>, accessed 2 February 2022.

not translated to online platforms (Zinnbauer 2021). Moreover, the pricing structures of online advertising are generally not transparent, with platforms able to set their own prices and charge one actor more than it charges another for the same type of advertisement and targeting, potentially impacting the content or targeting audiences of ads. Ideally, a reasonable standard should be set for equitable access to OPA in terms of pricing, but standards can also extend to mandating the number of ads that can be run and with what kind or level of reach. In Latvia and Lithuania, for example, all online advertising providers have to declare their pricing structure for political ads, and it is required that advertising pricing be applied equally across purchasers (Duncikaitė, Žemgulytė and Valladares 2021; Shlyk, Stonestreet and Pârvu 2022). The price lists are published on the websites of electoral authorities.

Ultimately, the implementation of regulation on their platforms is up to the technology companies behind them, including through automatic review, which may be error-prone, and human review of content, which may be slow and possibly subjective. There is also the risk that platforms will underinvest in or misapply these tools, thereby allowing, in practice, advertisers to bypass existing regulations and mechanisms to potentially mislead observers using transparency tools (Kirk and Teeling 2022; Leerssen et al. 2023; Le Pochat et al. 2022). To increase the transparency of platform actions taken regarding political advertising and other relevant content on their platforms, regulations may require platforms to publish and maintain content moderation policies, and a record of what actions were taken against violating ads, both proactively and in response to user-submitted notifications. Content moderation policies can be an especially important area for transparent, consistent and clear rules, as these standards affect not only paid political advertising but also the ecosystem of organic content through which people engage in democratic debate. Consistent content moderation policies are therefore especially crucial to ensuring that political speech, one of the most protected forms of freedom of expression, can be freely conducted on platforms while maintaining respect for the integrity of elections.

The lack of transparency and reliable data on decisions made by platforms can make it hard to evaluate the effectiveness of the

Content moderation policies are especially important for overall transparency, as they affect both paid political advertising and organic content.

actions taken or to hold platforms accountable for them, especially as AI-powered moderation solutions are increasingly implemented. This dynamic can be dangerous for freedom of expression: users are given little choice or input in the policies, and political pressure may influence what actions are taken, which can also change with shifts in leadership at the top or new legislation (Krimmer et al. 2022). By establishing a baseline for platform content moderation policies and transparency during election season, rules on OPA can help protect the integrity of elections in terms of paid content and by ensuring that the democratic debate taking place on these platforms is similarly free and fair.

Chapter 4 elaborates key fixtures of oversight and enforcement structures to illustrate what kind of mandate and capacity can support provisions targeted at OPA by describing different configurations of how oversight bodies can be structured and outlining key considerations.

3.5. CODES OF CONDUCT

Regulatory and oversight authorities are encouraged to remember that formal rules are not the only option in regulating OPA. Codes of conduct help strengthen transparency and accountability in online political campaigning by establishing voluntary behavioural standards for key actors in elections, including candidates, political parties and online platforms selling online ad space. Codes of conduct may use different names, such as charters and codes of practice, integrity or ethics. The structure of codes can range from a declaration on behalf of the signatories to a non-legally binding contract stating formal commitments. Different factors that may affect the final structure of a code include its goals, the process of how it was developed and what types of commitments were made, as well as whether any mechanisms for monitoring and sanctioning are outlined or forward-looking provisions provided.

As a soft-law measure, the three main benefits of a code of conduct include helping to bridge different gaps in the regulation of OPA, protecting electoral integrity while upholding democratic values and setting a baseline standard for behaviour while enabling

parties to make full use of online tools (Jaurisch 2021). Codes of conduct are effective in complementing as an interim step where effective regulation of OPA is not yet in place, and they help to get stakeholders acquainted with new standards. They can help in establishing standards where platforms may reside outside a country's borders. Finally, codes of conduct help establish standards where hard legislation would constitute an undue limitation on fundamental freedoms, sensitive issues and areas where there is still disagreement.

Codes of conduct allow electoral participants and voters to monitor the ethical use of online tools while respecting freedom of expression and contributing to transparent and accountable campaigning, a level playing field and electoral results that are perceived as legitimate by all. By setting a standard for behaviour, parties and candidates can show voters that they take ethical behaviour seriously and are willing to be held accountable for their actions, thus helping to generate peer pressure and media attention (Jaurisch 2021). This dynamic is also effective in reining in the operations of online platforms, as widespread public scrutiny and pressure from stakeholders can often influence changes in platform policies.

However, codes of conduct also come with two main challenges: as a voluntary measure, they are frequently criticized for lacking teeth, since there is no legal basis on which to apply formal sanctions. The effectiveness of codes therefore depends on the strength of these commitments, the level of engagement to abide by them, and the peer and public pressure that is created (European Commission 2021a). The usefulness of commitments will also vary depending on the specificity of commitments: the more ethical limits are clarified in the commitments, the easier it will be to track and monitor compliance with the code. Where commitments are vaguer, enforcement is more difficult.

The other challenge with codes of conduct is that it is difficult to reach an agreement on standards for online behaviour, as all stakeholders come to the table with different perspectives of what is fair. Certain parties may not want to agree to standards at all, as they may view the commitments as unduly limiting or as a means of

Codes of conduct are effective in complementing as an interim step where effective regulation of OPA is not yet in place or to fill gaps.

Challenges behind codes of conduct can be mitigated through a genuinely collaborative process facilitated by a neutral third party.

manipulating their campaign strategies and worsening their electoral results.

Analysis conducted by the European Commission and International IDEA's experience in negotiating the Dutch Code of Conduct indicate that these challenges can be mitigated by developing codes of conduct through a genuinely collaborative process, often facilitated by a neutral third party ([European Commission 2021b](#)). This process ensures that codes are co-created based on meaningful consultation of stakeholders, creating a shared sense of ownership, fostering engagement in the code and helping to avoid the impression that the standards are being imposed unilaterally by a set of elites.

A neutral third party can act as a mediator when developing codes of conduct. Key to this process is a holistic understanding of the laws and regulations that apply to elections, to which actors what rules apply and the independence to set rules free from influence ([European Commission 2021b](#)). Electoral management bodies can be well-placed facilitators, as they are familiar with the ins and outs of electoral dynamics and hold a fully independent mandate ([Shah 2015](#)). These bodies can guide standard setting and enable exchanges with political parties, online platforms or other online political communication actors to formulate commitments.

Depending on the objectives of the code of conduct, other oversight agencies can be more suitable for guiding the process. For example, in Luxembourg, the media regulator, the Independent Luxembourg Broadcasting Authority (Autorité luxembourgeoise indépendante de l'audiovisuel), held consultations with political parties, candidates and audio visual media in early 2023, leading to guiding principles focusing on transparency and a level playing field for the 2023 local elections ([Schnuer 2023](#)). Fully fledged codes of conduct for online campaigning were agreed between political parties for the local and national elections in 2023.⁶

Elections-focused international organizations can also fulfil this role, as they are neutral actors that possess the requisite knowledge in elections and often also expertise in convening stakeholder

⁶ For the full text of the code of conduct, see [Volteuropa \(2023\)](#).

Table 3.6. Examples of commitments from the 2021 Dutch code of conduct

Political parties	Platforms
<ul style="list-style-type: none"> • fully adhere to platform policies; • provide information in good faith; • refrain from engaging in deceptive messaging or using fake accounts; • refrain from using foreign funding; • place 'ethical' limits on microtargeting; • raise internal awareness of the code within their party organizations; and • continue the discussion on OPA after elections as an evolving process. 	<ul style="list-style-type: none"> • enforce transparency mechanisms; • publish ad archives; • prevent the spread of incorrect information about the electoral process; • establish a response mechanism for enquiries; • promote internal awareness of the code among their staff; • consider a post-election review; and • consider reporting on election-related incidents and sharing lessons learnt from other countries.

Source: Developed by the authors.

dialogues. International IDEA, political parties and online platforms collaborated to this end ahead of the Dutch elections in 2021. They signed the first national code of conduct on OPA between such groups in the EU.⁷

The lessons learnt by International IDEA from developing the Dutch code of conduct emphasized the importance of a collaborative process, developing a holistic system of accountability reinforced by all and including forward-looking provisions that ensure the process is constantly evolving. A process of co-creation helps secure buy-in, thus ensuring that stakeholders feel heard and that commitments are not perceived as imposed by actors at the top. It is important to include commitments that are specific enough to enable their monitoring. For example, a commitment to a maximum spending limit will be easier to check than a commitment to keep (micro) targeting within undefined ethical limits (Zinnbauer 2021). Including mechanisms for reporting compliance with commitments can also be helpful.

The voluntary nature of codes of conduct means that efforts must be supported by all in a reinforcing process to meaningfully increase the transparency and integrity of the online campaign. It is important

Besides co-creation for securing buy-in, commitments must be specific enough to enable monitoring.

⁷ For the full text of the code of conduct, see International IDEA (2021).

to engage stakeholders, as this helps to foster political will and the emergence of an 'ecosystem' between the signatories in which commitments are discussed and monitored, supported by external actors such as media and civil society organizations (Zinnbauer 2021). International IDEA had a similar experience with negotiating the Dutch code of conduct. Awareness raising targeted at candidates, parties, platforms, the media, academia, civil society and the wider public can also help to bring visibility to good performance and breaches.

Forward-looking provisions help ensure that commitments do not become outdated and are updated as necessary in response to changes in the political and online spheres. Political parties and political systems constantly have new actors entering and old ones leaving, making it important to keep political participants engaged in the code and a broader culture of integrity. Platforms similarly launch new websites and close old ones, with changes in leadership of companies also potentially impacting how they regulate content or whether they allow political advertising in the first place.

Chapter 4

OVERSIGHT AND ENFORCEMENT

There are a number of practical considerations in the oversight and enforcement of OPA, including the structure, mandate and capacity of oversight bodies and the full range of tools that can be used to effect compliance. It is important that the authorities realize that raising the transparency of campaigning will only have a meaningful impact on electoral integrity when it is accompanied by sufficient capacity and skill to conduct effective oversight and enforce sanctions for non-compliance. Cooperation with other oversight agencies and platforms, and civil society organizations, media and academia, is crucial for meaningful transparency and accountability. Soft-law solutions such as codes of conduct can also support these efforts.

Oversight bodies may have the mandate to monitor adherence to the rules. Given the scale of online communications, monitoring may be facilitated by oversight over broad compliance at the macro level while delegating detailed monitoring to others, or it can also be supported by adjudicating complaints submitted by citizens and other stakeholders and investigating breaches of the regulation.

This chapter describes the various ways oversight bodies can be structured, along with key considerations when tailoring structures to each unique country context and when cooperating both domestically and across borders. Different tools for oversight actors to informally or formally secure compliance are highlighted, including the important role played by civil society, academia and the media.

Raising the transparency of campaigning will only have a meaningful impact if accompanied by sufficient oversight capacity.

To exercise effective oversight of OPA, authorities should be independent, accountable and transparent.

4.1. OVERSIGHT BODY INDEPENDENCE, EXPERTISE AND CAPACITY

To exercise effective oversight of OPA, the authorities should be independent, accountable and transparent. Sufficient safeguards for independence ensure that the authority exercised by regulatory agencies will not be subject to political or private influence. Citizens should be able to have trust in the institution's independence, as secured through established procedures that keep its actions transparent and accountable through publicly available information.

Box 4.1. Examples of oversight body structure and capacity

In Czechia, the ÚDHPSH is organized at three levels: a political appointee is the head of the institution; the next level consists of independent experts from academia; and the operational level, including for monitoring the platforms.

In Ireland, the Election Commission can check online ads, investigate and report findings, and engage external assistance and expertise in addition to its own staff.

Tech companies possess and process much more information than the regulator, thus contributing to a power–knowledge imbalance and making it important that the authority possesses sufficient resources to exercise its responsibilities and powers to compel compliance and to sanction violations. A high degree of technical capacity is required of oversight agencies: these bodies should be able to regularly receive, monitor and cross-check information, possess the requisite knowledge to interpret highly complex and technical information, and have the power to investigate and take action in the event of non-compliance (Monti and de Streel 2022). When considering investigative capacity, it is important to remember that the speed at which developments move online can make a strong and agile oversight body even more crucial. For example, both France and Latvia have specialist bodies vested with powers to check party financial reports. However, while Latvia's agency has the power to

investigate, the agency in France must turn to the courts or the public prosecutor, thus slowing the process (Shlyk, Stonestreet and Pârvu 2022).

Two other examples of how capacity can be structured are set out in Box 4.1.

Oversight tasks are constantly evolving at a high speed, meaning that learning and training for employees to keep up with oversight of OPA must be continuous. This sentiment was underlined by interviews with authorities in Latvia. They indicated that the Corruption Prevention and Combating Bureau (Korupcijas novēršanas un apkarošanas birojs, KNAB) remains aware so that they do not fall behind parties and platforms in their understanding of the online sphere. The representatives stressed that, to maintain effective oversight, employees must meaningfully understand exactly what it is that is being regulated.

In addition, the massive scale of online content is a challenge, as even authorities with a monitoring mandate cannot possibly review every single piece of data online in real time, so some responsibilities must be delegated to the platform level. Still, content moderation should not be left to the sole authority of online platforms (Krimmer et al. 2022), and establishing the best way to monitor the interpretation and implementation of rules by platforms can be a complex task for agencies. Significant resources and staff may be needed, and access to the relevant data is essential.

Two avenues, which can also be combined, for the effective enforcement of OPA regulation are the drawing and assessing of samples from platform political ads and actions taken, as indicated in interviews with authorities in the Netherlands, and clear and well-established complaints procedures open to electoral stakeholders, civil society and the public, such as in Canada. Interviews in Canada also indicated that informal channels can be highly effective for following up on complaints, supported through strong networks between electoral authorities and candidates, parties and platforms.

Interviews with authorities indicated that the KNAB in Latvia, as the only agency vested with formal oversight responsibilities over OPA,

Oversight tasks are constantly evolving at a high speed, meaning that learning and training for employees to keep up with oversight of OPA must be continuous.

actively monitors the online advertising sphere. The three main issues the agency checks are whether political ads are only placed where it is permitted (i.e. on platforms that declared the pricing structures for political ads at least 150 days before the electoral period); whether those placing ads comply with established campaign spending maximums; and whether those submitting ads have provided the correct documentation for verifying their identity. The oversight body is also vested with the capacity to order a platform to stop displaying advertisements associated with a campaign where the financial limits have been exceeded. However, it is not yet known to what extent platforms will comply with these requests, as issuing such an order has not yet been necessary.

In most countries, there are still no authorities with a formal oversight mandate for OPA.

4.2. AUTHORITIES WITH OPA OVERSIGHT MANDATES

Traditionally, oversight responsibilities for political advertising are usually vested in media regulators or electoral authorities, or to a lesser extent in self-regulatory media bodies or supreme audit institutions ([European Commission 2021b](#)). However, in most countries, there are still no authorities with a formal oversight mandate for OPA. In other countries, OPA is at the intersection of the mandates of several oversight bodies, including election bodies, political party oversight, media and communications regulatory agencies, anti-corruption bodies, supreme audit institutions and data protection agencies. The following four scenarios have emerged.

4.3. OVERSIGHT RELATIONSHIPS AND COLLABORATION

4.3.1. Cooperation between multiple oversight agencies

Due to the broad group of actors involved in OPA and the agencies facilitating oversight, there can be confusion over which authority is ultimately responsible, poor coordination between bodies and limited capacity and resources for OPA oversight. Where multiple agencies are involved, it is important that each agency's responsibilities are clear, and that one agency takes the lead in organizing. It is also helpful for authorities to take the time to invest in communication and awareness-building among relevant judicial bodies, as judges

Table 4.1. Oversight mandate scenarios and examples

Scenario	Description	Country examples
No competent oversight authority	While agencies may possess the mandate to receive financial reports and act on citizen complaints, there are no formal standards for the oversight of OPA	Iceland Luxembourg Sweden
One body—the electoral management body	Oversight of OPA is the sole task of the electoral management body	Georgia Ireland Lithuania Portugal
One body—not the electoral management body	Oversight of political advertising is the sole task of an independent body that is not the electoral management body	ÚDHPSH in Czechia National Audit Office in Finland
More than one body	Multiple bodies are vested with the oversight of OPA, each with its own role and partial competency	Armenia: Television and Radio Commission, the Oversight and Audit Service of the Central Election Commission and the Corruption Prevention Commission Canada: Elections Canada, Commissioner of Canada Elections, and the Chief Electoral Officer Croatia: State Audit Office, State Electoral Commission, Ministry of Finance Latvia: KNAB, National Electronic Mass Media Council United Kingdom: Office of Communications, the Electoral Commission, and the Information Commissioner's Office Ukraine: Central Election Commission and National Agency on Corruption Prevention

Source: [European Commission 2021b](#); International IDEA Survey.

may have the final decision where the content of OPA is concerned (Krimmer et al. 2022). The forms this may take will also depend on the degree of centralization already present in the system: where systems are already highly decentralized, channels of communication and clearly defined responsibilities may already be established (Monti and de Streef 2022). However, where elections administration was previously highly centralized and oversight of the online sphere has necessitated more decentralized responsibility structures, this process will require more attention.

Coordination at the national level benefits from consistent policy objectives, streamlined legal safeguards, and accountability measures.

Several principles can help guide the process of structuring coordination at the national level (Monti and de Streef 2022). It is useful for authorities to ensure consistency between institutions' policy objectives, as this will help to avoid contradictory guidance and rules coming from different oversight elements. Legal safeguards can be streamlined to enable quick and secure information exchange between authorities, along with appropriate accountability measures. When developing skills and capacity and allocating resources to authorities, decision makers are encouraged to consider how these tools will be used by authorities not only individually but also jointly. Continuous discussion and stakeholder consultation throughout the structuring process is crucial.

Oversight agencies should also invest in building strong relationships with the online platforms under their purview.

4.3.2. Relationship with online platforms

Oversight agencies should also invest in building strong relationships with the online platforms under their purview, particularly given that in many cases these actors operate outside a country's jurisdiction. Experiences from regulating corporate entities have consistently demonstrated the importance of a long-term relationship between agencies that communicate frequently with corporations and build a strong foundation of mutual understanding of internal process and culture (Suzor and Gillett 2022). Channels of communication are also useful in informally communicating where actions need to be taken before moving to more formal notice or penalty procedures. Moreover, increased familiarity will help not only to facilitate compliance with hard rules but also to establish agreed-upon standards and strong buy-in for soft-law solutions.

Even when an oversight body has good relationships with online platforms, trying to exercise authority over an organization located

beyond a state's jurisdiction can complicate the compelling of compliance and of sanctioning violations. Oversight bodies may lack investigatory powers, and cooperating with authorities in another country can be challenging. As a result, OPA regulation may require platforms to assign a legal representative within the country's jurisdiction.

In other cases, a company being located outside an authority's jurisdiction can mean limited opportunities for investigation. Oversight bodies may be unfamiliar with how things work in another nation, and the tools and mandate to ensure compliance may be less effective across borders.

For example, Canada does not have a requirement for a legal representative, meaning that there is no enforceable basis for investigations or prosecutions of online platforms. However, interviews with elections officials in Canada indicate that the US-based platforms operating in Canada are highly proactive in their communications, with much violating content acted on with a simple phone call and a high degree of compliance generally observed. The informal channels have moreover been useful in that platforms have even alerted election officials when informed by US agencies of attempted manipulation campaigns on their websites.

Finally, relationships with platforms are important even when they do not allow political advertising. Political ads may evade detection and be displayed, as was indicated as an issue with certain platforms in interviews with authorities in Canada, Latvia and the Netherlands.

4.3.3. The role of civil society, academia and media

Accountability cannot be assumed from achieving transparency alone. Citizens may not know or choose to seek out available information, online platforms increasingly wield disproportionate power in comparison to oversight bodies and observers, and financial incentives discourage platform cooperation and encourage secrecy (Mehta and Erickson 2022). Oversight bodies should therefore ensure they actively cultivate a culture of accountability and that regulation translates into accountability for non-compliance.

Cooperating with civil society-led monitoring efforts and ensuring that platforms provide proportionate access to key information are important components for effective oversight.

It is crucial that the information provided through transparency rules is actually viewed and acted upon by the relevant stakeholders, most notably the oversight agencies themselves, the media, academia and the public at large, accompanied by appropriate consequences for violating actions (Norris 2014). Cooperating with civil society-led monitoring efforts and ensuring that platforms provide proportionate access to key information are important components for oversight bodies to develop. A high degree of public attention and criticism can also help drive legislative change where it is stalled or push platforms themselves to take proactive action.

As monitoring and identification of undeclared political ads is difficult for both platforms and oversight agencies, particularly given the scale, lack of access to data and respect for user privacy, tracking the campaign and democratic debate online can be supported through proactive, structured and continuous engagement with civil society and academia. It is important that researchers engaging in social media monitoring can observe the source of paid advertising, the topics and narratives that different individuals and campaigns have spread, how a message was displayed and whether and what kind of amplification was used (Krimmer et al. 2022).

There have already been notable civil society-led efforts to monitor OPA that have helped to increase the transparency of an online campaign.

There have been notable civil society-led efforts to monitor OPA that have helped to increase the transparency of an online campaign by making use of the tools and other information voluntarily provided by or required from platforms. The Transparent Online Microtargeting Dashboard maintained by the University of Amsterdam is an important example, as it was established with financial support from the Netherlands Ministry of the Interior (University of Amsterdam 2020) and further facilitated through platform commitments to transparency with the 2021 code of conduct. Monitoring efforts were also supported by AdLens in Belgium, a collective that fact-checks and monitors political advertising on Facebook, publishing regular reports (Eshuis 2023). As a civil society-led initiative, supported by public funding and information made accessible by a voluntary code of conduct, this example illustrates how different electoral stakeholders can cooperate to support electoral integrity.

Another key example comes from Ukraine, where the civil society movement Chesno compared official political party financial reports

after presidential elections in 2019 with the information provided by the Facebook Ad Library, to expose inaccuracies in the reports. Significantly, compliance with financial reporting improved in the 2020 local elections, thus showing the capacity for civil society-publicized incidents to help positively change campaign behaviour (Reppell 2022). The Civil Liberties Union for Europe watchdog organization has published a series of reports on targeted OPA on Meta during election campaigns in Europe, with the first being on the April 2022 elections in Hungary (Civil Liberties Union for Europe 2022a). Online tools can also help citizens access information on why they were targeted by a certain ad, for example, through the 'Who Targets Me?' browser extension, which combines information on targeting with collected lists of political advertisers to provide insights into who is targeting them and how. Mandating rules about information transfer to qualified researchers can support these efforts by helping to guarantee access to academia and civil society.

The public's role in ensuring effective transparency and accountability is therefore crucial to the complete picture of OPA oversight and can be cultivated through investment in voter education and media literacy campaigns. Media literacy can be integrated into existing voter education programmes or civic education programmes at schools, and oversight bodies may also engage in active social media campaigns to communicate authoritative information and raise awareness of manipulative tactics online.

Another common avenue is for oversight bodies to provide easily accessible online tools for citizens to report violating ads, such as those used in Latvia, Lithuania and Canada. Interviews with Latvian officials indicated that a key resource through which Latvia monitors OPA is a mobile application provided to the public for reporting violations. While Latvia's KNAB monitors the online campaigns of political parties and electoral candidates, particularly through Facebook Library Ads, any citizen can file a complaint via phone, email, an electronic report form (KNAB 2021) or the mobile application Ziņo KNAB (KNAB 2019). It is critical to include evidence substantiating the allegations, such as screenshots. It is estimated that 80 per cent of KNAB's information on campaign finance violations originate from the Ziņo KNAB application (Shlyk, Stonestreet and Pârvu 2022).

Another common avenue is for oversight bodies to provide easily accessible online tools for citizens to report violating ads.

Interviews with Canadian authorities indicated a similar dynamic, whereby the Commissioner of Canada Elections oversees any complaints about the electoral process including those related to OPA and may take investigative or enforcement actions. In Lithuania, members of the public are able to submit complaints using an ‘ads map’, through which they can flag non-compliant ads (Dunčikaitė, Žemgulytė and Valladares 2021). Whether through oversight-provided tools or their own projects and initiative, civil society, academia and the media play a key role in alerting the authorities to non-compliant advertising, thus enabling them to investigate and potentially sanction the behaviour.

4.4. FACILITATING AND INCENTIVIZING COMPLIANCE

The Public Management Committee of the OECD (2000) identified reasons for regulatory non-compliance at three different levels:

1. The degree to which the target group knows of and comprehends the rules.
2. The degree to which the target group is willing to comply because of economic incentives, positive attitudes arising from a sense of good citizenship, acceptance of policy goals or pressure from enforcement activities.
3. The degree to which the target group is able to comply with the rules.

At each level, failures can make government policy ineffective: even where there is a willingness to comply with regulations, certain actors and groups—especially smaller and less powerful ones—may have limited understanding, motivation or capacity to comply. Accordingly, the mandates and tasks of oversight bodies for OPA can be aimed at facilitating compliance sanctioning subjects of regulation in cases of non-compliance.

Guidance documents, training and meetings between oversight bodies and regulated subjects can be useful in raising awareness and compliance.

Guidance documents, training and regular meetings between oversight bodies and regulated subjects can be useful in raising awareness, incentives and ability for compliance. Guidance documents help actors interpret rules and understand their responsibilities and obligations, while training and meetings can

raise the practical experience and capacity of electoral stakeholders. Direct communications channels can always support these efforts. In Latvia, for example, where online platforms have to declare their ad pricing model, the electoral authority provides a tool that interviewees indicated was an effective means for the submission of the required declaration. Codes of conduct can also be useful as a complementary measure to formal regulation not only where regulation is not yet in place or may be overreaching but also where mediation between oversight authorities and other actors is possible before formal measures are necessary.

It is also important that the value of informal relationships with candidates, platforms and other relevant actors is not forgotten, as these kinds of relationships can directly impact improved compliance (Suzor and Gillett 2022). In interviews, Canadian officials credited their close relationships with parties and platforms with helping to enable swift response times and a high degree of familiarity with the rules. In Latvia, the frequent reporting requirements and public-facing tools have helped to develop a strong ecosystem of accountability (Shlyk, Stonestreet and Pârva 2022).

4.4.1. Guidance documents and trainings

Guidance documents explain how existing rules should be interpreted or applied to achieve their intended effect, building on what is minimally required by the legislation. It is recommended that oversight agencies take this task seriously, as legislation can be open-ended and require interpretation by the regulator as to how it will be implemented and enforced (Monti and de Streele 2022). This function is also established in Ireland's new Electoral Commission, with the Electoral Reform Act (2022) stating that 'to encourage compliance' the commission may publish notices 'containing practical guidance as to how those provisions may be complied with'.

Guidance is not always necessary, however, with some countries such as Latvia deeming the regulation detailed and clear enough not to require additional explanations. Interviews with the authorities in Latvia indicated that the country strives to establish regulation that is 'as clear as possible' to ensure it is equally understood and acted upon by all participants. In such contexts, training may be preferred to better instruct those subject to regulation as to how they

Guidance documents explain how existing rules should be interpreted or applied to achieve their intended effect.

should comply in practice. These efforts may also be supported by partnering with international organizations focused on supporting democratic elections.

A country's existing culture and traditions will similarly affect the impact of guidance issued by regulators. In Canada, the Elections Act (2000) grants Elections Canada the authority to issue guidance that can clarify legislation, and it has used this power frequently where it deemed it appropriate, while preferring to leave decisions to legislators where it feels that its powers of interpretation end ([Pal 2020](#)). To this end, to fill gaps before the Elections Modernization Act was passed in 2018, Elections Canada issued the guidance 'Election Advertising on the Internet', which established rules for advertising placed online with an equivalent 'placement cost' to traditional offline advertising ([Elections Canada 2015](#)).

In deciding upon what topics and sources to publish guidance, regulators are encouraged to take into account the broad constellation of actors involved in considering from where guidance should originate. For example, in the United Kingdom, election campaigning comes under the purview of the Office of Communications, the Electoral Commission and the Information Commissioner's Office, each of which has released its own guidance targeted at different aspects of a campaign. Where appropriate, electoral authorities are encouraged to cooperate closely with data protection agencies, as they have shown a willingness to provide valuable guidance and recommendations. Examples of agencies releasing guidelines or recommendations include those from Belgium, France, Greece, Norway, Poland, Portugal, Romania and Switzerland ([International IDEA 2020](#)).

Sanctions need to be significant enough to be taken seriously by stakeholders but also measured to avoid self-censorship.

4.4.2. Sanctions in cases of non-compliance

Oversight bodies usually have the power to investigate cases, to oblige subjects of regulation to provide additional information and ultimately to issue sanctions. The spectrum of sanctions is broad, depending on factors such as the severity of the breach and whether it was intentional, a one-off or a repeated offence. Possible sanctions include informal reminders, private compliance notices, public notifications, directions to take short-term action and ultimately the imposition of administrative fines or even formal criminal sanctions

in severe cases. Sanctions need to be significant enough to be taken seriously by stakeholders but also measured to avoid self-censorship in political discussions or, as the EU TTPA ([European Commission 2021c](#)) describes it, ‘effective, proportionate and dissuasive’.

It is important to balance timelines for compliance and penalties in cases of non-compliance: experiences with defined response times in Germany illustrate the potential danger with elaborating detailed procedures that require takedown in timelines that may be too short to comply with in practice. The NetzDG Act ([Bundesgesetzblatt 2017](#)) requires that platforms take ‘immediate note’ of the complaint and check whether the content qualifies as unlawful. Referencing existing German legal standards, content that is ‘manifestly unlawful’ is to be removed or blocked within 24 hours of receiving the complaint and ‘unlawful’ content within 7 days. Domestic and international observers have criticized the law due to the high fines imposed for non-compliance with these stringent deadlines, as it may cause platforms to pre-emptively remove lawful content ([Council of Europe 2020](#); [OHCHR 2017](#); [Rudl 2021](#)).

By establishing strong relationships with electoral stakeholders, particularly candidates, parties, online platforms, civil society, academia and the media, electoral oversight authorities can make their tasks and responsibilities easier and more efficient. Effective collaboration among this group can help create collective monitoring, support the identification of violations, draw attention to them and bring about follow-up through public pressure, informal communications or formal sanctions.

Chapter 5

CONCLUSION

Online campaign tools come with both risks for electoral integrity and chances for political parties.

This Report has set out to illustrate where traditional political advertising rules may be insufficient for the online sphere, zeroes in on the key complexities and major emerging loopholes, and clarifies how electoral authorities may address these issues from different starting points. Online campaign tools increasingly threaten electoral integrity through the amplification of mis- and disinformation, opaque campaign messaging, insufficient protections for the use of personal data in targeted messaging and underregulated campaign finances. However, these tools have also enabled parties to engage the public like never before by offering a cheap option for communicating with broad groups of voters and helping to open discussions.

The process of developing OPA regulation is difficult, and the acceptability of such regulation depends on the extent to which political advertising regulation is already in place. However, the path forward is not always clear, as new rules must balance freedom of expression with protecting electoral integrity, while limited legal and technical capacity and a lack of political will can make it difficult to agree on and implement new rules. Developing OPA regulation can also be particularly difficult for smaller jurisdictions and countries that may have neither sufficient technical expertise nor the leverage to rein in online platforms.

Due to sensitivities in relation to fundamental political and democratic rights, OPA regulation tends to focus more on transparency and less on the content of messages. Where content is concerned, provisions often defer to existing legislation, such as laws against hate speech. New rules also tend to focus on platforms more

than political parties or candidates, as they are the sole actors with the technical capacity to monitor effectively and report on relevant campaign communications. These common provisions generally focus on issues such as the definition of OPA and scope of rule application, what expectations will be placed on platforms in terms of ad transparency and verifying the identity of advertisers, and whether and how rules may impact the content of political ads.

Soft-law approaches such as codes of conduct can support formal regulation by filling gaps while rules are still being developed but can also be considered an inappropriate encroachment on free speech. Codes of conduct play an important role in increasing transparency and accountability by establishing voluntary standards for key electoral actors such as political parties, candidates and online platforms. However, agreed-upon standards can be difficult to achieve, and voluntary measures are difficult to monitor and enforce. A genuinely consultative process of development is essential to help codes of conduct overcome these challenges.

Authorities should keep in mind that transparency does not automatically translate into accountability, so it is important to cultivate an overall culture of integrity and ensure that OPA is sufficiently monitored, with violations appropriately publicized and punished. Facilitating compliance with OPA rules not only requires a range of sanctions of varying severity depending on the breaches but also measures to incentivize and enable compliance, including through guidance and training. Compliance can also be enhanced and monitoring responsibilities supported by including civil society, academia and the media, especially when publicizing the results of evaluations.

Co-regulation can be a highly flexible and effective way to approach structuring oversight, as it can help authorities adapt rules to existing information asymmetries with online platforms and work with different electoral stakeholders so that all members of the system work to uphold rules. It is essential that oversight agencies are sufficiently resourced and possess a sufficient mandate. Multiple different agencies may have overlapping mandates for different aspects of the campaign, making inter-agency cooperation necessary and complicating both oversight monitoring and responsibilities.

Effective compliance with OPA rules not only requires sanctions but also incentives and civil society-led monitoring support.

Co-regulation can help to adapt rules to existing information asymmetries between oversight authorities and online platforms.

As the online sphere evolves fast, it is unlikely that new OPA rules will remain unchanged for long. Developments online change at an exponential pace, often paired with numerous unexpected consequences and challenges, meaning that authorities must work to keep up in closing new loopholes and tailoring rules to new realities. Continuous learning, training and built-in flexibility will become increasingly important, thus helping to enable authorities keep pace with online developments and ensure that electoral integrity is protected while maintaining respect for freedom of expression.

Regular review of OPA rules is encouraged to incorporate new evidence and practical experiences into monitoring and oversight structures.

Regular review of OPA rules every few years is also encouraged to incorporate new evidence and practical experiences into monitoring and oversight structures. This task will only become more acute over time with the advent of AI and the stunning speed at which it is developing: a recent report released by Europol (2022) indicated that as early as 2026, up to 90 per cent of online content may be synthetically generated. With this publication, International IDEA hopes to help inspire and guide future discussions about the regulation and oversight of OPA and to be a committed partner and supporter of these efforts.

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As political campaigning in the lead-up to elections has moved online, parties and candidates have found new and innovative methods for connecting with voters. However, new challenges have multiplied, with the regulation and oversight authorities struggling to keep up. Campaign communications are increasingly opaque online, thus enabling harmful mis- and disinformation to influence electoral narratives. Moreover, it is harder to track the funding used for ads, and these communications may be targeted at voters on the basis of their personal data without their knowledge or consent.

The main objective of this Report is to support legislators, oversight bodies and other regulators in developing rules for the regulation and oversight of online political advertising. It addresses questions including how to build on existing campaign regulation and what kind of unexpected consequences and challenges may occur; how to strike the right balance between regulation and protecting fundamental freedoms; how soft-law tools such as codes of conduct can help to increase campaign integrity and where they fall short; what an effective oversight institution looks like and how it is coordinated; and what sanctions can help to ensure effective enforcement.

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