



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE AND CONSUMERS

Directorate C: Fundamental rights and rule of law
Unit C.3: Data protection

Brussels, 16/12/2020
JUST.C.3/OL/KS

xnet@xnet-x.net

Subject: Your message of 2 November 2020 concerning the use of EU citizens' personal data in elections

Dear Madam, Dear Sir,

Thank you for your message to Commissioner Reynders on the issue of how personal data are used in the context of elections.

As you rightly mention, data concerning political opinions are indeed a special category of data, subject to specific rules under Article 9 of the General Data Protection Regulation (GDPR)¹. Ensuring that such sensitive data are adequately protected and are not abused is indeed crucial for the democratic process.

Controllers can only process such data where they met – on top of their other obligations under GDPR – one of the criteria in Article 9 GDPR. This includes e.g. (1) where data subject has explicitly consented to the processing, (2) where the data subject has manifestly made the data public², or (3) where necessary for reasons of substantial public interest, on the basis of Union or Member State law. In the latter case, that law must be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject. This applies to inferred data as well³.

Public authorities involved in the electoral context process personal data in order to comply with a legal obligation or for the exercise of a public task, both of which must be provided for by law. Public authorities may disclose certain information on individuals included in electoral lists or in registers of residents to political parties only when specifically authorised by Member State law and only for the purpose of advertising in the electoral context and as far as necessary for that purpose, such as name and address.⁴

¹ OJ L 119 4.5.2016, p. 1

² This is to be interpreted restrictively, see [EDPB Guidelines 08/2020](#), paragraphs 120-121.

³ [EDPB Guidelines 08/2020](#), paragraphs 114-119.

⁴ See also <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2018:638:FIN>

Where organisations, such as political parties, public authorities, or social media companies, breach their obligations under GDPR, enforcement falls within the competence of national authorities, in particular the data protection supervisory authorities and courts, without prejudice to the competences of the European Commission as Guardian of the Treaties.

You also mention the issues of political micro-targeting and ad transparency.

On 3 December 2020 the European Commission presented its European Democracy Action Plan⁵ to empower citizens and build more resilient democracies across the EU. The Action Plan sets out measures to promote free and fair elections, strengthen media freedom and counter disinformation. There is a clear need for more transparency in political advertising and communication, and the commercial activities surrounding it. Citizens, civil society and responsible authorities must be able to see clearly the source and purpose of such advertising. In the online environment, it is often difficult to recognise paid-for political material and distinguish it from other political content, not least because it can often appear as ‘organic’ content shared or created by other users. New techniques used by intermediaries/service providers to target advertising on the basis of users’ personal information enable political adverts to be amplified and tailored to an individual’s or a group’s specific profiles, often without their knowledge. Micro-targeting and behavioural profiling techniques can rely on data improperly obtained, and be misused to direct divisive and polarising narratives. This process makes it much harder to hold politicians to account for the messaging and opens new way for attempts to manipulate the electorate.

To address these concerns, in 2021, the Commission will present a legislative proposal on the transparency of sponsored political content. The proposal will complement the rules on online advertising in of the forthcoming Digital Services Act, with the aim to have dedicated rules in place sufficiently ahead of the May 2024 European Parliament elections. It will target the sponsors of paid content and production/distribution channels, including online platforms, advertisers and political consultancies, clarifying their respective responsibilities and providing legal certainty. It will ensure that relevant fundamental rights and standards are upheld as effectively online as they are offline.

Please rest assured that the Commission monitors the situation and will not hesitate to take the necessary measures in line with its powers. This includes infringement proceedings where it determines that a Member State infringes its obligations under Union law.

Yours sincerely,

e-signed
Olivier MICOL
Head of Unit

⁵ https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2250