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# Rules for Fair Digital Campaigning

What Risks Are Associated with Online Political Advertising and What Reforms Are Necessary in Germany



Think Tank at the Intersection of Technology and Society



## Executive Summary

Election campaigns and other political campaigns have long moved from the street to the web. Online, political parties and other political organizations reach many people at once using their own channels in social networks, their own apps and messenger groups as well as advertising and influencers. This trend has not only been visible in the US, the UK and France for years, but is seen in Germany as well: German parties alone paid an estimated 1.5 million euros for roughly 80,000 ads on Facebook and Google during the 2019 European Parliament elections, which were seen millions of times. Political parties, but also other political advertisers, can use ads on social networks to present their positions, criticize their opponents, recruit volunteers and drive donations.

Political advertising happens under different circumstances online than offline

This online political campaigning, in part fueled by targeted ads on social media, is based on different foundations than traditional political advertising on TV and on the street. Paid political communication online is data-driven, personalized and happens on digital ad platforms. Based on personal behavioral data collected on the web and on mobile devices, ad platforms create profiles of voters. Political parties and other organizations can use this breadth of data, which is not available offline, to target groups according to certain (assumed) preferences and dislikes. The breadth and depth of behavioral data also helps platforms' algorithms show political messages to exactly those people who are most likely to interact with them. Apart from that, political campaigns can more easily and more often test how their messages work among what populations – often without users knowing about this. None of this is possible in the same way with poster campaigns, postal mailings and personal voter outreach on the street.

Risks of political online advertising: Distorted debates, big-money interference and lack of public interest scrutiny

It is a positive and necessary development that German political parties and campaigns try to reach voters and supporters on the web. Yet, the rise of political online advertising also comes with potential risks for individuals and society. Firstly, political online advertising in its current form can harden societal tensions: Narrowly targeted advertising, aimed at homogeneous groups, can lead to people only receiving messages that reinforce their own views and their fears of the other side. For these are likely the ads that users will “like” and share. Secondly, well-financed interests can flood the online information environment with their ads and can thus drown out other political opinions. Thirdly, online political advertising remains opaque despite some transparency measures. The high number of ads and their algorithmic delivery make counter speech and public interest scrutiny, as the media and citizens do for traditional ads, hardly possible. This opens the door for potential discrimination and negative campaigning, which remains unseen and unopposed.



Existing rules and laws are outdated and are barely able to address potential negative effects of digital campaigning

Germany is ill-equipped to deal with the technological changes and the associated potential risks seen in online political advertising. Existing rules and laws for political advertising were developed for the offline sphere and can barely offer protection anymore. For example, there are clear rules for postal mailings as to what demographic data may be used by whom for that. For behavioral microtargeting online, it is mostly platforms themselves deciding how targeting works. The European General Data Protection Regulation can at times limit microtargeting but has weaknesses in other parts regarding profiling. Broadcasting regulation in Germany ensures that even rich advertisers cannot flood the airwaves. Similar restrictions could be part of the newly created Interstate Media Treaty, which remains vague on this, though. Voluntary, self-regulatory measures exhibit serious flaws, too: To enable at least a little bit of public interest scrutiny and partly under pressure from the EU, platforms have developed political ad archives. These databases collecting political advertising are meant to allow an analysis of what political groups target voters with what messages. However, the archives are error-prone and offer citizens and researchers only rudimentary information. Transparency reporting obligations for political parties are rudimentary, too, revealing little information on ad spending.

What rules on online political ads are necessary in Germany and the EU

The lack of clear guidelines for paid political communication online is a danger for free, open, pluralistic political debates. Election campaigns in the US, the UK and many other countries have shown this over the past couple of years. Even though Germany has a different political system and a different political culture, lawmakers in Germany should be active in finding ways to address these risks that exist in this country as well. Therefore, rules on political advertising should be updated and expanded. The following measures should be discussed to safeguard elections and political debates.

Restrictions on behavioral microtargeting

The most urgent task is to prevent online political advertising from being tailored very narrowly to the (assumed) identity traits of voters and from mostly trying to strengthen their existing positions and fears. To that end, legislators should set clear limits for political microtargeting. Targeting and delivering political ads should only be allowed using some limited demographic data, and it should be prohibited to use comprehensive personal, also inferred, behavioral data for this. Voluntary microtargeting restrictions by some companies have to be expanded and made mandatory across platforms. A minimum size for target groups could also help in making political advertisers address bigger, more heterogeneous groups and not narrowly target citizens' preferences and fears, which might heighten polarization. This could also be achieved with financial incentives, such as discounts for large, heterogeneous target



groups. Moreover, users should have better ways to decide for themselves if and how they see political advertising.

A sort of quota for political online ads, as seen in broadcasting regulation, could be one way to prevent user feeds being flooded with ads. But it would have to be completely revamped for the online space and have different criteria than offline. For that to work, an updated definition of political advertising is necessary, which acknowledges the specific characteristics of the online sphere. Tiered spending caps could also be discussed as potential solutions.

Expanded campaign  
finance oversight

Campaign finance oversight in general should be expanded, so that not only political parties are covered, but also paid communication of other political movements and organizations. There should be verification mechanisms for political advertisers that do not rely solely on the platforms' definitions. Financial reports should be enhanced as well to provide more details on digital ad spending, among other things.

Transparency  
obligations for  
platforms

There should be certain transparency and accountability requirements for platforms to allow public interest scrutiny of political online advertising. This should include mandatory ad archives with standards for expanded, detailed information on ad targeting and ad delivery criteria. Transparency reporting on platforms' ad practices should be required. While many companies already have policies on ad content, less is known about the way targeting and algorithmic ad delivery works. Expanded mandatory reporting could make it easier for external observers to check corporate policies against actual ad practices. Subsequently, tech companies could be urged to allow independent auditing of their ad algorithms.

Independent body to  
check transparency  
obligations

The lack of transparency and accountability requirements reveal how little oversight there is for large platforms' data-driven, algorithmic ad business model. Germany should advocate at the European level to change this. Oversight mechanisms will be part of the discussions for the Digital Services Act, for example. This would be a suitable place to codify things like industry-wide reporting requirements. Such oversight mechanisms should acknowledge differences in size and market power between platforms. It should also be clearly spelled out who transparency measures are supposed to be for, what they are supposed to achieve and who is supposed to check them. For example, ad archives are not only helpful for users themselves, but especially for researchers and independent oversight bodies, and should thus take into account their needs as well. If this enables studies to help improve under-



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standing of political advertising, citizens benefit indirectly. Ad disclaimers in users' feeds benefit users directly and should be designed in a way that users have options to take action on how political ads are displayed to them. External checks of these transparency guidelines and measures are necessary. For that, it is important to ensure that the oversight body is legitimized by parliaments, independent from government and industry, and equipped with expertise, budgetary resources and sanctioning powers. The discussions on industry oversight should ideally be held at the EU level as well.

More and more, election campaigns and political movements are built online. Political parties and other political advertisers already spend millions on ads on social media, video portals and search engines. These large digital ad platforms offer different opportunities for paid political communication than offline. It should be elected officials who determine rules for this and not private companies.

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## 1. Introduction

*In many respects, online advertising is a lens through which one can view each of the threats and benefits of the Internet for democracy.*  
— Kofi Annan Commission on Elections and Democracy in the Digital Age<sup>1</sup>

Political advertising on social media platforms, search engines and video portals is largely governed by rules made for TV and radio, by corporate rules or no rules at all. This has left the door open for political advertisers and digital ad platforms to not only adapt tried-and-true campaign strategies to the online sphere, but also to come up with novel data-driven approaches to voter communication. Online advertising allows campaigns to reach out to voters at a lower price and much more narrowly, yet also at a much larger scale, than offline. Large organizations and small campaigns, well-known incumbents and upstart candidates alike appreciate and rely on these advertising services provided by big tech companies. Ads are not only or even primarily used to persuade voters from other parties to switch allegiance, but to create visibility for causes, to mobilize voters, to gain new members, to gather people's personal information for campaign databases and to drive volunteering and donating. While this can be helpful for political discussions and voter empowerment, certain risks also emerge: Parties and other advertisers can know much more about voters than before, without these voters realizing they are being profiled. They can segment the voting population much more narrowly, thanks to the behavioral data collected by platforms and made available to the advertisers. The sheer number of ads alone allows wealthy campaigners to crowd out other voices and distort debates. At this volume, outside observers such as journalists and researchers find it hard to keep track and call out potentially discriminatory ad campaigns. It is relatively cheap and easy to engage in negative campaigning and to pay to spread disinformation at scale. While unpaid content on social media and messengers is likely the main driver for disinformation, paid content containing disinformation can still be shared and widely circulated long after the ad budget has been depleted.

Germany is ill-equipped to deal with the technological changes and the associated potential risks seen in online political advertising. In traditional media, the country has had strong boundaries in place for political advertising.

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<sup>1</sup> Kofi Annan Commission on Elections and Democracy in the Digital Age, "Protecting Electoral Integrity in the Digital Age: The Report of the Kofi Annan Commission on Elections and Democracy in the Digital Age" (Geneva: Kofi Annan Commission on Elections and Democracy in the Digital Age, January 2020), 71, [https://www.kofiannanfoundation.org/app/uploads/2020/01/f035dd8e-kaf\\_kacedda\\_report\\_2019\\_web.pdf](https://www.kofiannanfoundation.org/app/uploads/2020/01/f035dd8e-kaf_kacedda_report_2019_web.pdf).



“Targeting” on traditional broadcasting is not nearly as granular as online and not based on personal behavioral data. Media regulation further helps ensure fair competition on TV and radio. Political parties are obliged to report their finances and large donations must be made public. Yet, the existing legislative framework is not prepared to address algorithmic ad delivery by dominating platforms, issues related to hundreds of thousands of ads being displayed to millions of users in the days leading up to an election and a growing set of political advertisers, not just parties, targeting homogeneous, receptive audiences with tailored messages and paid influencers.

There has been little sustained public and political debate on these issues in Germany because they seem distant and insignificant. The country has not seen negative campaigning like in the UK or foreign election interference aided by platform ads like in the US. The German electoral, media and political party systems are viewed as a bulwark against such dangers. Besides, European data protection laws make targeted political advertising next to impossible, the thinking might go, and German political parties lack the data, the financial means and the expertise to mount sophisticated ad campaigns on social media like in the US anyways. Not to mention that the effectiveness of online advertising has been questioned, at least for commercial advertising.<sup>2</sup>

However, with political campaigns moving online, not just because of the COVID-19 pandemic, the possibilities of advertising on digital platforms could become more and more attractive to various political campaigners. The benefits of this development could be wiped out if associated risks are not addressed. Political campaigns all over the world, including in Germany, are already pouring money into search engine and social media ads. The combined spend of the biggest German parties for Facebook and Google ads in the 2019 European Parliament elections was around 1.5 million euros,<sup>3</sup> with hundreds of ads being displayed to users every day. In other European countries, these numbers are much higher, and US budgets are in a different league altogether,

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<sup>2</sup> For an overview of this argument, see Jesse Frederik and Maurits Martijn, “The New Dot Com Bubble Is Here: It’s Called Online Advertising,” *The Correspondent*, November 6, 2019, <https://thecorrespondent.com/100/the-new-dot-com-bubble-is-here-its-called-online-advertising/13228924500-22d5fd24>; Facebook even admitted once that it overestimated its video ad views, see Suzanne Vranica and Jack Marshall, “Facebook Overestimated Key Video Metric for Two Years,” *The Wall Street Journal*, September 22, 2016, <https://www.wsj.com/articles/facebook-overestimated-key-video-metric-for-two-years-1474586951>.

<sup>3</sup> Simon Hegelich and Juan Carlos Medina Serrano, “Microtargeting in Deutschland bei der Europawahl 2019” (Düsseldorf: Landesanstalt für Medien Nordrhein-Westfalen, 2019), 5, [https://www.medienanstalt-nrw.de/fileadmin/user\\_upload/lfm-nrw/Foerderung/Forschung/Dateien\\_Forschung/Studie\\_Microtargeting\\_DeutschlandEuropawahl2019\\_Hegelich.pdf](https://www.medienanstalt-nrw.de/fileadmin/user_upload/lfm-nrw/Foerderung/Forschung/Dateien_Forschung/Studie_Microtargeting_DeutschlandEuropawahl2019_Hegelich.pdf).

where some presidential candidates spend millions of dollars in a week.<sup>4</sup> Depending on the context, they do get results in some cases: In 2016, the presidential campaign of Donald Trump “designed a Custom List of everyone who had interacted with one of Trump’s Facebook pages during the primaries, then sent those people targeted ads asking for donations. The ads cost three hundred and twenty-eight thousand dollars; they raised \$1.32 million, a net gain of a million dollars in a single day.”<sup>5</sup> In essence, large ad platforms make similar opportunities available to political campaigners in Germany and the EU as well.

For now (and maybe for the next couple of years), when referring to platforms, this mostly means Facebook/Instagram and Google/YouTube, which are the dominating ad platforms online.<sup>6</sup> But the term could essentially refer to most closed commercial advertising platforms capturing voter data and voter attention, be they video or audio streaming services, social networking apps or new services that are coming along in the future.

So, the fact that Germany has so far not seen wide-scale negative campaigning and election interference via ad campaigns should not lead to legislative complacency. Rather, German lawmakers now have the opportunity to develop rules that continue to ensure fair political competition in the online sphere, especially since most Germans oppose personalized political messaging<sup>7</sup>: They can establish guidelines that counteract ad practices that can distort political debates, limit big-money interference and provide better insights into how political online ads work. They can also contribute to debates on these issues on the European level, especially in view of the planned Digital Services Act (DSA), when it comes to EU-wide independent oversight mechanisms of online advertising business practices. Online political advertising may seem like a minor issue in Germany. But tackling associated risks raises deeper questions: Who can pay to reach and persuade voters? What limitations should be in place for that (if any)? How can platforms and advertisers be held accountable for their roles in paid political campaigning online?

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4 ACRONYM, “FWIW 2020 Data Dashboard,” ACRONYM, 2020, <https://www.anotheracronym.org/fwiw-2020-dashboard/>.

5 Andrew Marantz, “The Man Behind Trump’s Facebook Juggernaut,” *The New Yorker*, March 2, 2020, <https://www.newyorker.com/magazine/2020/03/09/the-man-behind-trumps-facebook-juggernaut>.

6 Lauren Feiner, “Facebook and Google’s Dominance in Online Ads Is Starting to Show Some Cracks,” *CNBC*, August 2, 2019, <https://www.cnn.com/2019/08/02/facebook-and-googles-ad-dominance-is-showing-more-cracks.html>.

7 Anastasia Kozyreva et al., “Artificial Intelligence in Online Environments: Representative Survey of Public Attitudes in Germany” (Berlin: Max Planck Institute for Human Development, 2020), 10, [https://pure.mpg.de/rest/items/item\\_3188061\\_4/component/file\\_3195148/content](https://pure.mpg.de/rest/items/item_3188061_4/component/file_3195148/content).

Other countries grappling with online political advertising issues have already taken steps to modernize their respective laws:<sup>8</sup> Ireland, for example, is developing legislation aimed at online political ads transparency, based on recommendations by an interdepartmental group.<sup>9</sup> The European Commission also seeks to address transparency issues, for example in the planned European Democracy Action Plan<sup>10</sup> and potentially the upcoming DSA. US senators have introduced a bill aiming to align online ad rules with traditional broadcast rules.<sup>11</sup> In Canada, new transparency rules for online political ads have been established as part of a larger electoral reform.<sup>12</sup> The International Grand Committee on Disinformation and “Fake News”, bringing together parliamentarians from around the world, has called for a moratorium on certain online political advertising.<sup>13</sup> Civil society and academic reports have pointed out the need for action on political ads online as well.<sup>14</sup>

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8 Paddy Leerssen et al., “Platform Ad Archives: Promises and Pitfalls,” *Internet Policy Review* 8, no. 4 (October 9, 2019): 5, <https://policyreview.info/articles/analysis/platform-ad-archives-promises-and-pitfalls>.

9 Government Press Office, “Proposal to Regulate Transparency of Online Political Advertising,” Department of the Taoiseach, November 5, 2019, <https://www.gov.ie/en/news/9b96ef-proposal-to-regulate-transparency-of-online-political-advertising/>; Marie O’Halloran, “Online Political Ads Law Unlikely before General Election – Varadkar,” *The Irish Times*, November 26, 2019, <https://www.irishtimes.com/news/politics/online-political-ads-law-unlikely-before-general-election-varadkar-1.4096015>.

10 Věra Jourová, “Opening Speech of Vice-President Věra Jourová at the Conference ‘Disinfo Horizon: Responding to Future Threats,’” European Commission, January 30, 2020, [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_20\\_160](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_160).

11 Zach Montellaro, “The Honest Ads Act Returns,” *POLITICO*, May 9, 2019, <https://www.politico.com/newsletters/morning-score/2019/05/09/the-honest-ads-act-returns-615586>.

12 Elisabeth Neelin and Marie-Pier Desmeules, “In the Name of Transparency: The Modernization of the Canada Elections Act,” *Langlois Lawyers*, June 28, 2019, <https://langlois.ca/name-transparency-modernization-canada-elections-act/>.

13 Houses of the Oireachtas, “Update: International Grand Committee on Disinformation and ‘Fake News’ Proposes Moratorium on Misleading Micro-Targeted Political Ads Online,” November 7, 2019, <https://www.oireachtas.ie/en/press-centre/press-releases/20191107-update-international-grand-committee-on-disinformation-and-fake-news-proposes-moratorium-on-misleading-micro-targeted-political-ads-online>.

14 Kofi Annan Commission on Elections and Democracy in the Digital Age, “Protecting Electoral Integrity in the Digital Age: The Report of the Kofi Annan Commission on Elections and Democracy in the Digital Age,” 71–74; European Partnership for Democracy, “Virtual Insanity: The Need to Guarantee Transparency in Online Political Advertising” (Brussels: European Partnership for Democracy, March 31, 2020), <http://epd.eu/wp-content/uploads/2020/04/Virtual-Insanity-synthesis-of-findings-on-digital-political-advertising-EPD-03-2020.pdf>; Mozilla Foundation, “Facebook’s Ad Archive API Is Inadequate,” *The Mozilla Blog*, September 29, 2019, <https://blog.mozilla.org/blog/2019/04/29/facebooks-ad-archive-api-is-inadequate>; Margaret Sessa-Hawkins and Hamsini Sridharan, “MapLight’s Guide to Political Ad Transparency on Facebook, Twitter, and Google” (Berkeley, CA: MapLight, May 8, 2019), <https://s3-us-west-2.amazonaws.com/maplight.org/wp-content/uploads/20190517193303/MapLight-Guide-to-Political-Ad-Transparency-on-Facebook-Twitter-and-Google.pdf>; Spandana Singh, “Special Delivery” (Washington, DC: New America, February 18, 2020), [https://d1y8sb8igg2f8e.cloudfront.net/documents/Special\\_Delivery\\_FINAL\\_VSGyFpB.pdf](https://d1y8sb8igg2f8e.cloudfront.net/documents/Special_Delivery_FINAL_VSGyFpB.pdf); Karolina Iwańska and Harriet Kingaby, “10 Reasons Why Online Advertising Is Broken,” *Medium*, January 8, 2020, <https://medium.com/@ka.iwanska/10-reasons-why-online-advertising-is-broken-d152308f50ec>.

While political ads only make up a tiny portion of platforms' massive advertising business, platforms themselves have acknowledged and started to address the outsized risks that come with them. A few tech practitioners even demand further changes.<sup>15</sup> Corporate action is welcome and necessary, especially in the absence of legislative measures. However, it should not be private companies setting the rules for paid political online communication. Instead, it should be elected representatives. Unfortunately, the incentives for either platforms or political decision-makers to set boundaries for political online advertising are scant: Platforms might fear intrusions into their targeted advertising business model, which is the basis for a lot the risks associated with online political advertising<sup>16</sup>. Political parties and other advertisers, meanwhile, might want to prevent interference in their voter reach-out out of self-interest. German legislators nonetheless have the responsibility to ensure that a fair and open political competition can be carried out online. They should therefore gather expertise from the tech sector as well as from academia, civil society, regulatory bodies and other governments, and then take the lead in developing a legislative framework mindful of the specific characteristics and risks of online political advertising (see table 1).

Goal and structure  
of paper

The paper analyzes some of the main risks for political debates associated with political advertising as well as the gaps in existing German and EU regulation to address these risks. It collects and develops several policy recommendations that help to ensure fair, open and pluralistic paid political campaigning online.

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15 The New York Times, "Read the Letter Facebook Employees Sent to Mark Zuckerberg About Political Ads," *The New York Times*, October 28, 2019, <https://www.nytimes.com/2019/10/28/technology/facebook-mark-zuckerberg-letter.html>; John Borthwick, "Ten Things Technology Platforms Can Do to Safeguard the 2020 U.S. Election.," *Medium*, January 7, 2020, <https://render.betaworks.com/ten-things-technology-platforms-can-do-to-safeguard-the-2020-u-s-election-b0f73bcccb8>.

16 Nathalie Maréchal and Ellery Roberts Biddle, "It's Not Just the Content, It's the Business Model: Democracy's Online Speech Challenge" (Washington, DC: New America, March 17, 2020), [https://d1y8sb8igg2f8e.cloudfront.net/documents/REAL\\_FINAL-Its\\_Not\\_Just\\_the\\_Content\\_Its\\_the\\_Business\\_Model.pdf](https://d1y8sb8igg2f8e.cloudfront.net/documents/REAL_FINAL-Its_Not_Just_the_Content_Its_the_Business_Model.pdf); Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (New York, NY: PublicAffairs, 2019); Jack M. Balkin, "Fixing Social Media's Grand Bargain," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, October 15, 2018), <https://papers.ssrn.com/abstract=3266942>; Jeff Gary and Ashkan Soltani, "First Things First: Online Advertising Practices and Their Effects on Platform Speech," *Knight First Amendment Institute*, August 21, 2019, <https://knightcolumbia.org/content/first-things-first-online-advertising-practices-and-their-effects-on-platform-speech>; K. Sabeel Rahman and Zephyr Teachout, "From Private Bads to Public Goods: Adapting Public Utility Regulation for Informational Infrastructure," *Knight First Amendment Institute*, February 4, 2020, <https://knightcolumbia.org/content/from-private-bads-to-public-goods-adapting-public-utility-regulation-for-informational-infrastructure>.



The remainder of this introduction includes some reflections on a definition for political advertising as well as on the issue of transparency in political advertising. The following chapters then have three parts each:

- First, a potential risk associated with online political advertising is laid out.
- Second, the shortcomings of existing rules to tackle the specific characteristics of this risk in the online sphere are highlighted.
- Third, policy options to address the potential risk are discussed.

The concluding chapter looks at the overall challenges again, summarizes the policy recommendations und prioritizes them.

**Table 1. What distinguishes social media political ads from traditional political advertising\***

	Online platform advertising	Traditional offline advertising
Type of delivery	<b>Algorithmic ad delivery</b> carried out by platforms' artificial intelligence (AI) (advertisers have no influence over this)	Ad delivery carried out by editors and/or automated systems
	Advertisers often buy <b>engagement-driven ad "outcomes"</b> such as clicks or website visits	Advertisers usually buy ad "space" like airtime or a page in a paper
Targeting options	Granular <b>behavioral targeting</b> : Ads are shown to users based on their (supposed) behavior, gleaned from their browsing history, which is used to make assessments of their attitudes, likes, dislikes and, ultimately, identity traits	Contextual targeting: Ads are shown to users based on what they are looking at, for example, a campaign could place ads in a fashion magazine for young people to target potential first-time voters
Feedback options	<b>Instantaneous interaction</b> with/among voters possible	No immediate voter feedback possible
	Ad campaigns can be used as a sort of <b>live polling opportunity</b> to figure out what grabs people's attention (often without voters' knowledge)	



Scale and reach	Large audiences (for big platforms)	Large audiences (for TV)
	Cheap and fast	Expensive and slow
	Usually not part of an editorial offer	Often part of an editorial offer
Oversight	Mostly <b>self-regulation</b>	Clear regulation (for broadcasting)
		Self-regulation with ethics body (for print)

\*It is important to note that talking of “online advertising” and “offline advertising” is a generalization. Even the term “online advertising” is very general: First, there are some differences between ads being placed on websites via ad exchanges and ads on social media platforms. Ad exchanges can have serious privacy implications for users, along with other significant risks.<sup>17</sup> They are excluded from this analysis solely for reasons of brevity. This paper focuses on political ads on platforms such as Facebook, Instagram, Snapchat, TikTok and YouTube. Secondly, these social media platforms have different “digital architectures”<sup>18</sup> and relatedly, advertising options vary somewhat, both among ad companies and within, for instance, regarding the types of ads, the audience, the reach, the algorithmic delivery, targeting options, where ads are placed (before or within a video, for instance) and the way ads are displayed differently for different users (like logged-in and logged-out users). Google can serve as an example: Its Search service offers contextual advertising based on users’ searches, enriched with behavioral data, whereas its YouTube service focuses much more on behavioral targeting (whether there are differences for logged-in and logged-out users is not entirely clear). Facebook, in turn, relies overwhelmingly on behavioral targeting. Despite these differences, most large, closed, commercial platforms share the general contours of a targeted-ad-based business model.<sup>19</sup>

17 Cf. Digitale Gesellschaft, “Beschwerde Gegen DSGVO-Widrige Verhaltensbasierte Werbung,” June 4, 2019, <https://digitalegesellschaft.de/2019/06/beschwerde-gegen-dsgvo-widrige-verhaltensbasierte-werbung/>; Fix AdTech, “Fix AdTech,” Fix AdTech, 2020, <https://fixad.tech/>; Global Disinformation Index, “The Quarter Billion Dollar Question: How Is Disinformation Gaming Ad Tech?” (UK: Global Disinformation Index, September 2019), [https://disinformationindex.org/wp-content/uploads/2019/09/GDI\\_Ad-tech\\_Report\\_Screen\\_AW16.pdf](https://disinformationindex.org/wp-content/uploads/2019/09/GDI_Ad-tech_Report_Screen_AW16.pdf).

18 Michael Bossetta, “The Digital Architectures of Social Media: Comparing Political Campaigning on Facebook, Twitter, Instagram, and Snapchat in the 2016 U.S. Election,” *Journalism & Mass Communication Quarterly* 95, no. 2 (June 1, 2018): 471–96, <https://doi.org/10.1177/1077699018763307>.

19 Mathew Ingram, “Talking with Former Facebook Security Chief Alex Stamos,” *The Galley*, 2019, <https://galley.cjr.org/public/conversations/-LsHiyaqX4DpgKDqf9Mj>.





## 1.1 Defining political advertising

### Variations among platforms

Definitions for political advertising vary among tech companies.<sup>20</sup> Both researchers<sup>21</sup> and political campaign practitioners<sup>22</sup> criticize such inconsistencies. In the case of definitions, they have practical effects regarding transparency and accountability measures such as determining disclosure requirements.<sup>23</sup> More fundamentally, definition making has been left to companies in the first place. Parliaments often did not have a say in this process and neither they nor oversight bodies nor researchers have a reliable way of checking what ads end up being considered political and labeled as such.

### Involving diverse stakeholders to find a definition

Finding a clear, cross-platform definition involves difficult questions regarding the delineations of different political advertisers and regarding freedom of speech, which this paper will not address comprehensively. When developing a definition, lawmakers (or, in the German case, the state media authorities, which are working on a definition within the scope of the Interstate Media Treaty) should involve diverse stakeholders such as scientific experts from various fields, regulators, civil society activists, independent user experience designers, platform representatives and engineers as well as voters themselves. Ideally, any stakeholder consultation would be conducted at the European level. While there are differences in election law, media regulation and campaigning techniques and rules in Europe, a common baseline definition of political advertising in the EU would be beneficial for regulators, voters and the platforms themselves.

### Covering candidate and issue ads

Determining whether a paid message is political advertising should consider both the advertiser and the issue discussed. This is the approach already taken

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20 A running list of platform definitions can be found at CITAP Digital Politics, “Platform Advertising,” CITAP Digital Politics, 2020, [https://citapdigitalpolitics.com/?page\\_id=33](https://citapdigitalpolitics.com/?page_id=33); see also Michael Beckel, Amisa Ratliff, and Alex Matthews, “Digital Disaster: The Failures of Facebook, Google, and Twitter’s Political Ad Transparency Policies” (Washington, DC: Issue One, 2019), <https://www.issueone.org/wp-content/uploads/2019/11/Issue-One-Digital-Disaster-Report.pdf>.

21 Ann Ravel, “For True Transparency around Political Advertising, US Tech Companies Must Collaborate,” *TechCrunch*, April 10, 2019, <http://social.techcrunch.com/2019/04/10/for-true-transparency-around-political-advertising-u-s-tech-companies-must-collaborate/>.

22 Jessica Baldwin-Philippi et al., “Digital Political Ethics: Aligning Principles with Practice” (Chapel Hill, NC: University of North Carolina at Chapel Hill, January 2020), 10, <http://citapdigitalpolitics.com/wp-content/uploads/2020/01/FINAL-Digital-Political-Campaigning-Report-2020-FINAL-1.pdf>.

23 Sessa-Hawkins and Sridharan, “MapLight’s Guide to Political Ad Transparency on Facebook, Twitter, and Google.”



by many of the big platforms<sup>24</sup> as well as Irish<sup>25</sup> and Canadian<sup>26</sup> legislators, for instance. It assumes that certain actors such as political figures, parties and candidates are always engaging in political advertising, whenever they pay to reach people. At the same time, this approach acknowledges that other actors also engage in political advertising, when they pay to address legislative or political issues. Including such issue ads makes for a fairly broad definition of political ads. With a narrower definition, focused on just candidate ads and ads before elections, it might be easier to enforce certain rules (such as disclaimer obligations). But a wider definition is necessary to include the range of political advertisers using platform ads. For example, it would be unfair if a candidate's or parliamentarian's paid post on a certain bill or social issue had to adhere to political advertising rules, whereas a lobby group's ad on that same bill or issue did not. Thus, political advertisers are not only parties or candidates, but also others paying to reach people regarding political issues. What constitutes a political issue varies from time to time and country to country, making a clear definition hard. Yet, in any case, it should not be solely platforms deciding what counts as a political issue.<sup>27</sup> For governmental agencies, there might have to be exceptions, when there is a need to inform the public on certain issues, for instance in the case of a pandemic. But even in this case, there should be clear guidelines spelled out in law.

Definitions should cover paid political content regardless of how it is spread, i.e. whether advertisers pay for an ad or pay for an influencer to spread their message. It should also not distinguish between different types of content online, i.e. whether political advertisers pay for static images or audiovisual messages to be boosted. The latter could be the case in Germany, depending on how the Interstate Media Treaty is interpreted (see 3.2). For the online ad space, this distinction is obsolete and should not apply. Any possible legal restrictions should apply to all media types on platforms.

#### Transparency for all platform ads

As a practical first step, though, platforms should not wait for this legislative definition-finding process to be concluded. Instead, existing transparency

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24 CITAP Digital Politics, "Platform Advertising."

25 Oireachtas, "Electoral Amendment Act" (2001), Pt.4 S.49, <http://www.irishstatutebook.ie/eli/2001/act/38/enacted/en/pdf>.

26 Parliament of Canada, "Canada Elections Act" (2000), 349.01 (1), <https://laws-lois.justice.gc.ca/eng/acts/E-2.01/FullText.html>.

27 For a discussion of defining issue-based ads, see Iva Plasilova et al., "Assessment of the Implementation of the Code of Practice on Disinformation" (Brussels: European Commission, May 8, 2020), 102–7, [https://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=66649](https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=66649).





measures such as disclaimer rules and the ad archives should include all advertising, commercial and political. Currently, categorizing and removing political ads is largely done by platform's AI systems based on corporate political advertising definitions. Inherent flaws and dangers in this set-up could be circumvented if no distinction between political and commercial ads was made.

## 1.2 Defining transparency

What is meant by transparency and whom is it for?

As there is still little opportunity for studies and oversight, one of the core ideas of many of the proposals on a regulatory framework for political online ads involves creating transparency. It could help users and regulators understand the online ad sphere better, the thinking often goes. This is indeed an important pillar of any policy response, but it requires an appreciation of what is meant by transparency and what is supposed to be achieved by it. At the very minimum, transparency surrounding online ad practices allows legislators to make suitable policy in this field.<sup>28</sup> It can help voters understand who is paying to influence them, and help them call out misleading or derogatory advertising. Yet, transparency can also overwhelm people, if it just means giving users lots of complex information without any context. There are other limitations to transparency.<sup>29</sup> Therefore, it is necessary to define who the proposed transparency tools and reports are addressing and what they are to be used for. What, for instance, is the purpose of providing more detailed information on political advertisers, what are unintended consequences? Why can it be helpful to bring targeting and delivery options out into the open and who benefits from that? How can it be ensured that transparency reports are checked by competent, independent authorities in a timely manner?

For example, comprehensive platform ad archives seem more suitable for an expert audience such as regulators, scientists and journalists (creating indirect transparency), while easy-to-read disclaimers right in the user feeds could be helpful for users themselves (direct transparency).<sup>30</sup> That is not to

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28 Robert Gorwa and Timothy Garton Ash, "Democratic Transparency in the Platform Society," in *Social Media and Democracy: The State of the Field*, ed. Nate Persily and Josh Tucker (Cambridge: Cambridge University Press, forthcoming, 2020), 17, <https://osf.io/ehcy2>.

29 Mike Ananny and Kate Crawford, "Seeing without Knowing: Limitations of the Transparency Ideal and Its Application to Algorithmic Accountability," *New Media & Society*, December 13, 2016, 5–10, <https://doi.org/10.1177/1461444816676645>.

30 For the differentiation between direct and indirect transparency, see Christopher Hood, "What Happens When Transparency Meets Blame-Avoidance?," *Public Management Review* 9, no. 2 (June 1, 2007): 191–210, <https://doi.org/10.1080/14719030701340275>.



say that each tool should necessarily either cater to only experts or only to non-experts (for details on the tools, see 4.3). Still, defining the audience more precisely is crucial, as “ambiguity cedes ground to industry (and other) actors to determine their own understanding of what information needs to be disclosed and how”.<sup>31</sup>

What seems clear, though, is that any transparency requirements for online ad platforms and online political advertisers will go beyond the rules for traditional offline ads. This is justified due to the different characteristics of online advertising, especially the fact that vast amounts of personal behavioral data are being used for targeted advertising (see table 1 above). For instance, users might want to learn more about the targeting criteria of an online ad than an offline ad, simply because there are more behavioral targeting criteria available and these are more privacy-invasive than offline targeting.

Parliamentary engagement necessary

Many actors, from platforms over legislators to researchers and political parties, have to work together to create suitable transparency mechanisms and, generally, to ensure fair online political advertising. Parliaments should, however, play a leading role in determining the overarching framework for paid political communications and reclaim rule-making power regarding political ads from tech companies. Parliamentary responses to the technological change in political advertising were slow and, in the meantime, corporate action was necessary and welcome. But it should be elected decision makers again who decide what requirements are in place and how they are checked, based on consultations with diverse stakeholders.

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<sup>31</sup> Katharine Dommett, “Regulating Digital Campaigning: The Need for Precision in Calls for Transparency,” *Policy & Internet*, February 12, 2020, 16, <https://doi.org/10.1002/poi3.234>.



## 2. How to Prevent Distortions of Political Debates via Political Online Advertising

### 2.1 Need for action due to behavioral microtargeting

With behavioral ad targeting, it is possible to pay to distort political debates. It can lead to people seeing mostly ads with messages that reinforce their own attitudes and leanings, which can, in turn, further entrench their positions in already heated societal debates and heighten polarization. It can foster negative campaigning and disinformation<sup>32</sup> in the quest to appeal to users' assumed identity traits. As a hypothetical case, ad platforms might infer that a group of users identifies with a movement to stop immigration to Europe and will most likely only engage with ads that support that position or discredit opposite positions. They can then deliver ads with such messages to that group of users.

#### What microtargeting means

Such microtargeting is at the core of many large digital platforms like Facebook. Microtargeting does not necessarily mean targeting a *small* audience, but one with narrowly defined, rather homogeneous characteristics: "Simply put, a micro-targeted audience receives a message tailored to one or several specific characteristic(s)."<sup>33</sup> Examples of this can be found not only in the USA, but also in Europe: In the United Kingdom, for instance, voters have been targeted based on demographic data such as gender and age, but also because they were expected to be swing voters.<sup>34</sup> The amount of behavioral data that ad platforms have and infer on users is much bigger than offline and it is much more granular (see case in point 1).

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32 For a comprehensive conceptualization, see Alexandre Alaphilippe, "Adding a 'D' to the ABC Disinformation Framework," *Brookings TechStream*, April 27, 2020, <https://www.brookings.edu/techstream/adding-a-d-to-the-abc-disinformation-framework/>.

33 Tom Dobber, Ronan Ó Fathaigh, and Frederik J. Zuiderveen Borgesius, "The Regulation of Online Political Micro-Targeting in Europe," *Internet Policy Review* 8, no. 4 (December 31, 2019): 3, <https://policyreview.info/articles/analysis/regulation-online-political-micro-targeting-europe>; see also Information Commissioner's Office, "Democracy Disrupted? Personal Information and Political Influence" (Wilmslow: Information Commissioner's Office, July 11, 2018), 27–28, <https://ico.org.uk/media/2259369/democracy-disrupted-110718.pdf>.

34 Bethan John and Carlotta Dotto, "UK Election: How Political Parties Are Targeting Voters on Facebook, Google and Snapchat Ads," *First Draft*, November 14, 2019, <https://firstdraftnews.org:443/latest/uk-election-how-political-parties-are-targeting-voters-on-facebook-google-and-snapchat-ads/>; Julian Jaurisch, "Transcript for the Background Talk with Sam Jeffers on 'Digital Disinformation – the New Default in Online Campaigning?,'" Stiftung Neue Verantwortung, March 3, 2020, <https://www.stiftung-nv.de/en/publication/transcript-background-talk-digital-disinformation-new-default-online-campaigning>.



### Case in point 1: Lots of granular personal data used for behavioral microtargeting

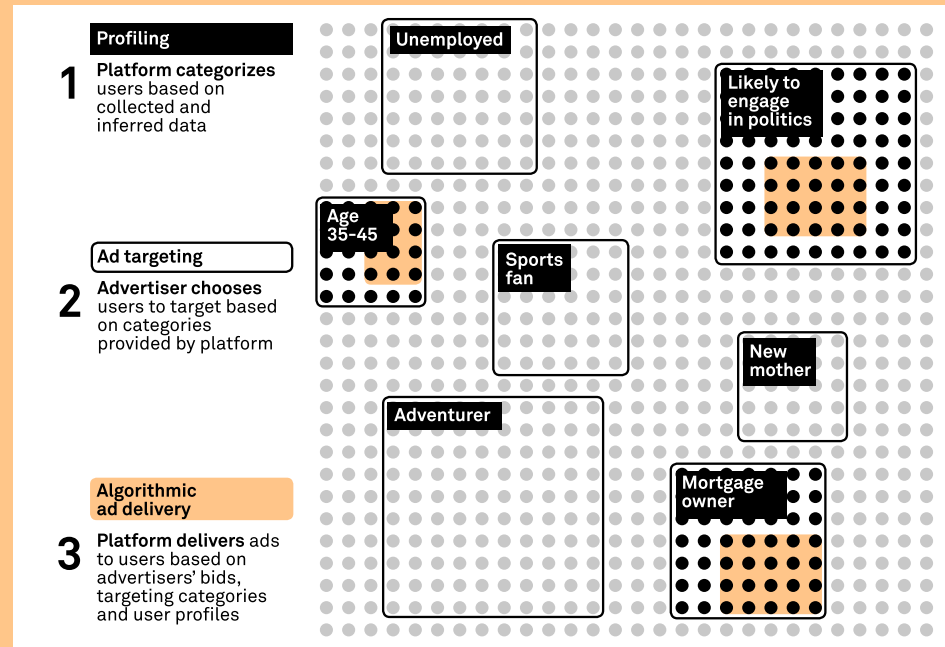


Figure 1: Simplified process of ad targeting and ad delivery on digital platforms<sup>35</sup>

Advertisers, whether political or commercial, benefit from grouping users into categories, so that they can serve ads to those most likely to engage with the message.<sup>36</sup> Advertising categories exist online as well. But online, user profiles can contain much more (and more granular) information on people's behavior, because advertisers and platforms can track users' movements around the internet and on their mobile devices<sup>37</sup>. A range of data points such as "likes", browsing habits and

<sup>35</sup> Adapted from Athanasios Andreou et al., "Investigating Ad Transparency Mechanisms in Social Media: A Case Study of Facebook's Explanations" (Network and Distributed Systems Security Symposium, San Diego, CA, 2018), 3, [http://www.eurecom.fr/en/publication/5414/download/data-publi-5414\\_1.pdf](http://www.eurecom.fr/en/publication/5414/download/data-publi-5414_1.pdf); Karolina Iwańska et al., "Who (Really) Targets You?" (Warsaw: Fundacja Panoptykon, March 17, 2020), <https://panoptykon.org/political-ads-report>.

<sup>36</sup> See, for example, how the industry body IAB is updating its "taxonomy" for ad content and audience: Melissa Gallo, "Taxonomy: The Most Important Industry Initiative You've Probably Never Heard Of," *Interactive Advertising Bureau*, July 20, 2016, <https://www.iab.com/news/taxonomy-important-industry-initiative-youve-probably-never-heard>.

<sup>37</sup> Varoon Bashyakarla et al., "Personal Data: Political Persuasion. Inside the Influence Industry. How It Works.," *Tactical Tech*, March 2019, [https://cdn.ttc.io/s/tacticaltech.org/methods\\_guidebook\\_A4\\_spread\\_web\\_Ed2.pdf](https://cdn.ttc.io/s/tacticaltech.org/methods_guidebook_A4_spread_web_Ed2.pdf); Singh, "Special Delivery"; Iwańska et al., "Who (Really) Targets You?"



location can be used to infer people's behaviors and preferences. Advertisers can then use these profiles to target people.

Additionally, it has to be remembered that it is the platforms' advertising delivery algorithms which determine what user groups see what ad in the end. This process is also based on advertising categories and personal user data.<sup>38</sup> Algorithmic ad delivery remains out of the control of both advertisers and users. It can have unintended consequences, such as recommending discriminatory targeting categories.<sup>39</sup> Even if advertisers did not mean to do this, it was shown that ad delivery algorithms might have discriminatory effects.<sup>40</sup>

Advertisers can pay to  
reinforce voters'  
entrenched positions

Behavioral microtargeting does not *cause* societal divides. In fact, there are also advantages to microtargeting, for example, if it is used to increase overall voter turnout.<sup>41</sup> Nonetheless, it might *amplify* tensions in society, partly because of the way online ad platforms are built.

Like no other information and ad space before, the online space offers advertisers and ad platforms vast and deep information on user engagement. Content posted online, paid or unpaid, can be easily and instantaneously tracked and analyzed. Real-time digital analytics have transformed newsrooms, as journalist Ezra Klein details for the US context:<sup>42</sup> Editors and journalists are shaped by the gamified analytics tools they use, showing them right away what content is being shared the most. Klein argues that attention-driven media and advertising platforms tend to favor identity-focused content because

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38 Iwańska et al., "Who (Really) Targets You?"; Singh, "Special Delivery"; Ian Bogost and Alexis C. Madrigal, "How Facebook Works for Trump," *The Atlantic*, April 17, 2020, <https://www.theatlantic.com/technology/archive/2020/04/how-facebooks-ad-technology-helps-trump-win/606403/>.

39 For example, discriminatory ad targeting options at Facebook were only changed after external observers pointed them out, see Daniel Golden, "Facebook Moves to Prevent Advertisers From Targeting Haters," *ProPublica*, September 15, 2017, <https://www.propublica.org/article/facebook-moves-to-prevent-advertisers-from-targeting-haters>.

40 Muhammad Ali et al., "Discrimination through Optimization: How Facebook's Ad Delivery Can Lead to Skewed Outcomes," *ArXiv:1904.02095*, September 12, 2019, <https://doi.org/10.1145/3359301>; Dipayan Ghosh and Joshua Simons, "Democratic Public Utilities," forthcoming 2020.

41 For an overview of the advantages of microtargeting, see Frederik J. Zuiderveen Borgesius et al., "Online Political Microtargeting: Promises and Threats for Democracy," *Utrecht Law Review* 14, no. 1 (February 9, 2018): 84–86, <https://doi.org/10.18352/ulr.420>.

42 Ezra Klein, *Why We're Polarized* (New York, NY: Simon & Schuster, 2020).



“social platforms are about curating and expressing a public-facing identity. They’re about saying I’m a person who cares about this, likes that, and loathes this other thing. They are about signaling the groups you belong to and, just as important, the groups you don’t belong to.”<sup>43</sup> Ad targeting (by the advertisers) and ad delivery (by the platforms) can exploit this by appealing to voters’ identities as well. This is what can drive polarization and negative campaigning, as it is often not a rational policy argument that taps into people’s hopes and fears (see case in point 2 further below).

The key risk associated with behavioral microtargeting is therefore not only that advertisers might promise one audience one thing and another audience the opposite. Facebook, in particular, was worried about its targeting tools being used for that.<sup>44</sup> This is not the major way how microtargeting might distort political debates and amplify polarization, though. It turns out that behavioral microtargeting is more readily used by advertisers to hammer home the same message to an audience over and over again – an audience the data shows is receptive to this message. Take the following example: If you have a voter segment that you can bank on because you have delivered the message they want to hear time and again (“I will protect the border!”, “I will protect the climate!”), there is no need to make opposing promises to another group. If anything, you can run ads discouraging the opposing group from voting altogether.<sup>45</sup>

Certain political messages can be withheld from some people

Microtargeting might also contribute to distorted societal divides because it is discriminatory. Ad targeting, by definition, is discriminatory, whether online or offline: Some users see a message and others do not. But online behavioral

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<sup>43</sup> Chapter 6, Klein; for further reflections on the role of political identities, see also Alice E. Marwick, “Why Do People Share Fake News? A Sociotechnical Model of Media Effects,” *Georgetown Law Technology Review*, July 21, 2018, 503–10, [http://www.e-skop.com/images/UserFiles/Documents/Editor/fake\\_news.pdf](http://www.e-skop.com/images/UserFiles/Documents/Editor/fake_news.pdf); Kate Starbird, “Disinformation’s Spread: Bots, Trolls and All of Us,” *Nature* 571, no. 7766 (July 24, 2019): 449–449, <https://doi.org/10.1038/d41586-019-02235-x>; Daniel Kreiss, “Micro-Targeting, the Quantified Persuasion,” *Internet Policy Review* 6, no. 4 (December 31, 2017), <https://policyreview.info/articles/analysis/micro-targeting-quantified-persuasion>.

<sup>44</sup> Steven Levy, *Facebook: The Inside Story* (New York, NY: Penguin Random House, 2020).

<sup>45</sup> This is apparently what happened during Donald Trump’s Facebook ad campaign during the 2016 US presidential elections, as Steven Levy reports: “‘They were just showing only the right message to the right people,’ says the tech executive familiar with the techniques. ‘To one person it’s immigration, to one person it’s jobs, to one person it’s military strength. And they are building this beautiful audience. It got so crazy by the end that they would run the campaigns in areas where he was about to give a stump speech and find out what was resonating in that area. They would modify the stump speech in real time, based on the marketing.’ (...) And what did the Trump people do when they found an audience for whom nothing resonated, implying that they weren’t likely to vote for Trump? To those people, they ran anti-Hillary ads, hoping to discourage anti-Trumpers from voting at all.” Levy.



targeting allows this discrimination to be much more specific and much less observable, due to the amount and depth of personal data that is available to large online platforms.<sup>46</sup> Paying to send political messages to only certain groups and depriving other parts of the population of this information can distort democratic discourse.<sup>47</sup> One hypothetical case is a negative ad campaign, perhaps one vilifying certain people and spreading lies. It would be bad enough if an online campaign like that could reach much more people much faster than a poster in the street could. Yet, a bigger risk for the polarization of society might be that digital platforms would enable the advertiser to send such messages to exactly those people who are likely to engage with it, while at the same time hiding the message from the view of other people, be they voters, researchers or journalists. Here, it becomes clear that new risks regarding online political advertising are not necessarily related to ad *content*. There are already ways laid out in the constitution and in criminal law to deal with potentially illegal content. What is new and unaddressed is the microtargeted, algorithmic, discriminatory ad *delivery* that might contribute to distorted political debates.

Voters are often not aware that such discriminatory profiling for political advertising is happening.<sup>48</sup> In the EU, two thirds of respondents to a survey said they are worried that personal data would be used to target them with political messages.<sup>49</sup> A majority of German respondents in a different survey had low acceptability rates for personalized messages from political campaigns.<sup>50</sup> If many users are unaware that their personal data is used for showing them political ads, it is quite possible that they are also not aware their personal engagement with these ads is, in turn, used by advertisers: The engagement metrics of an advertising campaign can serve as a type of poll for advertisers, helping them figure out what messages, appearance and candidates are

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46 Singh, “Special Delivery”; Ranking Digital Rights, “Human Rights Risk Scenarios: Targeted Advertising” (Washington, DC: Ranking Digital Rights, February 20, 2019), <https://rankingdigitalrights.org/wp-content/uploads/2019/02/Human-Rights-Risk-Scenarios-targeted-advertising.pdf>.

47 Judit Bayer, “Double Harm to Voters: Data-Driven Micro-Targeting and Democratic Public Discourse,” *Policy Review* 9, no. 1 (March 31, 2020), <https://doi.org/10.14763/2020.1.1460>.

48 For Germany, see Kozyreva et al., “Artificial Intelligence in Online Environments,” 9; for Canada, see Government of Canada, “Understanding the Digital Ecosystem: Findings from the 2019 Federal Election” (Ottawa: Government of Canada, 2019), 24–27, [https://b1c9862c-6924-4cfd-9cbe-6c6f0144a777.filesusr.com/ugd/38105f\\_c2beb2fbb5f46199fbc2f636ace59ee.pdf](https://b1c9862c-6924-4cfd-9cbe-6c6f0144a777.filesusr.com/ugd/38105f_c2beb2fbb5f46199fbc2f636ace59ee.pdf).

49 Kantar Public Brussels, “Special Eurobarometer 477 – Summary” (Brussels: Kantar Public, September 2018), 17, <https://ec.europa.eu/comfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/84538>.

50 Kozyreva et al., “Artificial Intelligence in Online Environments,” 10.

working best.<sup>51</sup> Apart from risks for the individual of unwittingly being part of an ad-testing experiment, there is also a societal danger, if advertisers rely on people's moods expressed on social media: Social media users are not representative of society, so the political agenda can be skewed by aligning topics and priorities according to just online discussions.<sup>52</sup>

Moreover, connected to this data-driven voter segmentation is a heightened risk of privacy breaches, again driven by the amount and the sensitivity of personal data used in online political advertising.<sup>53</sup> Lastly, on a more abstract level, it is questionable whether data-driven surveillance to figure out voters' intentions and beliefs in detail is necessary in a democracy in the first place.<sup>54</sup>

## 2.2 Weaknesses of existing rules and measures

There is no regulation that can stop polarization, either online or offline, nor should there ever be. But the danger of having debates distorted and polarized by paid political communication are nonetheless more pronounced with targeted online advertising because some of the limitations and data protection rules in place for traditional advertising are not suitable for the digital realm.

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51 Nick Corasaniti, "How a Digital Ad Strategy That Helped Trump Is Being Used Against Him," *The New York Times*, April 28, 2020, <https://www.nytimes.com/2020/04/28/us/politics/Facebook-Acronym-advertising.html>; Rowland Manthorpe, "Boris Johnson Team Posts Hundreds of Facebook Ads to Test Campaign Messages," *Sky News*, July 26, 2019, <https://news.sky.com/story/boris-johnson-team-posts-hundreds-of-facebook-ads-to-test-campaign-messages-11770644>.

52 Orestis Papakyriakopoulos et al., "Social Media und Microtargeting in Deutschland," *Informatik-Spektrum* 40, no. 4 (August 1, 2017): 334, <https://doi.org/10.1007/s00287-017-1051-4>; Orestis Papakyriakopoulos et al., "Distorting Political Communication: The Effect Of Hyperactive Users In Online Social Networks" (IEEE INFOCOM 2019 – IEEE Conference on Computer Communications Workshops, Paris, 2019), 157–64, <https://doi.org/10.1109/INFOCOMW.2019.8845094>.

53 For a succinct overview on studies regarding privacy risks associated with online advertising, see Athanasios Andreou et al., "Measuring the Facebook Advertising Ecosystem" (Network and Distributed System Security Symposium, San Diego, CA, 2019), 14, <http://www.eurecom.fr/en/publication/5779/download/data-publi-5779.pdf>.

54 Colin J. Bennett and David Lyon, "Data-Driven Elections: Implications and Challenges for Democratic Societies," *Internet Policy Review* 8, no. 4 (December 31, 2019): 11, <https://policyreview.info/data-driven-elections>.





How targeting is  
limited offline

Common options for offline political advertising available in Germany face natural and/or legal limitations. These restrictions on targeting opportunities somewhat blunt the associated dangers for distorted and polarized debates:

- Overall, offline ads largely rely on rather broad demographic targeting (in the case of mailings and posters) and/or contextual targeting (for example, in a paper or on TV). Such contextual targeting, like choosing to air an ad during a live sporting event or during a soap opera, is also rather broad. Behavioral targeting based on personal voter data is uncommon.
- Broadcasting ads, as the name suggests, are usually not targeted to narrow audiences. TV and radio ads are not driven by personal behavioral data, making microtargeting hard. Furthermore, TV ads are limited by available airtime. There are also clear legal rules: Only political parties can advertise on radio and TV and they can only do that ahead of elections (see 3.2).
- Parties could use print ads in different magazines according to what audience should be addressed. Behavioral targeting is hardly possible and relies on little personal voter data, though. Like TV airtime, newspapers can also run out of space and ads in papers are expensive.
- Election posters in the street might carry different slogans in rural and urban areas, for example. But overall, posters are about as public as advertising gets, and they typically only appear during election campaigns.<sup>55</sup>
- For postal mailings, targeting options are legally limited: Political parties can only access official registries shortly ahead of elections and must delete that data later.<sup>56</sup> They can only ask for limited data categories, such as people between the ages of 18 and 22, if they want to reach potential first-time voters.<sup>57</sup> Parties and other political advertisers could use address brokers to send postal mailings, but targeting is limited to aggregated households here.<sup>58</sup>

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55 In Germany, rules for election posters are handled at the local level. Who can advertise in public is at times up to the discretion of municipalities and subject to road traffic law. Commonly, political parties are allowed to advertise on the street between four to seven weeks ahead of an election, see psu, “Wahlplakate: Die Rechtslage zur Parteienwerbung,” *Deutsche Anwaltauskunft*, October 8, 2018, <https://anwaltauskunft.de/magazin/gesellschaft/staat-behoerden/wahlplakate-die-rechtslage-zur-parteienwerbung>.

56 Kristin Becker, “Wahlwerbung: Nicht alles ist erlaubt,” *tagesschau.de*, September 5, 2017, <https://www.tagesschau.de/inland/btw17/wahlwerbung-was-ist-erlaubt-101.html>.

57 Becker; Bayerisches Landesamt für Datenschutzaufsicht, “Tätigkeitsbericht 2013/14” (Ansbach: Bayerisches Landesamt für Datenschutzaufsicht, March 2015), 81, [https://www.lda.bayern.de/media/baylda\\_report\\_06.pdf](https://www.lda.bayern.de/media/baylda_report_06.pdf).

58 Dagmar Weitbrecht, “Welche Wahlkampf-Strategien nutzen die Parteien?,” *mdr.de*, May 24, 2019, <https://www.mdr.de/medien360g/medienpolitik/bigdata-wahlkampf-partei-100.html>.

Taken together, in offline advertising, it is hard to either barrage people with the same message to drive home a point over a long period of time and/or to trigger specific groups' identity with precisely tailored slogans. Such activities, which can distort debates and amplify polarization, can be relatively easily executed online, though.

### Case in point 2: Negative campaigning in the UK elections

The ad targeting and delivery opportunities afforded to campaigners online can be used to test what messages appeal to voters the most. This is not unusual and new, as advertisers can test messaging offline as well, and it is also not inherently bad. However, it can lead to a scourge of negative campaign ads, if sensationalist, personalized attack ads turn out to be the most engaging on social media. For the 2019 UK elections, this is apparently what happened.<sup>59</sup> This might mark a change from the 2017 elections, where researchers found that Facebook ads were at least not more negative than other advertising.<sup>60</sup> For the 2019 vote, a researcher with the NGO Who Targets Me, which aims to shed some light on Facebook advertising, said “negative messages on Brexit that can drive voters towards polarising opinions are becoming more refined”.<sup>61</sup> The election showed not only that ad targeting might strengthen polarization. It also highlighted how parties use ads for feedback on their general campaign: Ads were used to get people's personal contact information by having them sign up for newsletters or fill out surveys.<sup>62</sup>

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59 John and Dotto, “UK Election: How Political Parties Are Targeting Voters on Facebook, Google and Snapchat Ads”; Jamie Doward, “Voters ‘Used as Lab Rats’ in Political Facebook Adverts, Warn Analysts,” *The Observer*, November 9, 2019, <https://www.theguardian.com/technology/2019/nov/09/facebook-voters-used-as-lab-rats-targeted-political-advertising>.

60 Nick Anstead et al., “Political Advertising on Facebook: The Case of the 2017 United Kingdom General Election” (European Consortium of Political Research Annual General Meeting, Hamburg, 2018), <https://pdfs.semanticscholar.org/f423/74ed6138b0fd258d7b2fff7099f9f9700c93.pdf>; similarly, for the US, it was found that Facebook ads are not more negative than TV ads, but more ideologically driven and less issue-focused, see Erika Franklin Fowler et al., “Political Advertising Online and Offline,” May 18, 2018, [https://web.stanford.edu/~gimartin/papers/Ads\\_Online\\_and\\_Offline\\_Working.pdf](https://web.stanford.edu/~gimartin/papers/Ads_Online_and_Offline_Working.pdf).

61 Tristan Hotham, “We Need to Talk about A/B Testing: Brexit, Attack Ads and the Election Campaign,” *LSE BREXIT*, November 13, 2019, <https://blogs.lse.ac.uk/brexit/2019/11/13/we-need-to-talk-about-a-b-testing-brexit-attack-ads-and-the-election-campaign/>.

62 Manthorpe, “Boris Johnson Team Posts Hundreds of Facebook Ads to Test Campaign Messages.”

Large digital platforms offer opportunities for constant, microtargeted advertising, often with little to no physical or legal boundaries. For example, user feeds on Facebook or TikTok do not ever run out of space, are not dedicated news products that people consume deliberately (such as a newspaper) and are not bound by specific targeting limitations (seen for postal mailings, for instance). The characteristics of online advertising thus make it much easier to contribute to segmented news and ad spaces, where people are largely confronted with messages that are designed to speak to their preferences and identities, based on personal data collection and profiling.

The GDPR as an important check on online targeting

Such data collection and profiling are subject to European data protection rules. The EU's General Data Protection Regulation (GDPR) gives users more data protection rights than in other parts of the world. Many data usages available to political campaigners in, say, the US are not available for German campaigns.<sup>63</sup> For instance, rules regarding informed consent for data processing as well as limits to data collection and purposes for data use are pillars of the GDPR that political advertisers, like other data processors, need to adhere to. The GDPR also gives users the right to object to direct marketing. The rules put limits to location-based tracking such as geofencing, which is common in election campaigns in other parts of the world<sup>64</sup>. Tracking users with cookies is more difficult in Europe than elsewhere, too.<sup>65</sup> Using custom lists to cross-check with Facebook's database for ad purposes ("Custom

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63 Simon Kruschinski and André Haller, "Restrictions on Data-Driven Political Micro-Targeting in Germany," *Internet Policy Review* 6, no. 4 (December 31, 2017): 7–8, 12, <https://policyreview.info/articles/analysis/restrictions-data-driven-political-micro-targeting-germany>; Borgesius et al., "Online Political Microtargeting," 89–91; Dobber, Fathaigh, and Borgesius, "The Regulation of Online Political Micro-Targeting in Europe," 5–7; Colin Bennett and Smith Oduro Marfo, "Privacy, Voter Surveillance and Democratic Engagement: Challenges for Data Protection Authorities," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, October 1, 2019), 27–36, <https://doi.org/10.2139/ssrn.3517889>.

64 Bashyakarla et al., "Personal Data," 72–75.

65 This is regulated in the e-privacy directive (not just the GDPR), see Dobber, Fathaigh, and Borgesius, "The Regulation of Online Political Micro-Targeting in Europe," 6–7; the planned e-privacy regulation could be a key legislative reform in dealing with user tracking online, which has implications for online (political) ads, see Malte Engeler, "Die ePrivacy-Verordnung im Rat der Europäischen Union: Eine aktuelle Bestandsaufnahme," *PinG Privacy in Germany*, no. 4 (2018): 146–47, 149, [https://www.pingdigital.de/ce/die-eprivacy-verordnung-im-rat-der-europaeischen-union/\\_sid/DNXW-604887-W44f/detail.html](https://www.pingdigital.de/ce/die-eprivacy-verordnung-im-rat-der-europaeischen-union/_sid/DNXW-604887-W44f/detail.html); the reform process has been stuck for years, though.



Shortcomings of the  
GDPR regarding online  
advertising

Audiences”) requires users’ consent.<sup>66</sup> German parties also do not seem to use “Facebook pixels”, a tracking tool common in US campaigns.

Yet, even with the GDPR, existing rules for the online space have so far not been able to set limits with similar effects as offline ad limitations. To be sure, this is not the GDPR’s primary intent. It does not prohibit either targeting or the algorithmic ad delivery. In fact, direct marketing is explicitly mentioned as a “legitimate interest” for personal data collection and use. The data protection rules do include some restrictions for profiling, though, if it “produces legal effects” on users.<sup>67</sup> This provision has not been used in practice much regarding online advertising, where profiling is nonetheless rampant. German data protection authorities and the Data Ethics Commission have called for clearer transparency guidelines in this area, highlighting a regulatory gap regarding profiling.<sup>68</sup> There are also shortcomings in dealing with data inferences. For example, consent rules on sensitive personal data such as health data and data on political ideology are stricter than for other data. Even though users might provide some sensitive data voluntarily (such as writing “I support Party X” or “liking” a campaign’s Facebook page), they are often ill-informed about how such data might be used, despite clear requirements in the GDPR. Moreover, tech companies also infer political leanings, attitudes, behaviors and, ultimately, identity traits through seemingly innocuous other data (such

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66 Thomas Kranig, “Bayerischer Verwaltungsgerichtshof entscheidet: BayLDA untersagt zu Recht den Einsatz von Facebook Custom Audience”, Bayerisches Landesamt für Datenschutzaufsicht, November 20, 2018, [https://www.lda.bayern.de/media/pm2018\\_18.pdf](https://www.lda.bayern.de/media/pm2018_18.pdf).

67 § 22 (1) GDPR, European Parliament, “Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA Relevance),” Pub. L. No. 32016R0679, 119 OJ L (2016), <http://data.europa.eu/eli/reg/2016/679/oj/eng>.

68 Datenschutzaufsichtsbehörden des Bundes und der Länder, “Erfahrungsbericht der unabhängigen Datenschutzaufsichtsbehörden des Bundes und der Länder zur Anwendung der DS-GVO,” November 2019, 24, [https://www.baden-wuerttemberg.datenschutz.de/wp-content/uploads/2019/12/20191209\\_Erfahrungsbericht-zur-Anwendung-der-DS-GVO.pdf](https://www.baden-wuerttemberg.datenschutz.de/wp-content/uploads/2019/12/20191209_Erfahrungsbericht-zur-Anwendung-der-DS-GVO.pdf); Datenethikkommission, “Gutachten der Datenethikkommission” (Berlin: Datenethikkommission, 2019), 99–102, [https://www.bmjv.de/SharedDocs/Downloads/DE/Themen/Fokusthemen/Gutachten\\_DEK\\_DE.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmjv.de/SharedDocs/Downloads/DE/Themen/Fokusthemen/Gutachten_DEK_DE.pdf?__blob=publicationFile&v=2).



as commenting on certain posts or “liking” certain pages).<sup>69</sup> The platforms, along with advertisers themselves, gain information from tracking voters across the web and their mobile devices, and the GDPR is not well-equipped to handle these data inferences on its own.<sup>70</sup> Even if those preferences and identities inferred from behavioral data does not align with users’ actual preferences (which can happen quite often), these flawed inferred profiles still shape what advertising users see. There is little chance for users to correct their profiles, if they do not even know what data is used to make inferences and create profiles.

## 2.3 Policy options

### Restrictions for behavioral microtargeting

Only basic personal data to be used for political targeting

Opaque, discriminating and distorting behavioral microtargeting should be limited for online political advertising for the sake of ensuring fair and open political debates. Specifically, rules should be in place as to what data and data sources can be used for political ad purposes. For instance, there could be a set list of data that can be used for ad targeting (concerning advertisers) *and* ad delivery (concerning ad platforms). This could be electoral district, age and gender. Only this data could then be used for online political ads: No sensitive data, inferred data and other data from platforms’ user profiles can be used. Platforms and advertisers should not be allowed to use advertisers’ databases for platform advertising. Using external databases for platform advertising should not be allowed, unless it is a publicly available voter list. This mirrors similar rules in existence offline, where parties have limited opportunities to use the population register for election ads.<sup>71</sup> Citizens can object to this data use. This opt-out procedure could be replaced by an opt-in procedure.

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69 Amy Brouillette et al., “RDR Corporate Accountability Index: Transparency and Accountability Standards for Targeted Advertising and Algorithmic Systems. Pilot Study and Lessons Learned” (Washington, DC: Ranking Digital Rights, March 16, 2020), 11, <https://rankingdigitalrights.org/wp-content/uploads/2020/03/pilot-report-2020.pdf>; a lot of the points on inferred data are based on research by Michael Kosinski et al., see here as well as the critical letters on their work to the journal: Sandra C. Matz et al., “Psychological Targeting as an Effective Approach to Digital Mass Persuasion,” *Proceedings of the National Academy of Sciences* 114, no. 48 (November 28, 2017): 12714–19, <https://doi.org/10.1073/pnas.1710966114>.

70 Sandra Wachter and Brent Mittelstadt, “A Right to Reasonable Inferences: Re-Thinking Data Protection Law in the Age of Big Data and AI,” *Oxford Business Law Blog*, October 9, 2018, <https://www.law.ox.ac.uk/business-law-blog/blog/2018/10/right-reasonable-inferences-re-thinking-data-protection-law-age-big>.

71 Der Bayerische Landesbeauftragte für den Datenschutz, “Aktuelle Kurz-Information 28: Auskunft aus dem Melderegister an politische Parteien vor Wahlen,” Der Bayerische Landesbeauftragte für den Datenschutz, February 1, 2020, <https://www.datenschutz-bayern.de/datenschutzreform2018/aki28.html>.



Such rules could inhibit behavioral advertising and geotargeting, but still allow advertisers to tailor messages to certain parts of the population, which can be useful to address the constituents in their districts or first-time voters, for instance. There are compelling cases for banning targeted advertising altogether.<sup>72</sup> Especially with a view to political advertising, though, a ban might hurt smaller, non-incumbent political advertisers, who rely on paying to reach their (initial) audience.<sup>73</sup> Also, it is unclear what financing model would replace targeted ad revenues at platforms such as Facebook and YouTube. One obvious choice, a subscription-based (freemium) or fee-based model, might potentially exclude poorer people from access to social networks and thus some political debates.

Some platforms have already moved to restrict targeting. Google, for instance, has restricted targeting options for political ads to age, gender and postal code.<sup>74</sup> Such voluntary measures should be made mandatory across platforms. Otherwise, there is little chance to check enforcement and platforms could stop the measures at any time.

#### Minimum audience sizes for microtargeting

Rules or financial incentives for larger target audiences

Appealing to more people at once could blunt negative and identity-appealing advertising. There would be more opportunities for other voters and researchers to call out disinformation and engage in counter speech, for instance.<sup>75</sup> Hence, there could be a required minimum audience size for a target group, as regulators, academics and Silicon Valley tech entrepreneurs have recom-

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72 Gilead Edelman, “Why Don’t We Just Ban Targeted Advertising?,” *Wired*, March 22, 2020, <https://www.wired.com/story/why-dont-we-just-ban-targeted-advertising/>; Rahman and Teachout, “From Private Bads to Public Goods”; David Dayen, “Ban Targeted Advertising,” *The New Republic*, April 10, 2018, <https://newrepublic.com/article/147887/ban-targeted-advertising-facebook-google>.

73 Cf. Daniel Kreiss and Matt Perault, “Four Ways to Fix Social Media’s Political Ads Problem – Without Banning Them,” *The New York Times*, November 16, 2019, sec. Opinion, <https://www.nytimes.com/2019/11/16/opinion/twitter-facebook-political-ads.html>.

74 Scott Spencer, “An Update on Our Political Ads Policy,” *Google*, November 20, 2019, <https://blog.google/technology/ads/update-our-political-ads-policy/>.

75 Reddit, for example, requires US political advertisers to allow comments on ads for at least 24 hours, a means to encourage discussion on ads, see “Reddit Advertising Policy,” Reddit Help, 2020, <https://www.reddithelp.com/en/categories/advertising/ad-review/reddit-advertising-policy>; Spandana Singh, “Reddit’s Intriguing Approach to Political Advertising Transparency,” *Slate*, May 1, 2020, <https://slate.com/technology/2020/05/reddit-political-advertising-transparency.html>.



mended.<sup>76</sup> The size of a group could, for example, correspond to the sizes of electoral districts. Financial incentives could also be envisioned on microtargeting: The larger and more heterogeneous the audience is, the cheaper the ad campaign becomes.<sup>77</sup> An idea like this highlights how important it is to have a clear definition of political advertising (see 1.1), working advertiser verification mechanisms (see 3.3) and mandatory transparency reports (see 4.3).

Counter speech could also be encouraged if advertisers had the chance to respond to their political opponents. This could mean that advertisers could target the exact same audience of their opponents.<sup>78</sup> For this, platforms would have to implement functioning advertiser verifications (see 3.3) and ad archives (see 4.3).

### **Enhanced data protection and privacy controls for users**

Since ad platforms rely on gathering a lot of user data and inferring likes, dislikes and identity traits from this data for behavioral targeting, users should be able to know about and control how platforms go about these inferences and how advertisers use them. Voters everywhere in Europe should have easy access to information on their rights under the GDPR and easy ways to exercise them, especially the right to object to data processing for direct marketing purposes. Strict enforcement by national data protection authorities of rules on profiling, purpose limitations and data minimization, both towards advertisers and platforms, could also help. Yet, the GDPR is a “necessary but not a sufficient protection” regarding microtargeting.<sup>79</sup>

Therefore, clarifying and enhancing the GDPR with a view to profiling and advertising is necessary. It needs to be clearer what the limits for data inferences

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76 Ellen L. Weintraub, “Don’t Abolish Political Ads on Social Media. Stop Microtargeting.,” *The Washington Post*, November 1, 2019, <https://www.washingtonpost.com/opinions/2019/11/01/dont-abolish-political-ads-social-media-stop-microtargeting/>; Kofi Annan Commission on Elections and Democracy in the Digital Age, “Protecting Electoral Integrity in the Digital Age: The Report of the Kofi Annan Commission on Elections and Democracy in the Digital Age,” 20; Ingram, “Talking with Former Facebook Security Chief Alex Stamos”; Borthwick, “Ten Things Technology Platforms Can Do to Safeguard the 2020 U.S. Election.”

77 Karen Kornbluh, Ellen Goodman, and Eli Weiner, “Safeguarding Democracy Against Disinformation” (Washington, DC: German Marshall Fund of the United States, March 24, 2020), 32, <http://www.gmfus.org/publications/safeguarding-democracy-against-disinformation>.

78 Kreiss and Perault, “Four Ways to Fix Social Media’s Political Ads Problem – Without Banning Them.”

79 Dobber, Fathaigh, and Borgesius, “The Regulation of Online Political Micro-Targeting in Europe,” 13.



and user tracking there are.<sup>80</sup> Similar to hard restrictions on microtargeting (see above), the idea is to limit the amount and type of data that campaigns and platforms can use to target people, since all algorithmic advertising online is driven by personal data gathered and inferred by big companies.<sup>81</sup> This could disincentivize building up huge databases with voters' profiling information.<sup>82</sup> It might also help reduce divisive and polarizing ad content, if advertisers cannot appeal to people's identities and presumed preferences based on a lot of behavioral data.<sup>83</sup> There could also be the chance for more people seeing and calling out negative campaigning and ads with disinformation.

Enhanced privacy controls for users

Moreover, users should have the chance to see and change the behavioral profile advertisers and platforms have on them.<sup>84</sup> Some platforms are moving in this direction already by offering certain user controls. Facebook, for example, provides some very basic insights into users' ad profiles.<sup>85</sup> However, current privacy controls often do not stop the platforms from receiving data from advertisers and from using personal data to train their ad delivery algorithms.<sup>86</sup> Other serious flaws remain: Companies' disclosures at times lack meaningful information on what data is being used and inferred. Users lack control and awareness of how they can be targeted.<sup>87</sup> Many options are opt-out by default. Therefore, tech companies should provide users with more easily

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80 Wachter and Mittelstadt, "A Right to Reasonable Inferences"; Iwańska et al., "Who (Really) Targets You?"

81 Cf. Gary and Soltani, "First Things First."

82 Cf. Peter Kafka, "Facebook's Political Ad Problem, Explained by an Expert," Vox, December 10, 2019, <https://www.vox.com/recode/2019/12/10/20996869/facebook-political-ads-targeting-alex-stamos-interview-open-sourced>.

83 This has been argued by Weintraub, "Don't Abolish Political Ads on Social Media. Stop Microtargeting."; but there is also opposition, saying that banning microtargeting will not deal with misleading claims or negative ads, see Kafka, "Facebook's Political Ad Problem, Explained by an Expert"; certainly, a limit to microtargeting would not be the single solution to prevent negative campaigning or the spread of disinformation; reforms in various, interconnected policy fields are necessary for that, see Julian Jaurisch, "Regulatory Reactions to Disinformation: How Germany and the EU Are Trying to Tackle Opinion Manipulation on Digital Platforms" (Berlin: Stiftung Neue Verantwortung, October 22, 2019), [https://www.stiftung-nv.de/sites/default/files/regulatory\\_reactions\\_to\\_disinformation\\_in\\_germany\\_and\\_the\\_eu.pdf](https://www.stiftung-nv.de/sites/default/files/regulatory_reactions_to_disinformation_in_germany_and_the_eu.pdf).

84 epicenter.works, "Platform Regulation" (Wien: epicenter.works, October 2019), 17, <https://platformregulation.eu/assets/docs/platformregulation-latest.pdf>.

85 Rob Leathern, "Expanded Transparency and More Controls for Political Ads," Facebook Newsroom, January 9, 2020, <https://about.fb.com/news/2020/01/political-ads/>.

86 Bogost and Madrigal, "How Facebook Works for Trump."

87 Brouillette et al., "RDR Corporate Accountability Index: Transparency and Accountability Standards for Targeted Advertising and Algorithmic Systems. Pilot Study and Lessons Learned," 43–44; Iwańska et al., "Who (Really) Targets You?"





accessible privacy controls and improved disclosures on what personal data is used and how.<sup>88</sup> These controls should include options for users to take concrete actions, such as turning off data collection for certain types of ads.

Platforms should also make design choices that support users' competences to understand and contextualize the paid (and unpaid) content they see online.<sup>89</sup> This concerns especially the way ads are displayed and what disclaimers they have (see 4.3).

### Self-commitments for fair data-driven campaigns

Most social media platforms' business models are predicated on offering vast targeting advertising opportunities to advertisers, which is why keeping an eye this "supply side" of political advertising is so important. But the "demand side" is also crucial: Political advertisers bear a responsibility for using the vast opportunities for targeting voters that digital platforms afford. This responsibility is especially pertinent for *political* advertisers because they do not sell goods and services, but market ideas and candidates that shape democratic processes for everyone. At the very least, advertisers could voluntarily refrain from certain uses of platforms' offers or to make their use transparent.<sup>90</sup> If self-restraint does not work, legislators should mandate political advertisers to restrict their data-driven advertising. Unsurprisingly, neither self-commitments nor meaningful legislative action have emerged in this field, due to concerns that they could hurt parties' own outreach.

#### Self-commitments by political parties

Political parties could set an example by agreeing on a cross-party self-commitment ahead of the next election. NGOs, associations and other political advertisers should explicitly be invited to join and improve the agreed-upon code of conduct over time. Parties could pledge, for instance, to refrain from

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88 Nathalie Maréchal et al., "RDR Corporate Accountability Index: Draft Indicators – Transparency and Accountability Standards for Targeted Advertising and Algorithmic Decision-Making Systems" (Washington, DC: Ranking Digital Rights, October 2019), 35–37, [https://rankingdigitalrights.org/wp-content/uploads/2019/10/RDR-Index-Draft-Indicators\\_-\\_Targeted-advertising-algorithms.pdf](https://rankingdigitalrights.org/wp-content/uploads/2019/10/RDR-Index-Draft-Indicators_-_Targeted-advertising-algorithms.pdf).

89 For suggestions on cues for online content (not necessarily ads) that might help users, see Philipp Lorenz-Spreen et al., "How Behavioural Sciences Can Promote Truth, Autonomy and Democratic Discourse Online," *Nature Human Behaviour*, in press 2020.

90 The European Commission made recommendations to member states and political parties on this ahead of the 2019 European Parliament elections, see European Commission, "Commission Recommendation on Election Cooperation Networks, Online Transparency, Protection against Cybersecurity Incidents and Fighting Disinformation Campaigns in the Context of Elections to the European Parliament (C(2018) 5949 Final)" (Brussels: European Commission, September 12, 2018), 8, [https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-cybersecurity-elections-recommendation-5949\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-cybersecurity-elections-recommendation-5949_en.pdf).

using behavioral data for advertising, targeting people based on their (inferred) vulnerabilities, spreading disinformation, doxing opponents, seeking to demobilize voter groups and tracking users on the web and via their mobile phones. They could commit to clear labeling/imprints on their ads, to adhere to minimum sizes of their target audiences, to displaying certain ads without any targeting criteria and to conduct data protection impact assessments ahead of each election season. Campaigns have always gotten heated, dirty and personal, but the opportunities available for political advertisers online make such transgressions easier. Therefore, clear commitments for fair online campaigns are valuable.

Why voluntary agreements have not worked

So far, reaching cross-party agreement in Germany has been unsuccessful. With the current set-up of both state and federal parliaments, finding such agreement will continue to be hard. In North Rhine-Westphalia, an attempt by the Greens to get others on board with a draft “fairness treaty” failed miserably in 2017 because parties did not want to cooperate with each other.<sup>91</sup> Parties did not succeed in establishing joint standards ahead of the 2017 federal elections, either. Only individual party pledges were published. For example, the German Green party stated they opposed microtargeting as seen in the US, but they still said that targeting voters was part of a professional campaign. Their “self-commitment for a fair 2017 federal election” also included the pledge to clearly label party messages and to refrain from spreading disinformation.<sup>92</sup>

If parties themselves do not step up, other political advertisers and/or activists could take the lead and push for a consensus among the parties later. Ireland provides an example in this regard. Ahead of the February 2020 elections, a group of academics and activists drew up a short “fair play pledge” for online campaigning that eventually most parties signed on to.<sup>93</sup> In the absence of clear legislation on online political ads and communication, it was used as a

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91 Lenz Jacobsen, “Wahlkampf: Was ist schon fair,” *DIE ZEIT*, March 16, 2017, <https://www.zeit.de/politik/deutschland/2017-03/die-gruenen-nrw-wahlkampf-fairness/komplettansicht>; see also Ingo Dachwitz, “Wahlkampf in der Grauzone: Die Parteien, das Microtargeting und die Transparenz,” *netzpolitik.org*, September 1, 2017, <https://netzpolitik.org/2017/wahlkampf-in-der-grauzone-die-parteien-das-microtargeting-und-die-transparenz/>.

92 Bundesvorstand Bündnis 90/Die Grünen, “Grüne Selbstverpflichtung für einen fairen Bundestagswahlkampf 2017,” Bündnis 90/Die Grünen, February 13, 2017, [https://cms.gruene.de/uploads/documents/20170213\\_Beschluss\\_Selbstverpflichtung\\_Fairer\\_Bundestagswahlkampf.pdf](https://cms.gruene.de/uploads/documents/20170213_Beschluss_Selbstverpflichtung_Fairer_Bundestagswahlkampf.pdf).

93 Fair Play Pledge, “Fair Play Pledge,” Fair Play Pledge, 2020, <https://fairplaypledge.org>; Elaine Burke, “Irish Academics Fill ‘Gaping Hole’ in Election Process with Fair Play Pledge,” *Silicon Republic*, January 23, 2020, <https://www.siliconrepublic.com/innovation/general-election-online-campaigns-fair-play-pledge>.



point of reference for unfair campaign tactics.<sup>94</sup> In Austria, too, activists succeeded in getting most parties on board with a digital campaigning fairness and transparency pledge in 2017.<sup>95</sup>

Clear legal framework  
for digital campaigning  
would help

In Germany, a cross-party self-commitment to a code of conduct that specifically addresses online political campaigning issues is still missing. Even if there were a code of conduct, it would be voluntary and likely lack sanctions. Therefore, ideally, a legislative discussion would clarify what rules should apply for what political communication. Parties and other political advertisers have little incentives to restrict their own campaigning. However, elected officials should look beyond their own legislative terms and consider what guidelines would help fair digital campaigning in the long run. Especially with a view to future election campaigns and new political advertisers, this is necessary.

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94 Jennifer Bray, “Fine Gael Says Parody ‘No’ Video Breaks Fair Play Pledge,” *The Irish Times*, February 1, 2020, <https://www.irishtimes.com/news/politics/fine-gael-says-parody-no-video-breaks-fair-play-pledge-1.4159085>.

95 NETPEACE, “Fünf Parteien unterzeichnen NETPEACE Fairness- und Transparenz-Pakt,” NETPEACE, October 7, 2017, <https://www.netpeace.eu/fairness-und-transparenz-pakt/>.



## 3. How to Minimize the Risk of Big-Money Interference via Political Online Advertising

### 3.1 Need for action due to zone-flooding

By flooding social media feeds, video portals and search engine result pages with ads, political advertisers can use the scale and algorithmic delivery of online advertising to crowd out opposing voices. Any political advertiser with deep pockets, be it a little-known outside political campaign or an established incumbent candidate, can buy their way into people's online news and information space. In the hypothetical case that a political advertiser had a substantial amount of money at its disposal (maybe from a big donation or an inheritance), they could easily pay to reach millions of people in a short amount of time on a social network. This would come at the expense of financially weaker political actors. In commercial advertising, such a distribution of power might be justifiable, in political marketing, it raises questions about fair political competition (see case in point 3).

Discrimination in favor of well-heeled advertisers

Such zone-flooding<sup>96</sup> is a form of discrimination in favor of moneyed advertisers, which can lead to other political opinions and candidates with less financial clout being drowned out. Policy issues addressed in hundreds or thousands of ads are discussed among voters and in the media, and the advertiser's name recognition goes up.<sup>97</sup> With financial backing, a political topic or position can thus be boosted, creating an artificially inflated discussion around it, or it can be framed in a certain way. For instance, buying thousands of ads that only talk about migration in security and defense terms might lead to a political debate that does not focus much on other perspectives on the

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96 Cf. Sean Illing, "Flood the Zone with Shit': How Misinformation Overwhelmed Our Democracy," Vox, January 16, 2020, <https://www.vox.com/policy-and-politics/2020/1/16/20991816/impeachment-trump-bannon-misinformation>; Anne Applebaum, "The New Censors Won't Delete Your Words — They'll Drown Them out," *The Washington Post*, February 8, 2019, [https://www.washingtonpost.com/opinions/global-opinions/the-new-censors-wont-delete-your-words--theyll-drown-them-out/2019/02/08/c8a926a2-2b27-11e9-984d-9b8fba003e81\\_story.html](https://www.washingtonpost.com/opinions/global-opinions/the-new-censors-wont-delete-your-words--theyll-drown-them-out/2019/02/08/c8a926a2-2b27-11e9-984d-9b8fba003e81_story.html); Tim Wu, "Is the First Amendment Obsolete?," *Knight First Amendment Institute*, September 1, 2017, <https://knightcolumbia.org/content/tim-wu-first-amendment-obsolete>.

97 A most commonly used example comes from the US, where Michael Bloomberg's presidential election ads on Facebook received more than 1.6 billion views, see Julia Carrie Wong, Michael Barton, and Joseph Smith, "\$45m, 1.6bn Views and 'Crazy Donald': How Bloomberg Bought Your Facebook Feed," *The Guardian*, February 21, 2020, <https://www.theguardian.com/us-news/2020/feb/21/mike-bloomberg-facebook-ad-campaign>.

topic. It is noteworthy that this option to reach millions of German voters is also available for actors from abroad.

### **Case in point 3: How to use Facebook ads to become the biggest party in the Netherlands**

In the Netherlands, political parties receive subsidies based on their number of members. Each January 1, the member count determines the subsidies. According to research by Dutch journalists, the party Forum for Democracy (FvD) used Facebook ads in November and December 2019 to attract new members, generating millions of impressions.<sup>98</sup> The party likely spent more than 240,000 euros on the campaign. That is more than the four governing parties spent combined in over a year.<sup>99</sup> In the end, 9,000 people signed up as new party members ahead of the deadline (probably not all because of the ad campaign, though), making FvD the biggest party in the Netherlands. The new members' annual fees alone rake in at least 225,000 euros and adding the subsidies, that number reaches around 300,000 euros.

The FvD's campaign may have violated data protection rules and skirted transparency guidelines by obscuring the source funding for advertising. Apart from that, the big-money ad push is not illegal. In any case, it shows how political advertising can alter the political landscape.

## **3.2 Weaknesses of existing rules and measures**

In the traditional offline ad world, Germany has limitations and transparency requirements in place to deal with the risk of big-money interference via political advertising. Broadcasting regulation and the law on political parties touch upon this. Fitting guidelines are missing for the online ad space.

### **Broadcasting regulation: Limits on political ads on TV**

Current broadcasting regulation has limited political advertising on traditional TV and radio and thus prevented zone-flooding. These rules are laid down in the Interstate Broadcasting Treaty, Germany's key legislation on broadcasting defined by the federal states, and each states' specific broadcasting and media laws. Generally speaking, there is a differentiation between commer-

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<sup>98</sup> Eric van den Berg and Tijmen Snelderwaard, "Zo werd FvD de grootste partij van Nederland," *NPO3.nl*, April 8, 2020, <https://www.npo3.nl/brandpuntplus/fvd-ledenwerving-facebook>.

<sup>99</sup> Using Facebook's Ad Library despite its flaws (see 4.2), it seems the VVD, CDA and Christenunie spent 48,440 euros, 71,539 euros and 5,677 euros, respectively, between March 2019 and mid-April 2020, for a total of 125,656 euros. D66 apparently did not spend any money on Facebook ads.



cial advertising and “ads of a political, ideological or religious kind”.<sup>100</sup> The latter type is prohibited and this prohibition also includes online audiovisual media outlets such as broadcasters’ web offers. An exception is in place only ahead of elections and then only for political parties. Furthermore, in those cases, broadcasters cannot charge political parties for running ads beyond the costs they incur.<sup>101</sup> The overall ad distribution considers all parties running in an election: Broadcasters are expected to adhere to the standard of “graded equality of opportunities” for party political ads, allotting airtime based on a number of factors. Electoral success in the previous election is key, but other parameters include party size, number of members and years of existence.<sup>102</sup> For example, the German opposition parties get at least two ads and the biggest party should not have more than five times the airtime of smaller parties. This is mostly to ensure that small parties are not drowned out by bigger ones. Overall, these rules make it hard for political parties to gain an undue advantage via TV ads, because they cannot flood the airwaves, even if they had a lot of money to do so.

Print ads, meanwhile, are not limited by rules in the Broadcasting Treaty. There does exist a voluntary, self-regulatory ethics code for print media that includes some disclaimer rules on advertising. But print ads are quite expensive, making any flooding more costly than on the online ad duopoly of Facebook and Google.

New media regulation:  
Ambiguity on political  
ads online

The Interstate *Media Treaty*, which updates the Interstate *Broadcasting Treaty*, continues Germany’s long-held regulatory stance regarding political ads on radio and TV.<sup>103</sup> The treaty is a major reform of German broadcast and media

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100 § 8 (9) MStV-E, Staatskanzlei Rheinland-Pfalz, “Staatsvertrag zur Modernisierung der Medienordnung in Deutschland: Entwurf,” December 5, 2019, [https://www.rlp.de/fileadmin/rlp-stk/pdf-Dateien/Medienpolitik/ModStV\\_MStV\\_und\\_JMStV\\_2019-12-05\\_MPK.pdf](https://www.rlp.de/fileadmin/rlp-stk/pdf-Dateien/Medienpolitik/ModStV_MStV_und_JMStV_2019-12-05_MPK.pdf).

101 § 68 (2) MStV-E, Staatskanzlei Rheinland-Pfalz; similar rules are found in German states’ individual broadcasting laws.

102 For national private broadcasters, this is not laid down in law, but in a nonbinding recommendation by the state media authorities (for other broadcasters, the state broadcasting laws apply), see Die Medienanstalten, “Leitfaden der Medienanstalten zu den Wahlsendezeiten für politische Parteien im bundesweit verbreiteten privaten Rundfunk” (Berlin: Die Medienanstalten, March 27, 2019), [https://www.medienanstalt-nrw.de/fileadmin/user\\_upload/lfm-nrw/Service/Rechtsgrundlagen/Leitfaden\\_Medienanstalten-Wahlsendezeiten-politische-Parteien-im-bundesweit-verbreiteten-privaten-Rundfunk\\_2019.pdf](https://www.medienanstalt-nrw.de/fileadmin/user_upload/lfm-nrw/Service/Rechtsgrundlagen/Leitfaden_Medienanstalten-Wahlsendezeiten-politische-Parteien-im-bundesweit-verbreiteten-privaten-Rundfunk_2019.pdf).

103 § 8 (9) MStV-E, Staatskanzlei Rheinland-Pfalz, “Staatsvertrag zur Modernisierung der Medienordnung in Deutschland: Entwurf.”

regulation.<sup>104</sup> For the first time ever, media regulation in Germany is set to cover social media companies, search engines and online video portals: Ad platforms such as Facebook, Google and YouTube will likely fall under German media regulation soon. While creating some oversight rules for big tech companies is a welcome move, the draft does leave some open questions<sup>105</sup>, especially regarding political advertising online. The state media authorities are developing statutes to accompany the treaty that will address some of these questions. For example, it is yet to be determined how political advertising is defined in detail and it is unclear what platforms are covered by political advertising rules in what way. New disclaimer rules for political advertising also need to be spelled out: For political ads, it is not enough anymore to merely disclose that it is an advertisement, but the advertiser or source needs to be disclosed now as well.<sup>106</sup> What this disclaimer requirement means in practice, is still to be seen.

Legal transparency requirements for political parties

Apart from transparency requirements in media regulation, German law aims to create some openness regarding campaign financing and foreign interference. Political parties are required to submit an annual report on their income and expenditures, including campaign costs, to the president of the German parliament (“Bundestag”). In these reports, they must also publish donors (with their names and addresses), if their donations exceed 10,000 euros. Donations from abroad are only allowed in certain circumstances.<sup>107</sup> The parliament’s president can task external accountants with cross-checking the reports if

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104 The European Commission has criticized the draft as violating EU law in certain instances. It is possible the treaty, once passed, will end up being discussed by the European Court of Justice, see Marc Liesching, “EU Kommission: Medienstaatsvertrag verstößt gegen EU-Recht,” *beck-blog*, April 29, 2020, <https://community.beck.de/2020/04/29/eu-kommission-medienstaatsvertrag-verstoest-gegen-eu-recht>.

105 For initial discussions, see Mackenzie Nelson and Julian Jaursch, “Germany’s New Media Treaty Demands That Platforms Explain Algorithms and Stop Discriminating. Can It Deliver?,” *AlgorithmWatch*, March 10, 2020, <https://algorithmwatch.org/en/story/new-media-treaty-germany/>; Matthias Cornils, “Der globalen Netzwerke Zählung? Die Intermediärregulierung im neuen Medienstaatsvertrag” (Köln, December 9, 2019), 201, <https://www.mainzer-medieninstitut.de/wp-content/uploads/Cornils-Folien-Vortrag-K%C3%B6ln-2019.pdf>; Jan Christopher Kalbhenn, “New Diversity Rules for Social Media in Germany,” *Centre for Media Pluralism and Freedom*, February 21, 2020, <https://cmpf.eui.eu/new-diversity-rules-for-social-media-in-germany/>; Torben Klaus, “Medienrecht: Der schwierige Weg in die Praxis,” *Tagesspiegel Background Digitalisierung & KI*, April 17, 2020, [https://utf.rdir.de/form.do?agnCI=1024&agnFN=fullview&agnUID=D.B.CVUs.GvT.BsrGC.A.bzq3ZlqAdahkg6zulHG0Bb4F-UFkZbU4wtKEbZZpZ49XBNW\\_XS1gXSY7QltAorVWrXFLgfsek5rDEZafn1cUCQ](https://utf.rdir.de/form.do?agnCI=1024&agnFN=fullview&agnUID=D.B.CVUs.GvT.BsrGC.A.bzq3ZlqAdahkg6zulHG0Bb4F-UFkZbU4wtKEbZZpZ49XBNW_XS1gXSY7QltAorVWrXFLgfsek5rDEZafn1cUCQ).

106 § 22 (1) MStV-E, Staatskanzlei Rheinland-Pfalz, “Staatsvertrag zur Modernisierung der Medienordnung in Deutschland: Entwurf.”

107 § 25 PartG, Bundesamt für Justiz, “PartG – Gesetz über die politischen Parteien,” 2018, <https://www.gesetze-im-internet.de/partg/BJNR007730967.html>.





mistakes are suspected and can, ultimately, levy fines. These rules, laid down in the law on political parties, allow the parliamentary administration to check undue (foreign) financial interference in the German political process. It also enables interested citizens as well as researchers to get some idea of who is financing German political parties and what these parties are spending their money on.

Shortcomings of  
existing campaign  
finance oversight

This oversight mechanism has been criticized because it is rather open to partisan capture, considering the president of the Bundestag is a partisan politician traditionally from the parliament's biggest faction.<sup>108</sup> Furthermore, the task of evaluating the annual reports falls to a small number of experts in the Bundestag administration. This leads to serious weaknesses in campaign finance auditing. One obvious result is the delay in publishing the reports, which hinders public interest scrutiny. For example, the reports for 2017 (when elections to the federal parliament were held) were published only in January 2019. By then, reading up on what donors gave what amount of money to what parties is rather pointless with regards to the actual election campaign (even if donations above 50,000 euros have to be disclosed immediately). Also, the reports themselves are not meant to provide detailed information on parties' ad spending. Under "costs of election campaigns", there is no further distinction made regarding ad buys.

The reports are only required for political parties. But online, almost anyone can buy political advertisement. Non-party ad activities are not captured anywhere beyond the platforms' own ad archives (see 4.2). Legal scholars<sup>109</sup>

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108 Office for Democratic Institutions and Human Rights, "Federal Republic of Germany. Elections to the Federal Parliament (Bundestag), 24 September 2017. OSCE/ODIHR Election Expert Team Final Report" (Warsaw: Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights, November 27, 2017), 11, <https://www.osce.org/odihr/elections/germany/358936?download=true>; Group of States against Corruption, "Third Evaluation Round. Evaluation Report on Germany on Transparency of Party Funding (Theme II)" (Strasbourg: Council of Europe, December 4, 2009), 29, <https://rm.coe.int/16806c6362>; Sophie Schönberger, "Geld und Demokratie," *Merkur*, May 23, 2018, <https://www.merkur-zeitschrift.de/2018/05/23/rechtskolumne-geld-und-demokratie/>; Anna von Notz, "Dritte im Bunde: Für mehr Transparenz in der Partei- und Wahlkampffinanzierung," *Verfassungsblog*, May 25, 2019, <https://verfassungsblog.de/dritte-im-bunde-fuer-mehr-transparenz-in-der-partei-und-wahlkampffinanzierung/>; Jelena von Achenbach, "No Case for Legal Interventionism: Defending Democracy Through Protecting Pluralism and Parliamentarism," *Verfassungsblog*, December 12, 2018, <https://verfassungsblog.de/no-case-for-legal-interventionism-defending-democracy-through-protecting-pluralism-and-parliamentarism/>.

109 Alexandra Bäcker and Heike Merten, "Transparenz für Wahlwerbung durch Dritte," *Zeitschrift für Parteienwissenschaften* 25, no. 2 (November 27, 2019): 235-46 November 27, 2019, <https://mip.pruf.hhu.de/article/view/140/142>.



and the Bundestag administration itself<sup>110</sup> have grappled with a related issue for years, which could be exacerbated by the online ad environment: How can “parallel actions” be accounted for? This refers to outside financing of events or media that benefit a certain party, without being directly coordinated with that party. Detecting and accounting for such parallel actions is hard already in the offline sphere (see case in point 4). Online, it is even trickier due to the opacity of platform ad targeting and algorithmic delivery, combined with the sheer number of ads that can be distributed in a short time. Current rules do not reflect these potential dangers of the online ad space.

#### **Case in point 4: Shady campaign financing for a German party’s offline and online advertising**

Journalists have exposed potential campaign finance violations by the German party Alternative für Deutschland (AfD).<sup>111</sup> Wealthy supporters apparently sought a way to lend a hand to the party without their names appearing in public donors’ lists at the Bundestag administration, similar to how “Super PACs” allow large anonymous donations in the US. For example, a Swiss company indirectly financed advertising material in support of the AfD.<sup>112</sup> The most visible aspect of this ad campaign was a widely distributed pro-AfD print magazine as well as street posters, the cost of which dwarfed official campaign budgets for the AfD and its competitors. But there was also online advertising involved: According to investigative reporting by German journalists, that money bought AfD-friendly ads on Google.<sup>113</sup> The party maintained it never coordinated with the Swiss company.

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110 Präsident des Deutschen Bundestags, “Unterrichtung durch den Präsidenten des Deutschen Bundestages: Bericht über die Rechenschaftsberichte 2012 bis 2014 der Parteien sowie über die Entwicklung der Parteienfinanzen gemäß § 23 Absatz 4 des Parteiengesetzes.” (Berlin: Deutscher Bundestag, December 22, 2016), 50, <http://dip21.bundestag.de/dip21/btd/18/107/1810710.pdf>.

111 Marcus Bensmann and Justus von Daniels, “Der AfD-Spendenskandal – Die Übersicht,” *CORRECTIV*, November 26, 2019, <https://correctiv.org/aktuelles/neue-rechte/2019/11/26/der-afd-spendenskandal-die-uebersicht/>.

112 Peter Kreysler, “Kritik von Politikern und LobbyControl – Graubereich Parteienfinanzierung,” *Deutschlandfunk*, June 21, 2018, [https://www.deutschlandfunk.de/kritik-von-politikern-und-lobbycontrol-graubereich.724.de.html?dram:article\\_id=420985](https://www.deutschlandfunk.de/kritik-von-politikern-und-lobbycontrol-graubereich.724.de.html?dram:article_id=420985).

113 Christian Fuchs, Paul Middelhoff, and Fritz Zimmermann, “AfD: Millionen aus der Grauzone,” *DIE ZEIT*, May 18, 2017, <https://www.zeit.de/politik/deutschland/2017-05/afd-partei-foerderung-verein-geld/komplettansicht>.

The Bundestag administration as campaign finance oversight body later became active based on journalistic reporting and has already fined the AfD in some cases for illegal campaign financing.<sup>114</sup> This campaign financing scandal shows how hidden donations can evade oversight, and how this can be exploited for offline and online advertising.

### 3.3 Policy options

#### Limiting the volume of political ads online

To address zone-flooding, the number of political ads on platforms needs to be reduced. A quota, distantly related to the principle of graded equal opportunity from broadcasting, could be of help here:<sup>115</sup> Based on certain criteria, political advertisers could be allotted a maximum number of ads. The criteria from broadcasting would have to be expanded considerably and adapted to the online world. For instance, political advertisers that are not parties need to be included. A minimum volume could be related to the ads per week instead of airtime in minutes. A fair and dynamic quota system is preferable to a political advertising ban, which could potentially hurt smaller and lesser known advertisers.<sup>116</sup> Nonetheless, many questions around political ads restrictions remain open (see table 2).

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114 Sven Röbel and Severin Weiland, “Wahlhilfe der Goal AG: AfD-Chef Meuthen handelte ‘fahrlässig,’” *SPIEGEL ONLINE*, February 14, 2020, <https://www.spiegel.de/politik/deutschland/afd-chef-joerg-meuthen-handelte-laut-gericht-fahrlaessig-bei-wahlhilfe-der-schweizer-goal-ag-a-00000000-0002-0001-0000-000169470892>.

115 Cf. Jochen König and Juri Schnöller, “Wie digitale Plattformen sich um Transparenz bemühen,” *Politik & Kommunikation*, July 9, 2019, <https://www.politik-kommunikation.de/ressorts/artikel/wie-digitale-plattformen-sich-um-transparenz-bemuehen-1923588873>.

116 Kreiss and Perault, “Four Ways to Fix Social Media’s Political Ads Problem – Without Banning Them”; Jessica Alter, “Banning Digital Political Ads Gives Extremists a Distinct Advantage,” *TechCrunch*, November 8, 2019, <https://social.techcrunch.com/2019/11/08/banning-digital-political-ads-gives-extremists-a-distinct-advantage/>; Kafka, “Facebook’s Political Ad Problem, Explained by an Expert.”



**Table 2: Open questions on restricting political ads to address zone-flooding**

When are political ads restricted?	Whose political ads are restricted?	Are the number of ads or is the amount spent limited?	Are ad limitations relative or absolute?
Restrictions/bans would need to be in place year-round to address zone-flooding (blackout phases or only allowing ads during a certain time window would not address zone-flooding)	Restrictions need to include candidate, party and issue ads → clear definition is essential	Spending caps would be part of a larger debate on campaign financing	Absolute spending/volume caps would address zone-flooding but might hurt small advertisers
General ban might put smaller advertisers at a disadvantage			Relative spending/volume caps could address zone-flooding → would need to be adapted for the online sphere
Any exceptions make enforcement more difficult*			

\*Twitter, for example, generally does not allow candidates or politicians to buy ads. Government agencies may do that, though. Ads on legislative processes are forbidden, while ads on political topics not directly related to a piece of legislation are fine. Enforcing these distinctions comes with a financial cost for platforms as well as a societal cost by leaving decision-making on such issues with companies.

If European legislators (or, in Germany, state media authorities within the framework of the Interstate Media Treaty) decide to restrict political online advertising, this could help prevent zone-flooding. However, in that case, the difficult and important considerations on such restrictions should be discussed in an open process to account for the specific characteristics of political advertising online and to prevent potential discriminations. Over the long term, decisions on this should not be made solely by public authorities at the federal state level, but by legislators at the EU level.

Addressing potential free speech issues

Any ad limitations incur certain free speech issues, as they restrict people's and organizations' ability to make their voices heard. However, these restrictions only apply when people want to *pay* to place messages in other people's news and information space. There is precedent in German broadcasting regulation for such restrictions. Even political parties, who under Article 21 of the Basic Law are specifically tasked with supporting citizens' "political will-formation", face such limitations in broadcasting. Parties, candidates, politicians, political



organizations and citizens would still not be bound by any other law than the constitution, if they want to speak out on any political topic.<sup>117</sup> Just paying to reach voters would have some boundaries.

### **Campaign spending caps**

Capping expenditures on political advertising or political campaigning more generally could help prevent zone-flooding, the practice of advertisers buying their way into many people's social media feeds. In other countries, similar measures are already in place.<sup>118</sup> In the UK, for instance, there are definitions of political advertisers and limits for campaign spending.<sup>119</sup> Due to differences in political culture and electoral law, rules from different countries cannot be adopted in Germany or throughout the EU in the same way. More generally, the same caveats mentioned for restrictions on the number of ads (see table 2 above) apply to restrictions on the spending on ads. For example, spending caps in absolute terms might put smaller advertisers at a disadvantage, who cannot rely on larger online followings to reach people. These considerations should not, however, put off necessary discussions on improving financial transparency regarding both sources and expenditure of campaign money. Introducing some hurdles for political advertisers, established and checked by independent, pluralistic bodies, can help in dealing with the risk of zone-flooding.

### **Mandatory political advertiser verifications**

Clearly defining and potentially limiting political advertising to prevent zone-flooding on social media would, of course, not prevent bad actors from trying to circumvent the rules. For example, if there were restrictions on the number of ads a party could run (see above), the party could attempt to use different accounts from political foundations or other supporters, or even try to set up shell companies to buy more ads. Therefore, additional self-commitments by reputable political advertisers (see 2.3) and expanded transparency tools for independent public interest scrutiny (see 4.3) are necessary. It will be especially crucial to improve platform verification mechanisms, make them mandatory and have them checked by an independent body.

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<sup>117</sup> Platforms could have their own, stricter guidelines on what is allowed. If that is the case and political ads are removed, platforms should be required to explain the removal, see Singh, "Special Delivery," 60–61.

<sup>118</sup> ACE Electoral Knowledge Network, "Political Advertising and Campaign Spending Limits," 2020, <https://aceproject.org/ace-en/topics/me/mea/mec04/mec04b03>.

<sup>119</sup> The Electoral Commission, "Campaign Spending," The Electoral Commission, 2020, <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/financial-reporting/campaign-spending>.



Shortcomings of existing  
advertiser verification

Big platforms such as Facebook and Google have set up verification mechanisms for political advertisers. Google has even expanded the requirement for advertisers to verify themselves to all advertisers, commercial and political.<sup>120</sup> These voluntary “know your customer” measures are helpful, but they have shortcomings that need to be addressed. Verification mechanisms differ across platforms<sup>121</sup>, making it at times easier and harder for political advertisers to pay to get their messages out, and making it tough for outside observers to check the mechanism in any case. Verification requirements can also be rather easily circumvented<sup>122</sup>, leading to some political ads not being included in platforms’ ad archives<sup>123</sup>. Platforms should continue to invest in improvements to their verification processes. If voluntary actions do not suffice, mandatory rules with options for sanctions by an independent body should be instituted.<sup>124</sup> For example, platforms could be required to report on their verification processes, including any errors in falsely verifying political ad accounts.

Expanded campaign  
finance oversight  
necessary

Even if obligations for platforms to develop (better) advertiser verifications were instituted, this issue entails deeper questions beyond platforms’ responsibilities. Verifying whether a candidate or organization is a political advertiser should not rest solely with platforms, as is currently the case for the online space, at least in Germany. For example, in the US, Google requires advertisers to provide their Federal Election Commission ID, if they want to buy political advertising, allowing for a cross-check with an independent body. Similar IDs do not exist in Germany. The Federal Returning Officer keeps a list only of political parties, so a cross-check with this list would miss many of the other political advertisers online. More importantly, though, the Federal Returning Officer has no mandate in anything related to campaign finance or oversight but is exclusively responsible for the supervision of the proper conduct of federal and European Parliament elections. Furthermore, the

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120 John Canfield, “Increasing Transparency through Advertiser Identity Verification,” *Google Ads Blog*, April 23, 2020, <https://blog.google/products/ads/advertiser-identity-verification-for-transparency/>.

121 Sessa-Hawkins and Sridharan, “MapLight’s Guide to Political Ad Transparency on Facebook, Twitter, and Google.”

122 Laura Edelson et al., “An Analysis of United States Online Political Advertising Transparency,” *ArXiv:1902.04385*, February 12, 2019, <http://arxiv.org/abs/1902.04385>; Riley, “This Candidate Does Not Exist,” *Riley*, April 21, 2020, <http://posts.walr.com/this-candidate-does-not-exist>; Sessa-Hawkins and Sridharan, “MapLight’s Guide to Political Ad Transparency on Facebook, Twitter, and Google.”

123 Márcio Silva et al., “Facebook Ads Monitor: An Independent Auditing System for Political Ads on Facebook,” *ArXiv:2001.10581*, January 31, 2020, <http://arxiv.org/abs/2001.10581>.

124 Kornbluh, Goodman, and Weiner, “Safeguarding Democracy Against Disinformation,” 31.

head of the agency is appointed by the federal government, which has been criticized as opening the body to partisan capture.<sup>125</sup> Taken together, the role of the Federal Returning Officer would have to be revamped and expanded, if it were to participate in the verification of political advertisers. Alternatively, a new system for registering not only political parties but also other political organizations would have to be established in Germany. Other countries, albeit with different electoral systems, have such distinctions. For example, the UK's Electoral Commission deals with parties, candidates and “non-party campaigners”.<sup>126</sup>

### Enhanced campaign finance auditing

Expanded campaign finance oversight would not only support verification processes that help in addressing zone-flooding (see above). There are more political advertisers than before who can fairly easily and cheaply reach many people. Modernizing transparency and accountability rules for political campaigns are thus also necessary in general to deal with these changed circumstances for paid political communication.

#### More detailed annual financial reports

Annual finance reports, that are already required for political parties, could be expanded to allow the auditing body more insights into campaign financing. For example, campaign expenditures could be itemized in greater detail to show what advertising costs were incurred for what advertising platforms. Disclosures for donations could be enhanced, as these could be and have been used for political campaigning. The current threshold for donations that need to be published in the annual reports is 10,000 euros. This threshold could be reduced.<sup>127</sup> The threshold for immediate publication is 50,000 euros, which the Council of Europe has repeatedly advised to lower as well.<sup>128</sup> More detailed information about financial backers from non-EU countries could place more scrutiny on potential foreign interference.

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<sup>125</sup> von Achenbach, “No Case for Legal Interventionism.”

<sup>126</sup> The Electoral Commission, “Campaign Spending.”

<sup>127</sup> DER SPIEGEL, “Experten fordern Änderung der Parteienfinanzierung,” *DER SPIEGEL*, June 5, 2010, <https://www.spiegel.de/spiegel/vorab/a-698904.html>; LobbyControl, “Verdeckte Wahlbeeinflussung stoppen!,” *LobbyControl*, November 14, 2018, <https://www.lobbycontrol.de/2018/11/verdeckte-wahlbeeinflussung-stoppen/>.

<sup>128</sup> Group of States against Corruption, “Third Evaluation Round. Second Addendum to the Second Compliance Report on Germany ‘Incriminations (ETS 173 and 191, GPC 2)’, ‘Transparency of Party Funding’” (Strasbourg: Council of Europe, June 4, 2019), 4–7, <https://rm.coe.int/third-evaluation-round-second-addendum-to-the-second-compliance-report/168094c73a>.



Reporting requirements also for non-political parties

Requiring such revamped reporting raises some new questions. Currently, specific rules are only in place for political parties to publicly account for their income and expenditures. There are no such transparency obligations for other political advertisers (although they might have to publish reports as well, depending on their legal form of organization). This creates a potentially discriminatory discrepancy between the reporting requirements for a small Bundestag party compared to a large civil society or economic lobbying organization, for instance. It highlights once more the need for an overarching political advertising definition (see 1.1) that includes not only political parties but captures other political campaigners as well, including issue-based campaigns. This touches upon the difficult topic of “parallel actions”, when non-party outsiders support candidates or parties.

Need for revamped independent campaign finance oversight

Increasing not only the level of detail of reporting but also the number of organizations required to deliver reports would put a huge additional strain on the existing, relatively small expert team in the Bundestag administration dealing with this. Therefore, resources for the Bundestag administration have to be increased. It could also be considered to find a different auditing system to address the “faulty design”<sup>129</sup> of having the parliament check political parties’ accounting reports in the first place (see 3.2). For example, German legislators could empower an independent body of external auditors to improve financial transparency and accountability in political campaigning.<sup>130</sup> Whether this means bolstering existing organizations such as the “Bundesrechnungshof” (federal audit office), as has been suggested<sup>131</sup>, or creating a new one, it is crucial to ensure the auditors’ independence and to equip them with enough resources to adequately do their job.<sup>132</sup>

Difficulties in overseeing political campaign financing

To be sure, it is legally difficult to oversee political campaigning, especially if it does not emanate from parties: Questions of privacy and freedom of expression come into play when discussing how transparent political donations and activities for political causes should be. Political parties and other campaigners

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129 von Notz, “Dritte im Bunde.”

130 Office for Democratic Institutions and Human Rights, “Federal Republic of Germany. Elections to the Federal Parliament (Bundestag), 24 September 2017. OSCE/ODIHR Election Expert Team Final Report,” 9.

131 Group of States against Corruption, “Third Evaluation Round. Second Addendum to the Second Compliance Report on Germany ‘Incriminations (ETS 173 and 191, GPC 2)’, ‘Transparency of Party Funding,’” 25–26; von Notz, “Dritte im Bunde.”

132 Another fairly obvious choice would be the “Bundeswahlleiter” (federal returning officer), but this office could be prone to partisan influence as well, as its head is appointed by the government, see von Achenbach, “No Case for Legal Interventionism”; von Notz, “Dritte im Bunde.”





might feel hindered in their ability to reach voters. Those are just some of the reasons why reforming the law on political parties has been a contentious issue for decades, without substantial developments regarding campaign financing.<sup>133</sup> Yet, there is precedent for requiring financial transparency from political campaigners, at least towards auditors but also to the public. Political donors need to publish their names and addresses, when donating more than 10,000 euros to political parties, for instance. Furthermore, legal scholars and activists have already made reform proposals that could help inform the debate.<sup>134</sup> For example, a clear definition of political campaigns and safeguards against censorship should be considered, such as ample time for campaigns to register ahead of elections.<sup>135</sup>

### Self-commitments for fair campaign financing

Advertisers should  
pledge to publish  
more detailed financial  
reports

In the absence of far-reaching campaign finance rules and oversight, political advertisers could take a first self-regulatory step towards improved campaign financing transparency themselves. This mirrors the proposed self-commitment for fair data use in digital political campaigns (see 2.3). For instance, political parties and other political advertisers could disclose more detailed income and expenditure reporting than is legally required, including a differentiation between online and offline advertising costs, and the sources of funding, especially if it comes from abroad. Payments for (ad) consultants could also be highlighted.<sup>136</sup>

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133 Cf. Deutscher Bundestag, “Drucksache 14/6711. Unterrichtung durch die Kommission unabhängiger Sachverständiger zu Fragen der Parteienfinanzierung. Anlagenband.” (Berlin: Deutscher Bundestag, July 19, 2001), <http://dip21.bundestag.de/dip21/btd/14/067/1406711.pdf>; Kommission unabhängiger Sachverständiger zu Fragen der Parteienfinanzierung, “Bericht der Kommission unabhängiger Sachverständiger zu Fragen der Parteienfinanzierung (BT-Drucksache 15/3140), <http://dip21.bundestag.de/dip21/btd/15/031/1503140.pdf>; DER SPIEGEL, “Experten fordern Änderung der Parteienfinanzierung”; Bäcker and Merten, “Transparenz für Wahlwerbung durch Dritte.”

134 Bäcker and Merten, “Transparenz für Wahlwerbung durch Dritte.”

135 LobbyControl, “Eckpunkte für eine Regelung des Parteisponsoring und der indirekten Wahlkampffinanzierung” (Berlin: LobbyControl, August 23, 2018), 6–7, [https://www.lobbycontrol.de/wp-content/uploads/Eckpunkte\\_Sponsoring\\_LobbyControl.pdf](https://www.lobbycontrol.de/wp-content/uploads/Eckpunkte_Sponsoring_LobbyControl.pdf).

136 Cf. Hamsini Sridharan and Ann M. Ravel, “Illuminating Dark Digital Politics: Campaign Finance Disclosure for the 21st Century” (Berkeley, CA: MapLight, October 2017), 9, <https://s3-us-west-2.amazonaws.com/maplight.org/wp-content/uploads/20171017200640/Illuminating-Dark-Digital-Politics.pdf>.



## 4. How to Enable Public Interest Scrutiny of Political Online Advertising

### 4.1 Need for action due to the volume and opacity of ads

With online political ads, it is hard for voters, but also journalists and researchers, to detect potential discrimination, to expose voter suppression and to call out negative campaigning, because there is almost no chance of surveying the large number of advertisers and advertisements on social media. In the UK, for instance, parties ran hundreds of online ads in a week<sup>137</sup>, and in Germany in 2019, it was more than 47,000 ads on Facebook alone (see case in point 5 below).

Obstacles in observing ads and engaging in counter speech

In many cases, the thousands upon thousands of online ads are slight variations of one and the same message: Sometimes different fonts are used, sometimes the wording varies, always trying to figure out what best catches users' attention. It is also not only political parties and candidates running ads anymore. Digital platforms allow almost any individual or group to buy ads<sup>138</sup>, further increasing the array of advertisers and advertisements to be analyzed. Moreover, ads are not only run during elections anymore, but can be part of year-round political messaging efforts. Taken together, this makes it hard to figure out which advertisers are out there, which communication strategies parties and other advertisers rely on and what effects this has.

Role of paid influencers

In addition, the lines between paid and unpaid content on online platforms are often unclear. Many platforms are designed to blur these lines<sup>139</sup>, offering up paid content in a stream of other content. It can get even blurrier, when advertisers employ influencers to spread their messages.<sup>140</sup> In this case, a

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137 John and Dotto, "UK Election: How Political Parties Are Targeting Voters on Facebook, Google and Snapchat Ads"; the four big parties ran over 13,000 ads in a month, according to researchers from New York University, see Mark Scott, "Six Charts That Explain the UK's Digital Election Campaign," *POLITICO*, November 29, 2019, <https://www.politico.eu/article/uk-general-election-facebook-digital-advertising-labour-conservatives-liberal-democrats-brexit-party-nyu/>.

138 Andreou et al., "Measuring the Facebook Advertising Ecosystem," 3.

139 Aaron Rieke and Miranda Bogen, "Leveling the Platform: Real Transparency for Paid Messages on Facebook," *Upturn*, May 2018, 5–6, <https://www.upturn.org/reports/2018/facebook-ads>.

140 An example from the US is Michael Bloomberg's presidential campaign using influencers, which was uncovered by journalists and other citizens, see Kate Knibbs, "The Influencer Election Is Here," *Wired*, February 13, 2020, <https://www.wired.com/story/election-2020-influencers/>.

political campaign does not directly pay platforms to display ads, but works with marketing agencies or individual influencers, so that these influencers promote certain political messages. Posts by influencers often do not fall under platforms’ advertising policies and can be hard to identify for voters.

Lastly, algorithm-based delivery (see 2.1) further complicates the critical analysis of political online advertising: It is unclear who sees which ads and why – and who *does not* see which ads and why. This online ad environment harbors a risk of paid political communication being used for propaganda purposes out of sight of any journalistic or other public scrutiny. This is a stark contrast to public advertising on the street and to publicized political messaging such as candidate speeches or rallies, where some public scrutiny is possible.

**Case in point 5: German political parties ran more than 47,000 Facebook ads in a year**

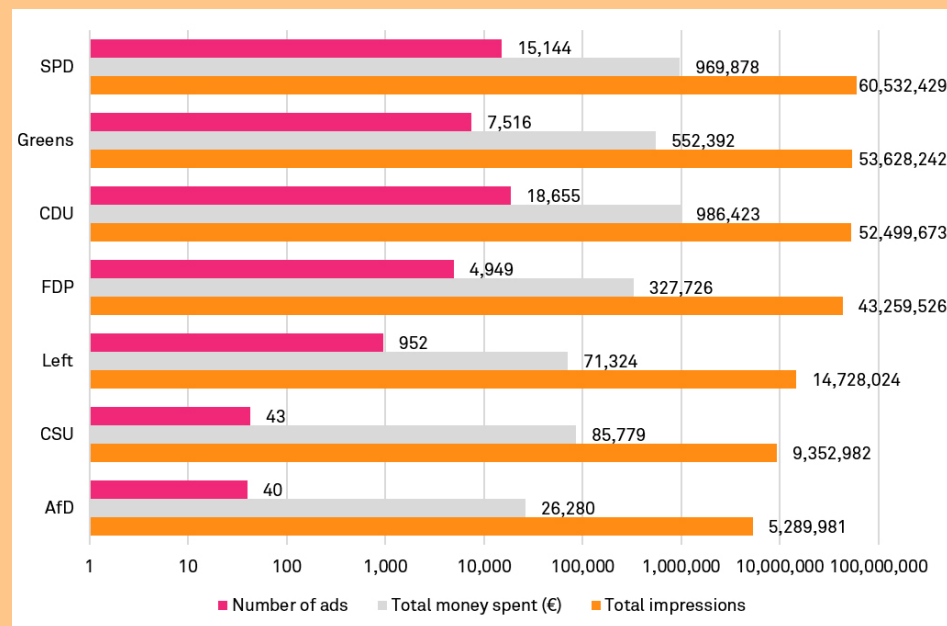


Figure 2: Amount of Facebook ads, ad expenditure and ad views by German parties in 2019

Note: Logarithmic scale. All numbers are estimates.

These estimates come from ad.watch, a project by Manuel Beltrán and Nayantara Ranganathan, who in a painstaking effort built a database for Facebook political ads meant to challenge “the lack of systematic access to data by Facebook”<sup>141</sup>. The statistics show the high number of ads by large German political parties alone, as other advertisers are not covered. In total, ad.watch estimates that in 2019, the year of the European Parliament elections, the parties ran 47,299 ads on Facebook for 3,019,802 euros, resulting in 239,209,857 impressions. On a daily average, that is an estimated 130 ads for 8,273 euros with 655,591 impressions. Studies on the 2019 election campaign covering time frames around the vote show different numbers, but still confirm the high count of ads: A journalistic investigation for the month before the election found more than 60,000 ads for a total price between 674,000 and 733,000 euros.<sup>142</sup> A study for the roughly two and a half months around the elections counted almost 47,000 ads for a price of over a million euros.<sup>143</sup>

These discrepancies and the fact that the statistics are estimates speaks to the difficulty of pinpointing even the volume of online ads. Therefore, this figure is also meant to symbolize the evasion of public scrutiny discussed in these paragraphs.

## 4.2 Weaknesses of existing rules and measures

For offline ads, some public scrutiny of ads is possible. The smaller number of ads and advertisers during a limited time frame allows the media, academia and the voting public to observe political advertising. Misleading or defamatory language can be called out. For instance, campaign posters and TV

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141 Manuel Beltrán and Nayantara Ranganathan, “Ad.Watch – Investigating Political Advertisements on Facebook,” *Exposing the Invisible*, 2020, <https://kit.exposingtheinvisible.org/en/what/ad-watch.html>.

142 Ingo Dachwitz, „Zahlen, bitte: So viel geben deutsche Parteien für Werbung auf Facebook aus“, *netzpolitik.org*, 23. Mai 2019, <https://netzpolitik.org/2019/zahlen-bitte-so-viel-geben-deutsche-parteien-fuer-werbung-auf-facebook-aus/>.

143 Hegelich und Serrano, „Microtargeting in Deutschland bei der Europawahl 2019“, 5.

ads are routinely presented to the media<sup>144</sup>, reviewed in academia<sup>145</sup> and are easily visible for most voters in the same way. TV and radio ads reach a broad audience and are embedded in journalistic or editorial formats. Voters can, theoretically, check out what campaign posters different parties use around their towns. Journalists and researchers can conduct content and rhetorical analyses of TV ads and leaflets. Candidates can at least glimpse the messages and messaging strategies of their competitors.

Platforms' ad archives  
only a first step

To allow for similar basic insights into the ads run on their platforms, companies such as Facebook, Google, Reddit, Snapchat and Twitter have developed ad archives. These public, online databases are supposed to contain all political ads along with some information on who paid for the ads and what users were targeted. This was an important and promising step to improve transparency and accountability surrounding political online advertising. In the case of Facebook, Google and Twitter, it came in part after pressure from the European Commission ahead of the 2019 European Parliament elections. The companies had agreed to the Commission's Code of Practice on Disinformation, which is a voluntary, self-regulatory agreement that, among other things, called for a "public disclosure of political advertising"<sup>146</sup>.

The ad archives are thus meant to ensure that voters themselves, but also journalists and researchers, can track and analyze political ads. Yet, there are many well-documented shortcomings of ad archives (see case in point 6). Since the Code of Practice has no sanction mechanism on this, the flawed ad archives remain a big hurdle for academic and public understanding of online political advertising.

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144 E.g., Ingo Rentz, "Bundestagswahl 2017: Mit diesen Plakaten gehen die großen Parteien ins Rennen," <https://www.horizont.net/marketing/nachrichten/Bundestagswahl-2017-Mit-diesen-Plakaten-gehen-die-grossen-Parteien-ins-Rennen-160225>; CDU, "Plakate zur Bundestagswahl," Christlich Demokratische Union Deutschlands, August 24, 2017, <https://www.cdu.de/artikel/plakate-zur-bundestagswahl>; dpa, Reuters, "Rennen um Platz drei: Grüne und Linken stellen Wahlplakate vor," July 22, 2017, <https://www.faz.net/aktuell/politik/gruenen-und-linken-stellen-wahlplakate-vor-15117413.html>.

145 E.g., Christina Holtz-Bacha, ed., *Die (Massen-)Medien im Wahlkampf: Die Bundestagswahl 2017* (Wiesbaden: Springer Fachmedien, 2019), [https://doi.org/10.1007/978-3-658-24824-6\\_12](https://doi.org/10.1007/978-3-658-24824-6_12); this book also contains a chapter touching on online ads.

146 European Commission, "EU Code of Practice on Disinformation," European Commission, September 26, 2018, 5, [https://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=54454](https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=54454); for discussions of the Code of Practice, see Jaurisch, "Regulatory Reactions to Disinformation: How Germany and the EU Are Trying to Tackle Opinion Manipulation on Digital Platforms," 14–16; Plasilova et al., "Assessment of the Implementation of the Code of Practice on Disinformation"; European Regulators Group for Audiovisual Media Services, "ERGA Report on Disinformation: Assessment of the Implementation of the Code of Practice," May 4, 2020, <http://erga-online.eu/wp-content/uploads/2020/05/ERGA-2019-report-published-2020-LQ.pdf>.

### Case in point 6: Platforms' voluntary ad archives seriously flawed

Granted, “[p]roviding access to tens of millions of ads through an A.P.I. is not a simple proposition”, writes a US journalist, “but it is also not an engineering feat for a company like Facebook. With 2.4 billion users, Facebook routinely rolls out complicated new features and products at scales that few tech firms could hope to manage.”<sup>147</sup> Yet, researchers have encountered significant hurdles in using tech companies’ ad archives for their analyses.<sup>148</sup> Many platforms have each designed their own ad archives, so there are differences among them, and some platforms such as TikTok do not have ad archives at all. Overall, though, they do not contain information necessary for a meaningful study of ads. Platforms have in some cases resisted more detailed disclosures.<sup>149</sup> Targeting metrics only include basic categories such as age and gender. The targeting data that is provided is presented in ranges that are too big (at least for Facebook and Google; for instance, Google offers the number of times an ad was shown in the range of 100,000 to one million<sup>150</sup>). Usability and searchability for researchers as well as download options and download speeds are insufficient.<sup>151</sup> Governmental<sup>152</sup>

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147 Matthew Rosenberg, “Ad Tool Facebook Built to Fight Disinformation Doesn’t Work as Advertised,” *The New York Times*, July 25, 2019, <https://www.nytimes.com/2019/07/25/technology/facebook-ad-library.html>.

148 European Partnership for Democracy, “Virtual Insanity: The Need to Guarantee Transparency in Online Political Advertising”; Edelson et al., “An Analysis of United States Online Political Advertising Transparency”; Laura Edelson, Tobias Lauinger, and Damon McCoy, “A Security Analysis of the Facebook Ad Library,” March 6, 2020, [http://damonmccoy.com/papers/ad\\_library2020sp.pdf](http://damonmccoy.com/papers/ad_library2020sp.pdf); Iwańska et al., “Who (Really) Targets You?”

149 Elizabeth Dubois, Fenwick McKelvey, and Taylor Owen, “What Have We Learned from Google’s Political Ad Pullout?,” *Policy Options*, April 10, 2019, <https://policyoptions.irpp.org/fr/magazines/avril-2019/learned-googles-political-ad-pullout/>; Hamsini Sridharan and Margaret Sessa-Hawkins, “States Countering Digital Deception,” MapLight, June 25, 2019, <https://maplight.org/story/states-countering-digital-deception/>.

150 Privacy International, “Social Media Companies Have Failed to Provide Adequate Advertising Transparency to Users Globally,” Privacy International, October 3, 2019, [https://privacyinternational.org/sites/default/files/2019-10/cop-2019\\_0.pdf](https://privacyinternational.org/sites/default/files/2019-10/cop-2019_0.pdf); see also Edelson et al., “An Analysis of United States Online Political Advertising Transparency,” 15–16.

151 Mozilla Foundation, “Facebook and Google: This Is What an Effective Ad Archive API Looks Like,” *The Mozilla Blog*, March 27, 2019, <https://blog.mozilla.org/blog/2019/03/27/facebook-and-google-this-is-what-an-effective-ad-archive-api-looks-like>; Rieke and Bogen, “Leveling the Platform”; Singh, “Special Delivery.”

152 French Ambassador for Digital Affairs, “Facebook Ads Library Assessment” (Paris: French Ambassador for Digital Affairs, 2019), <https://disinfo.quaidorsay.fr/en/facebook-ads-library-assessment>; French Ambassador for Digital Affairs, “Twitter Ads Transparency Center Assessment” (Paris: French Ambassador for Digital Affairs, 2019), <https://disinfo.quaidorsay.fr/en/twitter-ads-transparency-center-assessment>.

and non-governmental reports<sup>153</sup> have highlighted bugs and there were publicized cases of Facebook’s “Ad Library” breaking completely ahead of a UK election<sup>154</sup>. Researchers have therefore had to resort to work-arounds to gain a basic insight into how political advertising works on social media.<sup>155</sup> Lastly, ad archives at the big platforms are limited to large markets and do not cover political advertising globally.

As dominating ad platforms are thankfully continuing to work on the ad archives, some of these shortcomings have been addressed or are being addressed, while new ones might have emerged. Improvements are often thanks to cooperation with or pressure from academia and civil society, not because of legal obligations: None of the ad archive measures put in place by the platforms are required by law. Companies could thus shut down archives at any moment or make changes to its parameters, which could destroy researchers’ work.

It has to be noted that public interest scrutiny of political ads does not and should not entail censoring political opinions. The content of political ads must adhere to the constitution and criminal law, but for good freedom of speech reasons, there is no formalized procedure for state or non-state institutions to approve political messaging. For example, the state media authorities make it abundantly clear that neither they nor broadcasters are in the business of checking political ads<sup>156</sup>, and the Unfair Competition Act, “by far the most important instrument for the regulation of Internet advertising in Germany,

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153 Mozilla Foundation, “Facebook and Google: This Is What an Effective Ad Archive API Looks Like”; European Regulators Group for Audiovisual Media Services, “ERGA Report on Disinformation: Assessment of the Implementation of the Code of Practice,” 18.

154 Rory Smith, “The UK Election Showed Just How Unreliable Facebook’s Security System For Elections Really Is,” *BuzzFeed News*, January 14, 2020, <https://www.buzzfeednews.com/article/rorysmith/the-uk-election-showed-just-how-unreliable-facebooks>.

155 One example is the UK NGO Who Targets Me, which relies on volunteers to provide anonymous data for research on political ads on Facebook via a browser plug-in. Co-founder Sam Jeffers discussed this approach and its weaknesses at SNV, see Jaurisch, “Transcript for the Background Talk with Sam Jeffers on ‘Digital Disinformation – the New Default in Online Campaigning?’”; other examples are ad.watch, see Beltrán and Ranganathan, “Ad.Watch – Investigating Political Advertisements on Facebook”; and AdAnalyst, see Oana Goga, “Facebook’s ‘Transparency’ Efforts Hide Key Reasons for Showing Ads,” *The Conversation*, May 15, 2019, <https://theconversation.com/facebooks-transparency-efforts-hide-key-reasons-for-showing-ads-115790>.

156 Die Medienanstalten, “Leitfaden der Medienanstalten zu den Wahlsendezeiten für politische Parteien im bundesweit verbreiteten privaten Rundfunk,” 2.





does not apply to political advertising”<sup>157</sup>, only to commercial advertising. Calling out potential discrimination or defamation in political advertising is a public task, primarily fulfilled by the media, academia and the voters. Potential transgressions are handled in court.

### 4.3 Policy options

#### Mandatory improved and expanded ad archives

Ad archives can be helpful in creating transparency around political ads online. This is not an end in itself. Rather, the idea is that making online ads available in an archive can lead to public interest scrutiny: Advertisers and ad platforms can be held accountable “to the law, through litigation” and, crucially, “to public norms and values, through publicity”.<sup>158</sup> The ad archives can be a type of public disclosure mechanism that can lead to further investigations, thus functioning as an early-warning system.<sup>159</sup> Moreover, disclosing political ads publicly allows counter speech, for example, in cases of negative campaigning and disinformation.<sup>160</sup> In order to achieve these goals and to avoid some of the pitfalls of the vague call for “transparency”, existing ad archives need several improvements and need to be made obligatory.

To understand and investigate political advertising online, more information than is currently available is necessary, in a more reliable and faster way. Academics and civil society experts have made many proposals already, covering targeting and delivery transparency, data transparency, and source and financial transparency<sup>161</sup> (see case in point 6 above and table 3 below). All of this information is rather useless, however, if there are no researchers, civil society activists, regulators and maybe even voters to work with the data.<sup>162</sup> That is why support for independent research, for digital news and ad literacy and for strengthened enforcement agencies is crucial, as highlighted later in this section.

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157 Christina Etteldorf, “Germany,” in *Media Coverage of Elections: The Legal Framework in Europe* (Strasbourg: European Audiovisual Observatory (Council of Europe), 2017), 34, <https://rm.coe.int/16807834b2>.

158 Leerssen et al., “Platform Ad Archives,” 6.

159 Paddy Leerssen, “The Soap Box as a Black Box: Regulating Transparency in Social Media Recommender Systems,” March 19, 2020, 26, <https://doi.org/10.31228/osf.io/uhxcv>.

160 Cf. Abby K. Wood and Ann M. Ravel, “Fool Me Once: Regulating ‘Fake News’ and Other Online Advertising,” SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, September 18, 2018), <https://papers.ssrn.com/abstract=3137311>.

161 Dommett, “Regulating Digital Campaigning.”

162 Leerssen et al., “Platform Ad Archives,” 7.



Moving away from  
 voluntary ad archives

In the wake of the 2016 US presidential election and under pressure from lawmakers around the world, large platforms have already taken big steps towards creating transparency via their ad archives. However, the many serious shortcomings of the existing ad archives highlight the need for regulation in this area. Voluntary corporate action, without any meaningful sanctioning mechanisms, has not proven successful. Parliaments should therefore mandate that platforms create archives for political ads. The details of what those archives must include and how they are built should take into account that platforms differ in audience, user numbers and in how they are used. Therefore, legislation should be flexible enough to deal with these differences, focusing first on the most dominating platforms based on such metrics. A broad, rather inclusive definition of political ads should be at the core of any ad archive legislation<sup>163</sup>, covering election, candidate and issue ads (see 1.1). Ad archives could also just cover all advertising, whether commercial or political.<sup>164</sup> This would avoid leaving the task of determining what is a political advertiser and a political topic to private companies (or regulators, for that matter).

**Table 3: What information should be included in ad archives**

Ad content	Most platform archives already contain the ad content. Ad <b>content of all types</b> , i.e. video, image and text ads, should be included.
Targeting and delivery transparency	<b>Additional data on targeting and delivery</b> , i.e. on the <i>targeted</i> audience and the <i>actual</i> audience, is necessary to assess if discriminatory voter segmentation or other discriminatory practices occurs. <sup>165</sup> Information on who was and was not targeted based on what desired ad campaign outcome as well as engagement metrics would be helpful. The latter should be counted even once the ad budget has been used, in order to cover shared and still circulating ads. If ads have been flagged or removed, it should be clear on what basis this happened. <sup>166</sup>

163 Cf. Edelson et al., “An Analysis of United States Online Political Advertising Transparency,” 13–15.

164 Iwańska et al., “Who (Really) Targets You?”

165 Cf. Kofi Annan Commission on Elections and Democracy in the Digital Age, “Protecting Electoral Integrity in the Digital Age: The Report of the Kofi Annan Commission on Elections and Democracy in the Digital Age,” 20–22; Privacy International, “Social Media Companies Have Failed to Provide Adequate Advertising Transparency to Users Globally”; Rieke and Bogen, “Leveling the Platform,” 16; Singh, “Special Delivery,” 54–58; Iwańska et al., “Who (Really) Targets You?”; epicenter.works, “Platform Regulation,” 17–18

166 Cf. Singh, “Special Delivery,” 60–61.



Data source transparency	In contrast to offline ads, platform advertising strongly relies on analyzing users’ personal browsing behavior. Ad archives need to allow <b>more insights into what data was gathered or inferred</b> to serve ads, making it easier to detect potential privacy violations and discriminatory ad practices.
Financial source transparency	Platforms already show who paid for an ad (similar to an offline imprint). However, due to issues with their verification mechanisms, this information is not always reliable. <sup>167</sup> Rudimentary <b>financing information on ads needs to be enhanced</b> . For example, it matters whether an advertiser spends \$1,000 or \$50,000 on an ad, but if the range offered by a platform is \$1,000 to \$50,000, such analysis is a guessing game.
Usability and data access	Archives need a <b>reliable infrastructure with options for fast, bulk downloads</b> in machine-readable format for investigators. <sup>168</sup> As is mostly the case already, databases should contain both current and past ads. They should be available for all markets, not just big countries. Non-experts should be able to use the archives as well. Information from the ad archives should not allow the identification of users who have seen the ad <sup>169</sup> and archives should follow all relevant GDPR rules.

There are limitations to having *public* ad archives: Platforms might claim that they cannot or should not include all data relevant to political ad targeting and delivery in a public archive due to concerns regarding privacy and trade secrets. However, public ad archives have the benefit of being open to all instead of relying on exclusive partnerships between platforms and some universities or civil society groups. If ad archives thus are “real-time, anonymized, output-focused, and accessible to all”<sup>170</sup>, they can help various independent investigators to hold platforms and advertisers accountable. If need be, a tiered model of ad archive transparency could be considered: For example, regulators and accredited academic researchers could receive more access to more data than the public (similar to transparency reports, see below). This

<sup>167</sup> Sessa-Hawkins and Sridharan, “MapLight’s Guide to Political Ad Transparency on Facebook, Twitter, and Google.”

<sup>168</sup> Full Fact, “Tackling Misinformation in an Open Society” (London: Full Fact, 2018), [https://fullfact.org/media/uploads/full\\_fact\\_tackling\\_misinformation\\_in\\_an\\_open\\_society.pdf](https://fullfact.org/media/uploads/full_fact_tackling_misinformation_in_an_open_society.pdf); Dipayan Ghosh and Ben Scott, “Digital Deceit II: A Policy Agenda to Fight Disinformation on the Internet” (Washington, DC: New America, January 23, 2018), [https://d1y8sb8igg2f8e.cloudfront.net/documents/Digital\\_Deceit\\_2\\_Final.pdf](https://d1y8sb8igg2f8e.cloudfront.net/documents/Digital_Deceit_2_Final.pdf); Ashley Boyd, “Facebook’s New Transparency Updates: Helpful, But Not Exhaustive,” *Mozilla Foundation*, January 9, 2020, <https://foundation.mozilla.org/en/blog/facebooks-new-transparency-updates-helpful-not-exhaustive/>.

<sup>169</sup> Singh, “Special Delivery,” 58.

<sup>170</sup> Leerssen, “The Soap Box as a Black Box,” 30.



would also heed the call that ad archives should be built with and checked by independent auditing bodies instead of relying solely on the platforms.<sup>171</sup>

### **Mandatory improved and expanded ad disclaimers**

Political ads should be clearly labeled as such right where users see them, for instance, in user feeds and on search engine results pages. They should provide information such as the data used for targeting and delivery and the financial sources.<sup>172</sup> This direct disclosure is an addition to ad archives, which are separately accessible databases outside of people's feeds (see above). Ad disclaimers should not be an end in and of themselves but should help users make decisions about their privacy online and about the advertising they see. That is why improved privacy controls are also crucial (see 2.3).

Many large platforms already provide disclaimers in a rudimentary form. Such disclaimers should be improved and made mandatory. Considering that transparency should not mean overwhelming people with information and that different ad platforms are designed differently, explanations should be easily findable and understandable within each platform's logic.<sup>173</sup> It should be simple for users to understand why they were targeted, why others might not have been targeted with the same ad and who paid to reach them. Disclaimers should also apply to paid influencer posts. If users have shared an ad, there should still be a note that the shared post originated as a paid political message, even once the budget for the ad has been used.

Clearer visual  
distinction of ads

Improving the ad archives and especially the disclaimers should include deliberate design choices by platforms. As some Facebook employees have demanded, a better visual distinction between ads and non-paid content is necessary.<sup>174</sup> This could be done, for example, by color, by verbal cues and/or by different fonts. Legislative guidance is important, but prescriptions should not be too rigid, as design options change frequently, vary across platforms and

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171 Brendan Fischer and Maggie Chris, "Digital Transparency Loopholes in the 2020 Elections" (Washington, DC: Campaign Legal Center, April 8, 2020), 5–6, <https://campaignlegal.org/sites/default/files/2020-04/04-07-20%20Digital%20Loopholes%20515pm%20.pdf>.

172 For a mock-up, see Ghosh and Scott, "Digital Deceit II: A Policy Agenda to Fight Disinformation on the Internet," 16; see also Sridharan and Ravel, "Illuminating Dark Digital Politics: Campaign Finance Disclosure for the 21st Century," 9.

173 Cf. Greg Michenera and Katherine Bersch, "Identifying Transparency," *Information Polity* 18 (2013): 233–42, <https://pdfs.semanticscholar.org/4ac7/5190784e6eec337d61ce86d45718a910bfaf.pdf>.

174 The New York Times, "Read the Letter Facebook Employees Sent to Mark Zuckerberg About Political Ads."



across devices. Diverse stakeholders should be consulted and there should be robust user testing, leaving the design principles neither to platforms nor governments alone.

In Germany, media regulation already prescribes ad disclaimers for radio and TV ads. For the online space, the state media authorities have developed guidelines for advertisers on how to label ads<sup>175</sup>, such as videos on YouTube and posts on Instagram. The Interstate Media Treaty foresees some stricter rules for political ad labeling, requiring not only the disclosure that it is an ad, but also who financed it. All of these disclaimer rules aim at allowing users to make a distinction between paid and non-paid content online, not necessarily at informing users about targeting and delivery options. Such details should be included in future media regulatory reforms at the German and EU levels.

Implementing such wide-ranging transparency measures is a balancing act: Offering more useful information is necessary, while at the same time people's privacy and political parties' advertising strategies must be protected. Thus, ad disclosures should not allow identification of individual users. Regarding potential revelations of advertisers' campaign strategies, it is a reasonable ask of them to allow outside observers as well as voters a glimpse: With more powerful advertising tools available online, parties and other political advertisers also need to be more open about their paid communication. Here, it becomes clear once again that providing options for public interest scrutiny on political online ads is a shared responsibility of political advertisers and platforms.

Platforms should be required to provide transparency reports on political ads

#### **Mandatory improved and expanded transparency reports around ad policies**

In addition to mandatory ad archives and disclaimers, platforms should be required to report on their advertising business practices. This could help with a better understanding of the rationale and mechanisms behind online advertising. Tech companies make decisions on what political advertisers and ads are allowed, and how political advertising is dealt with on their platforms.<sup>176</sup> They should be held accountable for how they reach these decisions, because the decisions can affect political debates online.

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175 Die Medienanstalten, "Leitfaden der Medienanstalten: Werbekennzeichnung bei Social-Media-Angeboten" (Berlin: Die Medienanstalten, January 2020), [https://www.die-medienanstalten.de/fileadmin/user\\_upload/Rechtsgrundlagen/Richtlinien\\_Leitfaeden/Leitfaden\\_Medienanstalten\\_Werbekennzeichnung\\_Social\\_Media.pdf](https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Richtlinien_Leitfaeden/Leitfaden_Medienanstalten_Werbekennzeichnung_Social_Media.pdf).

176 For an illustrative case from the US, see Daniel Kreiss and Shannon C. McGregor, "The 'Arbiters of What Our Voters See': Facebook and Google's Struggle with Policy, Process, and Enforcement around Political Advertising," *Political Communication* 36, no. 4 (October 2, 2019): 499–522, <https://doi.org/10.1080/10584609.2019.1619639>.

Transparency reports should provide insights into corporate decision-making on advertising practices, recognizing the power that ad platforms hold to push or depress certain voices. For instance, during the COVID-19 pandemic, platforms of all sizes were rightfully applauded for allowing health organizations to advertise safety tips for free, thus favoring scientific evidence over debunked disinformation. Yet, unfortunately, similar decisions on other topics, especially if taken in conjunction with governments, could potentially also be used to favor one side over the other in more controversial and less-clear cut cases.<sup>177</sup> With extended reports on ad policies available, investigators could better test whether the stated corporate policies are actually working, which some limited experiments have shown is not always the case<sup>178</sup>. Also, it would be easier to retrace platforms' changes to their targeting and data practices, which can impact democratic processes such as voter turnout, yet often remain unnoticed.<sup>179</sup>

The need for ad transparency reporting requirements is well-established among civil society and academic experts.<sup>180</sup> In Germany, there is already precedent in legally requiring transparency reports from big platforms, albeit not for advertising: The Network Enforcement Act (NetzDG) mandates platforms to publish reports on their content moderation policies, including their use of automated systems in content moderation.<sup>181</sup> Legislators should build on these valuable efforts to develop binding standards to ensure that platform reports are comprehensive and comparable. At the same time, any

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177 Julian Jaursch, "Desinformation zu COVID-19: Wie die Plattformen durchgreifen und welche Fragen das aufwirft," *netzpolitik.org*, March 24, 2020, <https://netzpolitik.org/2020/wie-die-plattformen-durchgreifen-und-welche-fragen-das-aufwirft/>.

178 Kaveh Waddell, "Facebook Approved Ads With Coronavirus Misinformation," *Consumer Reports*, April 7, 2020, <https://www.consumerreports.org/social-media/facebook-approved-ads-with-coronavirus-misinformation/>.

179 Cf. Bridget Barrett and Daniel Kreiss, "Platform Transience: Changes in Facebook's Policies, Procedures, and Affordances in Global Electoral Politics," *Internet Policy Review* 8, no. 4 (December 31, 2019), <https://policyreview.info/articles/analysis/platform-transience-changes-facebooks-policies-procedures-and-affordances-global>.

180 For detailed proposals see, for example, Maréchal et al., "RDR Corporate Accountability Index: Draft Indicators – Transparency and Accountability Standards for Targeted Advertising and Algorithmic Decision-Making Systems"; Singh, "Special Delivery"; see also Kreiss and McGregor, "The 'Arbiters of What Our Voters See'"; others have pointed to the general need for transparency reporting by platforms, see epicenter.works, "Platform Regulation."

181 Making similar content moderation transparency reporting obligatory in the EU has been proposed in the European Parliament as well, see Tiemo Wölken, "Draft Report with Recommendations to the Commission on a Digital Services Act: Adapting Commercial and Civil Law Rules for Commercial Entities Operating Online (2020/2019(INL))" (Brussels: *European Parliament*, April 22, 2020), [https://www.europarl.europa.eu/doceo/document/JURI-PR-650529\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/JURI-PR-650529_EN.pdf).





legal framework needs to be flexible enough to work for platforms of different sizes, audiences and reach, and it needs to be dynamic enough to adapt to emerging technology and challenges. The experience with the reporting obligations from the NetzDG can be instrumental: Largely due to a lack of clarity in the law, platforms initially got away with delivering few useful insights on content moderation practices.<sup>182</sup>

Reporting on ad delivery practices

One key requirement should be that big platforms go beyond publishing ad *content* policies and also publish ad *targeting* and *delivery* policies. The latter are effectively reports shining some light on big platforms' algorithmic systems.<sup>183</sup> Ad delivery algorithms, and algorithms used in social media in general, are not neutral, but emerge based on corporate decisions.<sup>184</sup> So far, these decisions remain largely in the dark, which transparency reports could change.

Many platforms already publish some transparency reports, but outside observers are still missing important features. Targeting policies would need to “outline what information the platform and advertisers can use to target ads to users (e.g. location information), which targeting parameters are prohibited on the platform, and what tools and processes (e.g. automated tools) the platform uses to identify ads and accounts that violate its ad targeting policies”.<sup>185</sup> Ad removals and ads approved in error should be covered in the reports as well.<sup>186</sup> Pricing policies could be included to contribute to a better understanding of how political advertisers are charged by large platforms. At the moment, there is little insight into how digital ad platforms charge advertisers and whether there is price discrimination. For instance, it is unclear,

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182 Amélie Heldt, “Reading between the Lines and the Numbers: An Analysis of the First NetzDG Reports,” Internet Policy Review 8, no. 2 (June 12, 2019), <https://policyreview.info/articles/analysis/reading-between-lines-and-numbers-analysis-first-netzdg-reports>; Ben Wagner et al., “Regulating Transparency? Facebook, Twitter and the German Network Enforcement Act,” in *FAT\* '20: Proceedings of the 2020 Conference on Fairness, Accountability, and Transparency* (Barcelona: Association for Computing Machinery, 2020), 261–271, <https://dl.acm.org/doi/abs/10.1145/3351095.3372856>.

183 The Council of Europe has recommended such reporting for “algorithmic systems that can trigger significant human rights impacts”, see Council of Europe, “Recommendation CM/Rec(2020)1 of the Committee of Ministers to Member States on the Human Rights Impacts of Algorithmic Systems” (Strasbourg: Council of Europe, April 8, 2020), [https://search.coe.int/cm/pages/result\\_details.aspx?objectid=09000016809e1154](https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016809e1154); similar recommendations on transparency of AI systems were made by the European Commission's High-Level Expert Group on AI, “Ethics Guidelines for Trustworthy AI” (Brussels: European Commission, April 8, 2019), 17–18, [https://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=60419](https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=60419).

184 Ulrike Klinger and Jakob Svensson, “The End of Media Logics? On Algorithms and Agency,” *New Media & Society* 20, no. 12 (June 25, 2018): 4657–59, <https://doi.org/10.1177/1461444818779750>.

185 Singh, “Special Delivery,” 55.

186 Cf. Singh, “Reddit's Intriguing Approach to Political Advertising Transparency.”





whether large platforms change their rates in the middle of an election season or whether there are disadvantages, because an advertiser has to pay more to reach their desired audience.

It could be useful to require two versions of such ad transparency reporting, one aimed at regulators and one aimed at the public.<sup>187</sup> The public reports could be summaries of the full regulatory reports, which might help interested citizens with no explicit expertise on the topic to still participate in debates. In contrast to many existing terms of services and privacy policies, especially the public-facing ad targeting and ad delivery reports should be easy to understand.

For the NetzDG, an agency that previously had little to do with platform regulation or content moderation was put in charge of overseeing the reporting requirements<sup>188</sup>, which contributed to considerable lags in setting up a compliance regime. When specifying what agency is tasked with checking ad transparency reports, legislators should keep this experience in mind. If an existing body such as media authorities or data protection authorities is picked, lawmakers need to ensure that these regulatory agencies receive expanded mandates, enforcement powers as well as more expert staff to evaluate platforms' reports. Otherwise, the effects of transparency reporting are compromised.

### **Mandatory independent auditing of ad targeting and delivery algorithms**

Some platforms are overseen by a variety of bodies at the state, federal and EU levels, such as data protection authorities under the GDPR, media regulatory authorities under the Interstate Media Treaty and the Federal Office of Justice under the NetzDG. There is no explicit oversight of the core ad business, however. To monitor some of the associated risks, mandatory, regular, independent audits of companies' ad targeting algorithms and ad delivery algorithms could be helpful, as has been suggested more broadly on social media algorithms

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<sup>187</sup> This roughly follows the idea of “qualified transparency”, see Frank A. Pasquale, “Beyond Innovation and Competition: The Need for Qualified Transparency in Internet Intermediaries,” SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, October 1, 2010), 164, <https://doi.org/10.2139/ssrn.1686043>.

<sup>188</sup> The planned reform of this law confirms the Federal Office of Justice (“Bundesamt für Justiz”) as the authority to receive and review the transparency reports, keeping it as yet another body that is somehow involved in platform regulation in Germany, see Bundesministerium der Justiz und für Verbraucherschutz, “Gesetz zur Änderung des Netzwerkdurchsetzungsgesetzes,” Bundesministerium der Justiz und für Verbraucherschutz, 2020, <https://www.BMJV.de/SharedDocs/Gesetzgebungsverfahren/DE/NetzDGAendG.html>.



already<sup>189</sup>. With a specific look at advertising algorithms, external audits could help identify potentially discriminatory effects or privacy violations.<sup>190</sup> In essence, this can be compared to how mandatory financial auditing helps regulators and the public understand companies' internal operations and potential effects on the financial markets.<sup>191</sup> The ad targeting and ad delivery reports mentioned above could form the starting point for external auditors.

Open questions  
regarding auditing  
algorithms

As of yet, it is not clear what the standards of auditing algorithms should be and who carries them out. Promisingly, though, many researchers and civil society organizations are exploring various avenues in this emerging field of study.<sup>192</sup> For example, scientists have developed and tested some ideas of how to audit Facebook's "Ad Library".<sup>193</sup> More broadly on algorithms (not just advertising algorithms), audits have been proposed as a means to create some transparency towards regulators and/or users and are already part of some

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189 Institute for Strategic Dialogue, "Extracts from ISD's Submitted Response to the UK Government Online Harms White Paper" (London: Institute for Strategic Dialogue, July 2019), 9–11, <https://www.isdglobal.org/wp-content/uploads/2019/12/Online-Harms-White-Paper-ISD-Consultation-Response.pdf>; see also Datenethikkommission, "Gutachten der Datenethikkommission," 169–70.

190 Cf. Singh, "Special Delivery," 56; Ethan Zuckerman, "The Case for Digital Public Infrastructure," *Knight First Amendment Institute*, January 17, 2020, 30–33, <https://s3.amazonaws.com/kfai-documents/documents/7f5fdaa8d0/Zuckerman-1.17.19-FINAL-.pdf>.

191 James Guszcza et al., "Why We Need to Audit Algorithms," *Harvard Business Review*, November 28, 2018, <https://hbr.org/2018/11/why-we-need-to-audit-algorithms>; other comparisons are to food and medicines auditing, see Chloé Berthélémy and Jan Penfrat, "Platform Regulation Done Right. EDRI Position Paper on the EU Digital Services Act," *European Digital Rights*, April 9, 2020, 27–28, [https://edri.org/wp-content/uploads/2020/04/DSA\\_EDRiPositionPaper.pdf](https://edri.org/wp-content/uploads/2020/04/DSA_EDRiPositionPaper.pdf); for caveats regarding such comparisons, see Heidi Tworek, "A New Blueprint for Platform Governance," *Centre for International Governance Innovation*, February 24, 2020, <https://www.cigionline.org/articles/new-blueprint-platform-governance>.

192 SNV is part of a project on auditing AI-based systems, see Gesellschaft für Informatik, "Über das Projekt," KI Testing & Auditing, 2020, <https://testing-ai.gi.de/ueber>; German NGO AlgorithmWatch focuses strongly on automated decision-making, see "Was wir tun," AlgorithmWatch, 2020, <https://algorithmwatch.org/was-wir-tun/>; the following US-based research project provides a running list of resources on the topic: Auditing Algorithms, "Readings," *Auditing Algorithms*, 2020, <http://auditingalgorithms.science/?p=153>; another angle to take, maybe as a first step towards auditing, is documentation, see The Partnership on AI, "About ML," *The Partnership on AI*, 2020, <https://www.partnershiponai.org/about-ml/>; US judges have dealt with questions of the legality of regarding external auditing, in principle clearing some legal hurdles, see Naomi Gilens and Jamie Williams, "Federal Judge Rules It Is Not a Crime to Violate a Website's Terms of Service," *Electronic Frontier Foundation*, April 6, 2020, <https://www.eff.org/deeplinks/2020/04/federal-judge-rules-it-not-crime-violate-websites-terms-service>.

193 Edelson, Lauinger, and Damon McCoy, "A Security Analysis of the Facebook Ad Library" (this paper also provides a review of research on online ads transparency); see also Silva et al., "Facebook Ads Monitor."

business-to-business EU regulation.<sup>194</sup> In Germany, the state media authorities are gaining new powers in this area with the draft Interstate Media Treaty. The treaty contains requirements for social media companies and search engines to provide transparency regarding the selection and presentation of online content: Users need to receive explanations on the algorithms driving this.<sup>195</sup> Publishers can file complaints if they feel their editorial content is systematically downranked.<sup>196</sup> These provisions are rather vague in the draft. They focus strongly on providing information to users (not necessarily auditors), although media authorities have some control function as well. If German state media authorities do emerge as the proper oversight bodies for algorithmic auditing, it will be crucial to specify the details of the auditing measures and ideally collaborate with European partners to develop common standards.

Shortcomings of  
existing platform  
auditing

Clear auditing mechanisms with a sanctions regime would be an improvement over the current auditing practices at big ad platforms. Being audited and seeking external input on business practices is nothing new for tech companies. Facebook, for example, hired external auditors when it wanted to have its policy on dealing with white supremacy examined.<sup>197</sup> The company has also established an Oversight Board, which is supposed to provide guidance on content moderation.<sup>198</sup> The Global Network Initiative (GNI) counts Facebook, Google, LinkedIn, Microsoft and Yahoo as members and all of them are subject to external audits on topics such as content moderation, freedom of expression, responsible corporate decision-making and privacy. The GNI is a major step towards more transparency and industry oversight. Its audits

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194 European Parliament, “Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on Promoting Fairness and Transparency for Business Users of Online Intermediation Services,” Pub. L. No. 32019R1150, 186 OJ L (2019), <http://data.europa.eu/eli/reg/2019/1150/oj/eng>.

195 § 93 MStV, Staatskanzlei Rheinland-Pfalz, “Staatsvertrag zur Modernisierung der Medienordnung in Deutschland: Entwurf.”

196 § 94 MStV, Staatskanzlei Rheinland-Pfalz.

197 Megan Rose Dickey, “Facebook Civil Rights Audit Says White Supremacy Policy Is ‘Too Narrow,’” *TechCrunch*, July 1, 2019, <https://social.techcrunch.com/2019/06/30/facebook-civil-rights-audit-says-white-supremacy-policy-is-too-narrow/>.

198 Facebook Oversight Board, “Announcing the First Members of the Oversight Board,” Facebook Oversight Board, May 6, 2020, <https://www.oversightboard.com/news/announcing-the-first-members-of-the-oversight-board/>; for a discussion of the Oversight Board, see Evelyn Douek, “What Kind of Oversight Board Have You Given Us?,” *The University of Chicago Law Review Online*, May 11, 2020, <https://lawreviewblog.uchicago.edu/2020/05/11/fb-oversight-board-edouek/>.



do remain voluntary, however, and lack sanctioning mechanisms beyond the termination of GNI membership.

Whereas the GNI is voluntary, Google and Facebook face mandatory privacy audits in the US thanks to a settlement with the Federal Trade Commission (FTC). The FTC required the two companies in 2011 to be subject to “privacy audits”<sup>199</sup> every two years for 20 years. This was at first seen as a big commitment to creating transparency and oversight, especially because the FTC would have the power to fine the companies for violations.<sup>200</sup> However, what was touted in the press releases as audits were actually assessments, which are weaker forms of oversight.<sup>201</sup> The points covered under the 2011 Google “audit” were criticized as almost meaningless.<sup>202</sup>

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199 Federal Trade Commission, “Facebook Settles FTC Charges That It Deceived Consumers By Failing To Keep Privacy Promises,” *Federal Trade Commission*, November 29, 2011, <https://www.ftc.gov/news-events/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep>; *Federal Trade Commission*, “FTC Charges Deceptive Privacy Practices in Googles Rollout of Its Buzz Social Network,” *Federal Trade Commission*, March 30, 2011, <https://www.ftc.gov/news-events/press-releases/2011/03/ftc-charges-deceptive-privacy-practices-googles-rollout-its-buzz>.

200 Kashmir Hill, “So, What Are These Privacy Audits That Google And Facebook Have To Do For The Next 20 Years?,” *Forbes*, November 30, 2011, <https://www.forbes.com/sites/kashmirhill/2011/11/30/so-what-are-these-privacy-audits-that-google-and-facebook-have-to-do-for-the-next-20-years/>.

201 Chris Jay Hoofnagle, “Assessing the Federal Trade Commission’s Privacy Assessments,” *IEEE Security Privacy* 14, no. 2 (March 2016): 58–64, <https://doi.org/10.1109/MSP.2016.25>.

202 Megan Gray, “Understanding & Improving Privacy ‘Audits’ under FTC Orders” (Stanford, CA: Stanford Law School, April 2018), 4, <http://cyberlaw.stanford.edu/files/blogs/white%20paper%204.18.18.pdf>.



To avoid such weaknesses in the future, lawmakers and regulators should consult widely and deeply with teams of interdisciplinary experts when discussing what ad algorithm auditing could look like and who should be responsible for it. This task should be considered at the EU level, where there are already discussions on an independent EU-wide social media regulator<sup>203</sup>.

### Strengthened enforcement agencies

Coordination on media regulation, data protection and campaign finance oversight

In Germany, there are already several bodies with parallel responsibilities concerning political ads that could be strengthened. As mentioned throughout the paper, state media authorities, data protection authorities, the parliament administration and the Federal Returning Officer all have a say, directly or indirectly, over different parts of political campaigning, although none of them comprehensively address political advertising online. Communication among these bodies could be improved and institutionalized, especially if there continues to be no overarching agency concerned with social media platforms.

Support for state media authorities in their new tasks

State media authorities are charged with implementing the Interstate Media Treaty. This includes specific legislation on political ads (see 3.2) and some oversight of platform algorithms, albeit not for ads directly (see above). The state media authorities already have decades of experience regulating broadcasters and much legal expertise concerning German media legislation. They do face new tasks and challenges now, though, having to oversee globally operating, multibillion-dollar companies not headquartered in Germany. This might have already been the case for some TV stations, yet the scale of dealing with Facebook and Google in particular is different. State media authorities should take stock of what additional expertise and resources are necessary to

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203 An expert group summoned by the French president has suggested an EU-wide mechanism based on corporate transparency to create some oversight, see Sacha Desmaris, Pierre Dubreuil, and Benoît Loutrel, “Creating a French Framework to Make Social Media Platforms More Accountable: Acting in France with a European Vision” (Paris: French Secretary of State for Digital Affairs, May 2019), [https://minefi.hosting.augure.com/Augure\\_Minefi/r/ContenuEnLigne/Download?id=AE5B7ED5-2385-4749-9CE8-E4E1B36873E4&filename=Mission%20Re%CC%81gulation%20des%20re%CC%81seaux%20sociaux%20-ENG.pdf](https://minefi.hosting.augure.com/Augure_Minefi/r/ContenuEnLigne/Download?id=AE5B7ED5-2385-4749-9CE8-E4E1B36873E4&filename=Mission%20Re%CC%81gulation%20des%20re%CC%81seaux%20sociaux%20-ENG.pdf); the idea of an EU social media regulator is found, for example, in European Partnership for Democracy, “Virtual Insanity: The Need to Guarantee Transparency in Online Political Advertising,” 30; Berthélémy and Penfrat, “DSA,” 30–33; Ben Wagner and Lubos Kuklis, “Disinformation, Data Verification and Social Media,” *Media@LSE*, January 7, 2020, <https://blogs.lse.ac.uk/medialse/2020/01/07/disinformation-data-verification-and-social-media/>; Leerssen, “The Soap Box as a Black Box,” 31–32; Alex Agius Saliba, “Draft Report with Recommendations to the Commission on Digital Services Act: Improving the Functioning of the Single Market (2020/2018(INL))” (Brussels: European Parliament Committee on the Internal Market and Consumer Protection, April 15, 2020), 17, [https://www.europarl.europa.eu/doceo/document/IMCO-PR-648474\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/IMCO-PR-648474_EN.pdf); Wölken, “Draft Report with Recommendations to the Commission on a Digital Services Act: Adapting Commercial and Civil Law Rules for Commercial Entities Operating Online (2020/2019(INL))”; epicenter.works, “Platform Regulation,” 10.



deal with additional oversight tasks, including political ads online. Lawmakers might deem budget increases for expert staff necessary, for example, to hire engineers, user experience designers and social scientists, adding to the many legal experts already at hand.

More resources  
for data protection  
authorities

Data protection authorities oversee rules concerning consent, purpose limitation and profiling, which touch upon political advertising online (see 2.3). They have already gone through an expansion of the list of their tasks, as the EU's GDPR included some new powers and responsibilities for national data protection authorities. Despite the positive intent and effects of the GDPR, a lack of enforcement has been criticized. German data protection authorities are the best-staffed and best-resourced in the EU, yet still complain that current staffing levels do not allow for adequate enforcement of the GDPR.<sup>204</sup> Other European data protection authorities face similar situations. In order to deal with user complaints on privacy violations, conduct their own analyses and thus hold political advertisers and online ad platforms accountable, data protection authorities need to be funded better than they are today. They, too, require more expert staff from a variety of backgrounds.<sup>205</sup>

Strengthening the  
Bundestag  
administration

The parliament's administration has no direct role in overseeing political ads online. However, it has developed strong expertise in checking political parties' annual accounting reports. The Federal Returning Officer, with its task in ensuring the proper conduct of elections, is another agency indirectly touching upon political campaigning, as it is in charge of determining the list of political parties allowed in an election. This body, however, has no mandate beyond the actual election process. Therefore, without an independent body covering all campaign finance auditing (see 3.3), the Bundestag administration remains the primary organization creating some transparency regarding political financing in Germany. In this case, it should at least have more staff to enable a speedy and comprehensive auditing of the reports.

Information ex-  
changes between  
agencies

Together, state media authorities, data protection authorities and the Bundestag administration form the oversight mechanism for political online ads. They each have different legal foundations, areas of expertise and responsibilities. It could be helpful to facilitate an exchange between these organizations

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204 German Data Protection Authorities, "Evaluation of the GDPR under Article 97: Questions to Data Protection Authorities/European Data Protection Board. Answers from the German Supervisory Authorities" (Brussels: European Data Protection Supervisor, 2020), 15, [https://edpb.europa.eu/sites/edpb/files/de\\_sas\\_gdpr\\_art\\_97questionnaire.pdf](https://edpb.europa.eu/sites/edpb/files/de_sas_gdpr_art_97questionnaire.pdf).

205 Cf. Johnny Ryan and Alan Toner, "Europe's Governments Are Failing the GDPR. Brave's 2020 Report on the Enforcement Capacity of Data Protection Authorities" (London: Brave, April 2020), <https://brave.com/wp-content/uploads/2020/04/Brave-2020-DPA-Report.pdf>.



on political ads and campaigning in general.<sup>206</sup> Each side could benefit from learning what responsibilities the others have in this field. Communication channels could be established or strengthened, so that in cases where cooperation could prove valuable, there are already structures in place. A hypothetical case could be that a political party took illegal foreign donations to fund an ad campaign on social media that violates voters' privacy rights. This is a situation with potentially grave dangers not only for individual users but also the democratic process as such. Each agency would have specific tasks to fulfill but would profit from a coordinated effort.

Furthermore, German regulatory bodies could thus pool their expertise and resources to inform debates and decisions at the EU level. Legislative discussions in the European Parliament surrounding social media and other digital platforms might very well include considerations of an EU agency that coordinates member states' regulatory bodies.<sup>207</sup>

### **Independent research and journalism**

Academic researchers and other investigators such as journalists need support to conduct analyses of political ads online in the public interest. Only with independent, verifiable research results will it be possible for lawmakers to determine what measures on online ads are useful and what measures overshoot the mark. So far, researchers have struggled to do such analyses, largely because of a lack of openness from platforms and the lack of a common set of practice.

Researchers have repeatedly criticized the lack of meaningful access to platforms' data, some of which is much more readily available to advertisers. This is not solely related to online political advertising research, but a general feature of many platforms' policies: Facebook has struggled with its Social Science One research project, which was meant to provide some data access

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206 Bennett and Oduro Marfo, "Privacy, Voter Surveillance and Democratic Engagement," 54; mindful that the UK has a different political and electoral system than Germany, the Electoral Commission there has also proposed increased coordination with other oversight bodies, see The Electoral Commission, "Digital Campaigning: Increasing Transparency for Voters" (London: The Electoral Commission, June 2018), 21–22, [https://www.electoralcommission.org.uk/sites/default/files/pdf\\_file/Digital-campaigning-improving-transparency-for-voters.pdf](https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Digital-campaigning-improving-transparency-for-voters.pdf).

207 Initial discussions of coordinating "National Enforcement Bodies" are included, for example, in a committee report on the Digital Services Act, see Saliba, "Draft Report with Recommendations to the Commission on Digital Services Act: Improving the Functioning of the Single Market (2020/2018(INL))," 17.





but was heavily delayed.<sup>208</sup> Twitter has been criticized for stalling research.<sup>209</sup> YouTube has failed to assuage criticism regarding attempts to understand its recommendation engine better.<sup>210</sup>

The EU's Code of Practice on Disinformation called for improved support for research but lacked details and sanctionable mandates on that. Such mandates seem necessary now, after platforms have had years to figure this out on their own. How exactly a reliable and secure system of conducting independent research can be built is still an open question and a difficult one at that. It touches on delicate issues of data and information access, privacy and ethical standards.

Finding  
co-investigation  
standards

Instead of mandating a specific type of data access or research cooperation for platforms, legislation could incorporate the obligation for meaningful co-investigation standards. For the specific case of researching digital disinformation, Ben Nimmo, an investigator in this field, has proposed these moves from collaboration to co-investigation and from top-down rules to bottom-up initiatives.<sup>211</sup> This would have platforms and researchers agreeing on a set of principles that would allow them to study information operations across platforms. They would include measures to ensure researchers' independence (for example, regarding the timing and means of publishing findings), privacy-protecting data access and trust-building ethical standards to deter fraudulent researchers. Like with ad archives, this could help prevent that platforms only have exclusive cooperation agreements with certain researchers, in which dependencies remain. While Nimmo's ideas relate strictly to studying the

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208 The European Advisory Committee Social Science One, "Public Statement from the Co-Chairs and European Advisory Committee of Social Science One," December 11, 2019, <https://socialscience.one/blog/public-statement-european-advisory-committee-social-science-one>; Gary King and Nathaniel Persily, "Unprecedented Facebook URLs Dataset Now Available for Academic Research through Social Science One," *Social Science One*, February 13, 2020, <https://socialscience.one/blog/unprecedented-facebook-urls-dataset-now-available-research-through-social-science-one>.

209 Deepa Seetharaman, "Jack Dorsey's Push to Clean Up Twitter Stalls, Researchers Say," *The Wall Street Journal*, March 15, 2020, <https://www.wsj.com/articles/jack-dorseys-push-to-clean-up-twitter-stalls-researchers-say-11584264600>.

210 Brandi Geurkink, "Congratulations, YouTube... Now Show Your Work," *Mozilla Foundation*, December 5, 2019, <https://foundation.mozilla.org/en/blog/congratulations-youtube-now-show-your-work/>.

211 Ben Nimmo, "Investigative Standards for Analyzing Information Operations," unpublished draft 2020.



spread of disinformation, it could be worthwhile to discuss a similar set-up for research on digital political advertising.

Research challenges and government grants

Both standard-developing initiatives as well as research itself could be funded in part by governments. On online disinformation in general, without specifically focusing on political advertising, the European Commission has already called on member states to support multidisciplinary research. It has funded a “Social Observatory for Disinformation and Social Media Analysis”, aiming to bring together fact-checkers and academic researchers, and is additionally looking to establish a “European Digital Media Observatory”<sup>212</sup>. Such efforts could be built on to help researchers with their studies. One example of a concrete, short-term project is a Canadian research challenge: Roughly six months ahead of the 2019 federal elections there, two scientists issued a challenge to fellow academics in Canada and abroad to study online disinformation, political advertising, privacy and political participation during the election campaign.<sup>213</sup> The “Digital Ecosystem Research Challenge” led to 18 projects on various topics, which shared data among each other. The research teams found, among other things, that all parties use ad targeting, that few people know what personal data is used for political advertising and that some political advertisers obscure their identities despite being listed in the ad archives.<sup>214</sup> Similar research challenges, partly funded by governments and with meaningful data access, could be expanded for the German and European contexts as well.

Platforms could fund an independent endowment

Platforms, too, could step up their support for independent research and journalism. Large companies are already investing some money into various research and journalism projects. For instance, Facebook and Google support editorial offices around the world, particularly regarding local journalism. To prevent dependencies and industry capture, there could be different ways to support independent analysis, though. For example, taxes from tech companies could be used to fund research and journalism or tech companies could

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212 European Commission, “Commission Launches Call to Create the European Digital Media Observatory,” *European Commission*, October 7, 2019, <https://ec.europa.eu/digital-single-market/en/news/commission-launches-call-create-european-digital-media-observatory>.

213 Government of Canada, “Understanding the Digital Ecosystem: Findings from the 2019 Federal Election.”

214 Government of Canada, 7.



donate money to create an independent endowment.<sup>215</sup> Specifically with a view to political advertising, it has been proposed that platforms pay all revenues from political advertising into a fund to support election research.<sup>216</sup>

### Digital news and ad literacy

Platform measures and stricter regulation alone will not be enough to deal with the specific characteristics of the online ad space that millions of citizens frequent every day. Voters themselves need to be empowered to better understand how ad platforms work, how political advertisers try to influence them and what it means to be informed in a largely attention-seeking media environment. What is usually characterized as digital news literacy should include digital ad literacy as well. News literacy is already something different from technical media literacy (such as setting up an account or changing privacy settings) to include an understanding of how to spot signs of disinformation online or how to cross-check sources, for example. In that vein, being a competent user of social media, video portals and search engines should include a basic understanding of the online ad space as well.

Policymakers could consider establishing or funding digital news and ad literacy programs or helping to fund external organizations working on this. There is lots of different expertise to build on: The Federal Agency for Civic Education is an experienced actor in related fields, data protection authorities have the task of educating people about privacy-related issues and numerous academic and civil society organizations, including SNV, are looking specifically at digital news literacy already.

Platforms need to promote user competences

Additionally, tech companies should embrace their responsibility and better inform users of all ages (not just children and teenagers) about ad targeting and delivery options. So far, many companies fail to improve their users' literacy regarding (political) online advertising.<sup>217</sup> In light of such failure, strict

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215 Emily Bell, "Do Technology Companies Care about Journalism?," *Columbia Journalism Review*, March 27, 2019, [https://www.cjr.org/tow\\_center/google-facebook-journalism-influence.php](https://www.cjr.org/tow_center/google-facebook-journalism-influence.php); Zuckerman, "The Case for Digital Public Infrastructure," 23–24; see also Lisa Macpherson, "The Pandemic Proves We Need A 'Superfund' to Clean Up Misinformation on the Internet," *Public Knowledge*, May 11, 2020, <https://www.publicknowledge.org/blog/the-pandemic-proves-we-need-a-superfund-to-clean-up-misinformation-on-the-internet/>.

216 Kreiss and Perault, "Four Ways to Fix Social Media's Political Ads Problem – Without Banning Them."

217 For a pilot study evaluating companies' lack of effort regarding digital ad literacy, see Brouillette et al., "RDR Corporate Accountability Index: Transparency and Accountability Standards for Targeted Advertising and Algorithmic Systems. Pilot Study and Lessons Learned," 34–36, 45–47.



legal guidelines could be devised, maybe not on ad literacy specifically, but digital news literacy generally: For instance, platforms could be mandated to give a percentage of their ad revenue to an independent fund to advance digital news literacy.<sup>218</sup>

### **Ad buy restrictions**

Somehow limiting the number of ads online would not only be helpful for addressing potential zone-flooding (see 3.3; figure 2). It also supports public interest scrutiny because users and researchers are not inundated with tens of thousands of ads. The sheer amount of political advertising online inhibits timely and thorough analyses.

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<sup>218</sup> For the general idea of an independent fund, see Bell, “Do Technology Companies Care about Journalism?”; Zuckerman, “The Case for Digital Public Infrastructure,” 23–24.



## 5. The Way Forward: Platform and Advertiser Accountability

Now is the time for Germany and Europe to adapt rules in the face of a changing political campaigning landscape, of which platform advertising is a big part. The algorithmic ad delivery, the ads' reach and the scale of behavioral ad targeting mark a vast shift to how political parties and other campaigners used to pay to get their messages out. This shift is not reflected in the rules for political advertising, which were largely made decades before social media emerged. Using digital platforms, political campaigns benefit greatly from easy interaction with voters and tailored messaging at scale. Certain risks emerge, too, though: The danger of big-money interference via zone-flooding is heightened, as is the risk for microtargeted ads that can distort political debates and violate users' privacy. Due to the sheer number of ads and the opacity of algorithmic advertising systems, voters, researchers, journalists and regulators have little opportunity to understand these risks better.

To address these risks, existing rules need to be updated and enhanced. Relying solely on corporate and political party self-regulation has not been sufficient.

Priority: Limits for behavioral microtargeting

The most urgent task is to prevent online political advertising from being tailored very narrowly to the (assumed) identity traits of voters and from mostly trying to strengthen their existing positions and fears. To that end, legislators should set clear limits as to how political advertising can be used online. On the one hand, this concerns targeting: Advertisers should only be able to use limited demographic data to target people – and not lots of behavioral data revealing citizens' potential opinions and weaknesses. Therefore, voluntary measures in this area by some companies have to be expanded and made mandatory across platforms. On the other hand, these obligations should also apply to the algorithmic ad delivery, so that platforms cannot use any other data but demographic data for this, either. A minimum size for target groups of political online advertising could be helpful in addition.

Such limits clearly restrict what is technically possible: Not all available tools to pay to reach people with personalized political messages would be allowed. This is also the case offline and has helped minimize some of the negative aspects of political advertising. It also reflects what most Germans articulate on this in surveys. Thus, the question should be how to achieve similar effects online. To that end, it is not enough to simply transpose rules from the offline world to the online sphere word for word, but existing approaches need to



expanded and modernized. For the online sphere, restricting microtargeting options at the platforms can best help in ensuring fair political competition and free opinion formation processes.

Other important measures and questions emerge when discussing restrictions on microtargeting that stretch across various political levels and cut across different policy fields (see table 4).

**Table 4: Summary of policy options to deal with political online advertising**

	Preventing distortions of political debates	Limiting big-money interference	Enabling public interest scrutiny
<b>Legislators</b>			
Develop ad targeting and delivery restrictions	X	X	X
Mandate improved platform ad archives	X	X	X
Mandate improved ad disclaimers	X		X
Mandate advertising policy reports by platforms			X
Update rules on financial accounting reporting for advertisers		X	X
Introduce rules for digital political campaigning	X	X	X
Support independent research and journalism	X		X
Support digital news and ad literacy	X		X
Equip oversight agencies with sufficient resources and/or: Create independent oversight bodies for platforms and for political campaigning	X	X	X



Update media regulation	X	X	
Refine GDPR rules on profiling and microtargeting	X		X
<b>Existing regulators</b>			
<b>State media authorities</b>			
Develop political ads definition		X	
<b>Data protection authorities</b>			
Strictly enforce the GDPR	X	X	X
<b>Platforms</b>			
Implement political ads definition and rules	X	X	X
Implement and maintain improved ad archives		X	X
Implement and maintain improved ad disclaimers	X		X
Develop and implement user privacy controls	X		X
Develop and publish transparency reports		X	X
Establish independent fund to support journalism and/or digital news literacy and/or election research	X		X
<b>Political advertisers</b>			
Commit to fair digital political campaigning	X	X	X

Defining political ads

Defining political ads is of immediate importance for questions surrounding limits on microtargeting. In Germany, state media authorities are already working on this in the context of the Interstate Media Treaty. Germany should embrace this opportunity to think about political advertising in the online space and help steer future reforms of media regulation – both at the German



and the EU levels – towards a fitting definition. This definition should be broad and include more political advertisers than before. It should continue to be in place for issue ads as well and not just candidate ads. A definition should not distinguish between the type of content, i.e. if it is a picture or video ad, and should include influencer ads.

Reporting standards  
for platforms

Moreover, it needs to be possible to check whether platforms adhere to rules on political advertising, concerning microtargeting and other topics. To that end, mandatory transparency reports are necessary, which highlight corporate policies on ad practices. Platforms should also be required to maintain ad archives with clear, legislative standards. The next step concerns auditing the reports and transparency measures as well as, over the long term, auditing of the ad algorithms themselves by an independent body. The public would indirectly benefit from this, if there were a trusted, independent oversight body, similar to how a banking regulator oversees financial institutions.

Towards an EU-level  
industry oversight for  
ad platforms

This begs the question of who should be responsible for enforcing rules on online political advertising. Ideally, this question should be discussed at the EU level, especially since it is unclear whether some national platform rules might be in violation of EU law<sup>219</sup>. Germany has pushed ahead on many questions regarding platform regulation such as content moderation, competition law and media regulation.<sup>220</sup> It should now help find a common EU-wide approach. The European Commission is already working on the DSA, a reform of the e-commerce directive. This could be the place to implement many of the reporting and accountability standards discussed above and throughout this paper. Germany should continue to share positive and negative experiences from its legislative achievements or proposals and find like-minded states to introduce reform ideas on political online advertising. It should advocate for the DSA to establish industry oversight for dominating ad digital platforms that include accountability and transparency standards. Such a focus on business practices oversight rightly steers clear of regulating political speech.

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219 Liesching, “EU Kommission”; Silke Wettach, “Facebook-Gesetz: EU-Kommission hält Dokumente zurück: „Veröffentlichung würde das Klima des gegenseitigen Vertrauens beeinträchtigen“,” *WirtschaftsWoche*, November 10, 2017, <https://www.wiwo.de/politik/deutschland/facebook-gesetz-eu-kommission-haelt-dokumente-zurueck-veroeffentlichung-wuerde-das-klima-des-gegenseitigen-vertrauens-beeintraechtigen/20561614.html>; Wolfgang Schulz, “Regulating Intermediaries to Protect Privacy Online – The Case of the German NetzDG,” HIIG Discussion Paper Series (Berlin: Alexander von Humboldt Institute for Internet and Society, July 19, 2018), 6–7, <https://papers.ssrn.com/abstract=3216572>.

220 Jaurisch, “Regulatory Reactions to Disinformation: How Germany and the EU Are Trying to Tackle Opinion Manipulation on Digital Platforms”; Théophile Lenoir and Julian Jaurisch, “Disinformation: The German Approach and What to Learn From It,” *Institut Montaigne*, February 28, 2020, <https://www.institutmontaigne.org/en/blog/disinformation-german-approach-and-what-learn-it>.



There is ample precedent for EU industry regulation of various kinds (although caveats for transposing existing regulatory regimes apply), for example, in banking, food and drugs. Yet, tech platform's data-driven algorithmic advertising business model that can amplify many of the risks associated with paid political online communication has so far been largely left unchecked. An advertising business model is nothing new and nefarious per se, but rarely have companies that play a part in democratic discourse been so reliant on advertising and rarely has advertising been so targeted.<sup>221</sup> To oversee this business model, clear compliance guidelines and sanction mechanisms need to be in place, whether this lies with an organization coordinating member state agencies or a new EU regulator, as has been proposed.

Lawmakers should carefully evaluate whether existing bodies can take on the complicated and resource-heavy task of overseeing big tech platforms. In any case, the agency should have tech experts among their staff and be equipped with resources and enforcement mechanisms. It should be legitimized by parliaments and be independent, so as to reduce the risks of partisan and industry capture.

Tiered model:  
Accounting for the  
variety of platforms

How the transparency tools, reporting standards and independent auditing mechanisms work should take into account differences between platforms, while acknowledging the overall similarities in how platforms work compared to traditional, offline advertising. Specifically, rules should not lead to strengthening dominating ad platforms' positions at the expense of smaller companies with alternative business models. Tiered regulation according to (market) size could be one approach to prevent this. Transparency obligations and mandatory ad algorithm auditing could be designed in a way so that dominating market players (and not their small competitors) would have to prove their benefits for markets and society (instead of governments and regulators having to prove potential harms).<sup>222</sup>

Dynamic legislation  
needed

Similarly, legal frameworks need to strike a balance between clear compliance obligations and sufficient leeway for ad platforms to fulfill obligations based on different user experiences and audiences. For instance, legal obligations in Germany's first version of the NetzDG requiring content moderation reports from platforms were too vague, diminishing the reports' usefulness and making them hard to compare between platforms. A reform of this law aims to clarify

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<sup>221</sup> Rahman and Teachout, "From Private Bads to Public Goods," 16.

<sup>222</sup> Cf. Tworek, "A New Blueprint for Platform Governance."



what companies have to report on and how.<sup>223</sup> But laws can also be too prescriptive: The California Consumer Privacy Act made detailed design rules for a specific button, which might have actually hurt compliance with the spirit of the law, which is helping users understand what their data is being used for.<sup>224</sup>

Updating campaign  
finance oversight

Not only the rules for platforms should be enhanced, but also those for political advertisers. At the German federal level, a rather lax oversight system for political advertisers should be replaced by modern rules for campaign finance. As international organizations and researchers have pointed out over the years, German financial reporting requirements need to be enhanced and an independent oversight body to audit financial transparency reports should be found or created. Political financing reporting needs to be expanded to include more data on money sources. While such changes would go beyond mere advertising issues, any campaign finance reform should still account for the mass-scale, yet tailored messaging that advertising money can buy on many online platforms. Other advertisers apart from parties should be covered by transparency rules as well, which ties into the need for developing verification mechanisms for political advertisers. Knowing full well that reforms on such a complex and touchy subject entail a heated and lengthy legislative process, political parties should, as a first step towards mandatory guidelines, set a good example by self-committing to fair digital campaigns and high financial transparency standards.

As these considerations about regulation and transparency measures illustrate, there are many complex issues arising with online political advertising. The basic premise that fair, open and pluralistic political competition is vital for democracy remains unchanged. Yet, technological change has upended the way this competition plays out online, giving rise to new opportunities as well as new risks associated with paying to reach voters. Setting rules to deal with this technological change is about ensuring citizens' ability to form and voice their political opinions free from online ad practices that might be discriminatory, enable dark money to interfere and are too opaque to scrutinize. Finding such rules should rest with parliaments, not private companies.

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223 Bundesministerium der Justiz und für Verbraucherschutz, "Gesetz zur Änderung des Netzwerkdurchsetzungsgesetzes."

224 Cf. Jen King and Jana Gooth, "Comments on Assembly Bill 375, the California Consumer Privacy Act of 2018" (Stanford, CA: Stanford Law School, March 29, 2019), [http://cyberlaw.stanford.edu/files/blogs/king\\_gooth\\_CCPA\\_comments.pdf](http://cyberlaw.stanford.edu/files/blogs/king_gooth_CCPA_comments.pdf); Jen King and Tianshi Li, "Comments to the California Attorney General's Office Regarding the February 10th Revision of the Regulations for the California Consumer Privacy Act (CCPA)" (Stanford, CA: Stanford Law School, February 26, 2020), [http://cyberlaw.stanford.edu/files/blogs/King\\_Li\\_CCPA\\_Feb\\_2020\\_Comments.pdf](http://cyberlaw.stanford.edu/files/blogs/King_Li_CCPA_Feb_2020_Comments.pdf).



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