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Tender Specifications to the Request for Service

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Framework Contracts **JUST/2020/PR/03/0001** on

Evaluation, impact assessment and related policy support services in the Justice
and Consumers policy areas – **Lot 1**

**Study to support the preparation of an EU instrument on to help improve the resilience
of our democracies and address the threats of interference in elections through greater
transparency in political advertising, and other measures to promote resilient
democracy in the EU**

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PART I – SPECIFIC PROVISIONS

I.1 BACKGROUND TO THE REQUEST

The use of advertising as part of political campaigning is common across the EU, and the national laws and practices which control it vary. In many Member States this is carefully defined and strictly controlled activity: for instance, a Member State might prohibit political, partisan or issues-based adverts in national media outside a specific period, or it might strictly control the amounts of money which can be spent on them, or the numbers or duration of any visible campaign material, or the access that the parties and individuals contesting an election can have to the various media. Political advertising will thus engage many aspects of national electoral laws, traditional safeguards which include silence periods, rules about visibly marking such material, funding rules and restrictions on who may participate in political activity (for instance non-nationals and corporate entities). There are also relevant EU laws which can apply in this context, which include data protection and e-commerce rules, as well as fundamental rights and, in the context of European elections, specific rules on their organisation and the funding of the activities of European political parties.

The digital transformation of our societies has brought many opportunities for new ways of conveying political messages to citizens, to provide citizens with rich, relevant and timely information, and to enable citizens to create their own content and participate directly in the political debate. Key developments in the online environment have been the great decrease in the cost of publication and dissemination of messages online; the great increase in the amounts of personal data on citizens available to political actors from a great variety of sources including commercial activity or directly from the citizens' own online activity; and combining these two developments, the emergence of services which enable the analysis of this data and its use in the creation of messages which can be tailored and targeted to increasingly refined subsets of citizens.

While the tailoring and targeting of advertising to groups is not a new or unusual phenomenon, its development online in recent years has resulted in a number of phenomena which are considered to have had a negative impact on aspects of the political process. Compliance with the abovementioned traditional rules which apply to political campaigning, designed to maintain a degree of transparency and parity of resources when contesting elections, can be difficult or even impossible to monitor and enforce in the online context. Whether through a lack of relevant legislation, a lack of compliance and transparency on the part of political actors or the online platforms which disseminate such material, or a lack of monitoring capability on the part of competent national authorities, such rules have been circumvented and it has been challenging to ensure that online activity is properly included in the overall supervision applied to elections.

Other issues concern the material and the means by which political advertisement is disseminated. The Facebook-Cambridge Analytica scandal brought to light an industry which had sprung up around political and issues based campaigning, where the sophisticated

analysis of online social media users' personal data¹ was used to manipulate public opinion and potentially the outcome of elections by various means, such as through the identification of specific groups and individuals likely to be affected by particular issues or messages (both positively and negatively), through the identification of particularly influential members of social networks, and through the use of such analyses and the targeting services offered by online platforms to selectively and often misleadingly advertise on this basis. One effect of targeting is that it enables different messages to be directed to different people by the same campaign, with less chance of contradictory facts or misleading promises being spotted.

Other campaign activities make use of different aspects of the online environment and the way that the online intermediaries disseminate and prioritise information on their platforms. For instance, because online posts, including adverts, will often be prioritised on the basis of user interaction, one technique is to rely on triggering negative reactions obtained by targeting politically provocative material to users likely to disapprove of it, in order to drive up its wider dissemination among other users later on. Other techniques are to use false accounts or to pay for real people to generate large amounts of user generated content to create the appearance of a groundswell of popularity for a particular idea or candidate. Finally, some efforts simply aim to misinform, including regarding essential procedural information regarding elections such as ballot station closing times.

While online and data-enabled political campaigning is much cheaper than traditional forms of political campaigning, its proven effectiveness and return on investment means that it is also the case that very large sums of money are now being spent online in efforts to shape the political debate. In many cases, the majority of a campaign's publicity spending is directed towards online advertising and supporting services. While online platforms have begun to voluntarily require a degree of transparency about the identity and in some cases the amount spent to place an advert online, this transparency is neither complete, nor is information made available to the competent authorities to ascertain whether such disclosures are true². At present, while most online platforms will require an entity placing a political advert to disclose its identity, and in some cases they will require some kind of evidence of a link to the country in which a political advert is placed, these are transactions being conducted exclusively within the framework of the online intermediaries contractual terms of service, and rarely is reference made to national rules relevant to the electoral context. Access to information about how and the extent to which such requirements are implemented is not made available, and there are few justiciable recourses available to users beyond the contractual terms for such services. Finally, novel forms of offline political interference have been observed, such as the distribution of free newspapers including manipulative material, for instance promoting conspiracy theories.

¹ Obtained and used without consent for such purposes, and including the combination of data derived from multiple sources, such as from social media, online searches and online retail activity being combined with more traditionally obtained data such as club and political party membership and physical location.

² The Commission recently published its assessment of the first year of operation of the self-regulatory Code of Practice on disinformation, a framework for a structured dialogue between relevant stakeholders – the first one of its kind worldwide – to ensure greater transparency and accountability of platforms' policies on disinformation. While a first step of great value, the assessment identified a number of fundamental shortcomings in the Code: <https://ec.europa.eu/digital-single-market/en/news/assessment-code-practice-disinformation-achievements-and-areas-further-improvement>

Currently, the European Commission is taking action to establish the overall responsibilities owed by online intermediaries acting within the European Union's single digital market. The phenomena considered here, however, reach beyond the activities of online intermediaries and touch upon a host of services provided in the context of a particular subset of advertising services. An impact on the integrity of the democratic debate and of the political processes in the Member States of the European Union, and in particular as these apply to the elections to the European Parliament, can be discerned in connection to certain aspects of political advertising as it is conducted online and enabled digitally. At the same time, political expression and campaigning are both strictly protected by the freedoms of expression and association, an essential part of the democratic values that the Union is founded to uphold, and crucially, regulated largely in sensitive areas of national competence, but also regulated largely by reference to activities conducted offline. Some Member States are individually taking action to impose some transparency requirements into this market, but this risks increasing its complexity and resulting uncertainty for market actors. The European Commission is therefore taking forward initiatives under the President's new push for democracy in Europe, including a European Democracy Action Plan to help improve the resilience of our democracies and address the threats of external interference in European elections. The aim is to counter disinformation and other forms of information manipulation, and to adapt to evolving threats and manipulations, as well as to support free and independent media. Measures would need to be effective offline and online, and it is also intended to promote these outcomes for national elections but determining the extent to which this is achievable and how is an aim of the current study.

In this context, the Commission will assess whether action is needed to address the legal uncertainty in this complex market, reduce its impact on the single market and ensure thereby that the issues created by political advertising are addressed effectively, consistently and compatibly with fundamental rights, and in a manner which is proportionate and compliant with the principle of subsidiarity.

I.2 CONTRACT OBJECTIVE

The objective of the contract is to provide the Commission with evidence and analysis to help prepare an EU instrument to enhance the transparency of political advertising, and other measures to increase the resilience of democracy in the EU. Political advertising should be understood broadly in this context, and should include concepts such as issues based and partisan advertising, and other forms of paid for political communication (definitions are elaborated below).

This would support the functioning of the internal market by providing specific measures to clarify the obligations of actors in a sensitive area. Transparency of political advertising would aim to help citizens, including actors in the public interest and public authorities, recognise advertisements and determine their source, funding and purpose, and thereby increase the accountability – including that all relevant laws are complied with – of actors seeking to influence the political debate and thus reduce the scope for interference. A further aim of intervention in this area would be to ensure that relevant fundamental rights and standards continue to be upheld as effectively online as they are offline, and ultimately, that legal certainty is provided to market actors engaged in this activity.

A legislative proposal could be complemented by further provisions applicable to European political parties, and could entail recommendations to be applied by national political parties. It would aim to cover all types of elections in Europe as appropriate, in particular during election periods³ and potentially beyond. The aims of such a legislative proposal could be furthered by measures to increase the transparency of certain techniques used to amplify and disseminate paid for advertising more widely, particularly online (microtargetting etc), as well as to assist in the monitoring and enforcement of relevant electoral rules (including rules on political financing, but also on fair and equal access to the political debate), and the auditability of the relevant conduct of actors in this market. These measures could be part of the legislative proposal, or included in guidance and recommendations, as appropriate. Self-regulatory codes and standards established among market actors and relevant stakeholders could be given binding force or a procedural framework in law. Relevant electoral rules are largely national and differ greatly, but there are also EU rules, as well as relevant international standards, which should be taken into account and could be supported by such measures.

Any eventual initiative in this area would be complementary to the proposals being taken forward to update the audio-visual media services framework through the Digital Services Act package, and would thus enable providing greater clarity as regards the respective obligations of the service provider and purchaser of political advertising services. This complementarity and the articulation between the proposals under study and any to emerge from the Digital Services Act package must be taken into account. An initiative would also be complementary to other initiatives related to free and fair elections and a new push for democracy in Europe currently in the pipeline, including measures to further clarify the rules regarding the funding of European political parties, and proposals to amend the directives providing detailed arrangements for the enjoyment of EU democratic rights under Article 22 TFEU. Other potentially relevant instruments, such as 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) and Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union, should also be considered.

I.3 TASKS

The research contracted for will feed into an impact assessment of possible Commission action to ensure greater transparency in political advertising, including to enable its monitoring and relevant capacity building among competent authorities at Member State level. The Commission expects thus to be enabled to analyse and assess the different policy options against a background of solid research and an assessment of their strengths and weaknesses, in particular in terms of cost efficiency and administrative burden. **Two main tasks are therefore required.** First, a thorough backward-looking **baseline description of the status quo** and analysis of it will be needed, which will include a comprehensive legal and policy mapping of relevant national provisions determining political advertising in

³ Election periods are defined variously in the Member States, and in a few cases, they are not defined.

general, advertising in political campaigns, as well as the conduct and financing of political campaigning will be needed to ground the analysis. Second, upon this basis, **an impact assessment** will be performed.

The requirements and methodology outlined in the Better regulation guidelines (SWD(2015)111)⁴ and its accompanying Toolbox (hereinafter Better Regulation Guidelines) should be strictly followed at all stages of the research and analysis. Only approved methodologies will be accepted and triangulation of methods is required. The contractors should explain in their bids the advantages, limitations and risks involved in using the proposed tools and techniques.

The contractor should define and use quantitative indicators to support its conclusions. In this context, data could include a survey of relevant market actors (advertising services providers, consultants, electoral analysts, campaign management and consultation, marketing design and distribution, other online services such as profiling and behavioural analysis), political parties and campaign organisations; volume data for online and offline advertising spending, both political, issues based and total; political financing data – amounts received by political parties and campaign organisations as donations and contributions, amounts raised by other means, and expenditure analysis; as well as basic relevant data on elections in the European Union regarding the number of elections, the composition and demographics of the electorates, the prevalence of political advertising online and offline and general online behavioural data. In this respect we refer the contractor to the studies already conducted by the EU Joint Research Centre on ‘Understanding our Political Nature’⁵ and ‘Technology and democracy’⁶.

I.3.1 Performance of the tasks

Based on the information gathered during the initial stage of the project (see I.3.2), the contractor should produce a report which sets out a prospective analysis (impact assessment – see I.4).

The information gathering stage and the analysis are described in more detail in the following sections, in the likely order in which they would be expected to be performed. This is followed by a brief outline of the likely main research themes.

I.3.1.1 Information gathering, preliminary background analysis and mappings

The analysis foreseen in this report will require substantial information and data collection efforts, some of which will need to be from primary research. A list of examples of sources has been included in the Terms of Reference (see section I.5). The specific questions which need to be addressed will be considered in greater detail in section I.3.2.

In their bids, the tenderers will set out the information needs for the analysis to be prepared for this report. In establishing this information base, the tenderers should consider all relevant available empirical information, including statistics and findings which can be extracted from

⁴ http://ec.europa.eu/smart-regulation/guidelines/docs/swd_br_guidelines_en.pdf

⁵ <https://ec.europa.eu/jrc/en/publication/eur-scientific-and-technical-research-reports/understanding-our-political-nature-how-put-knowledge-and-reason-heart-political-decision>

⁶ forthcoming

previous studies and data which is available through public consultations, surveys, stakeholders input and experts' views.

Knowledge and data already available to the tenderers and the quantitative indicators which they propose to use in the evaluation and the impact assessment analyses should be enumerated in the bid and exploited fully. The tenderers should propose methodology to fill any gaps in the required information, in the form of a plan for research. They should also propose a draft intervention logic for the impact assessment analyses based on the information available, making reference to any uncertainties regarding which further evidence should be gathered. The Commission will provide the successful bidder with certain already available materials, including material prepared in the context of the Digital Services Act package.

A preliminary background analysis will as a first step be further elaborated following the award of the contract, to inform the primary research requirements (gap analysis), to support the preparation of a skeleton report and impact assessment, and to form a solid basis for the study and the analysis to be performed. **It is essential** that sufficient data, ideally quantitative but also qualitative, be obtained to ground the each main heading under the problem definition, as well as the analysis of the various options detailed in the impact assessment section.

The background research should make best use of existing material and at least include:

- an exhaustive mapping of all relevant legislation and practices in all Member States as well as of relevant self-regulatory/co-regulatory instruments, guidelines and professional guidelines/codes (including in Annex full text of all the instruments in EN translation where used and other relevant documents applicable). This point should in particular be understood to be a requirement to map the rules relevant to political advertising and private sector actors, and consider instruments, guidelines and professional codes/guidelines beyond those applicable to the online intermediaries;
- case studies of the political campaign process in (around 5 – bidders should justify the number and choice of state) selected Member States (to be determined during the inception phase) and at European level, to enable the law and policy context to be synthesised with the conduct of market and political actors, and the conditions in which an intervention would be implemented to be illustrated;
- a description of the types of actor involved in preparing, procuring and funding a political advert, and the types and examples of the service providers involved in providing these adverts online and offline, as well as the providers of ancillary services such as political consultancy, electorate analysis, campaign strategy and other forms of advice and intermediary services.
- specific description of the process followed when placing an advertisement (online and offline), and the conditions imposed by leading service providers in this respect, including any relevant differences when the advertisement is political or “issues based”.
- data about the amounts of spent in online advertisement in specific election campaigns and the percentage of amounts spent on online vs offline advertisement, and on the availability of such data at a European level;

- as comprehensive description as possible of related services made available in the context of placing a political advert, including in their preparation, their funding, their targeting, amplification and dissemination, and their monitoring;
- review of relevant definitions of key terms (including political advertising, campaigning and campaign expenditure) where available in law, national and European policy, and contractual terms of service and the differences between them where Member States and market actors differ in their approaches (this is known to be the case for definitions of “political advertising” but could also cover other relevant concepts e.g. political financing and protected speech;
- relevant guidelines, standards and recommendations issued by international, intergovernmental and leading non-governmental organisations in this field, which must include as a minimum the Council of Europe and its related bodies (including the Venice Commission and the Court of Human Rights), the United Nations and its related bodies (including UNESCO and the UNHRC), International IDEA, International Partnership for Democracy, and the OSCE and its related bodies (including ODIHR);
- a thorough literature review and analysis of the state of the art regarding the main heads of analysis, including in particular on electoral law and the impact of the digital transformation on monitoring and enforcement, the phenomenon and impact of political advertising online, the use of political advertising as a vector for disinformation and other forms of information manipulation, and its impact on the political debate. An indicative list of sources is provided in the annex to act as a starting point for the preparation of bids.

The analysis to be carried out will need a solid information base to understand the complex context into which any initiative must fit. To fully address the objectives set out in in section I.2, a non-exhaustive indication of the specific questions which will need to be addressed in the background research is set out below in sections I.3.2.1-3.

Where statistics and information is to be obtained by contacting national authorities within or, if necessary, outside the EU as well as through other stakeholders, these contacts will be conducted in agreement with the Commission, which may facilitate or join the contact on the basis of the preparatory work done by the contractor (e.g. drafting the necessary letters, searching for contact persons, etc).

Once the primary research needs for the study are identified, and after the contract is awarded, the contractor will have to prepare suitably tailored **draft questionnaires** for the consultation of Member State authorities and other relevant stakeholders, in consultation with the Commission and taking appropriately into account existing material. The aim of the questionnaires will be to complete and consolidate the information available on legislation and practices and market activity concerning elections in general and political advertising online and offline in particular. In principle, the Member States will be requested to validate information available and to provide missing information.

A public consultation will be prepared by the Commission to run concurrently to and support this study, and the contractor will be required to feed into the preparation of the consultation questions at the “interim report” stage (see timings in section I.6 below) to help ensure that they yield results relevant for this study. The Commission will make the consultation results available to the contractor, and the contractor will analyse them and take into account the

outcome of the public consultation in the report. The public consultation will be treated under the EU Survey system, which, except for open questions, allows easy obtaining of aggregated results.

Synthesising the information collected through the completion of the above steps in the form of consultation summaries and a draft synopsis (to be included in annex of the deliverables, as they become available), the contractor will finally perform the further **impact assessment** support tasks described in section I.4 below.

I.3.2 Main research themes

It is the exclusive responsibility of the contractor to guarantee the consistency, sufficiency and adequacy of the information gathered for the purposes of the report. The following will outline the main research themes which should contribute to the impact assessment.

I.3.2.1 Description of political advertising online and offline, within the overall advertising services market

The contractor should be able to describe the market in which political advertising is conducted, and describe the services provided in this connection, the main service providers, the main users of those services, the legal and self-regulatory frameworks within which this activity is conducted.

As comprehensive a review as possible should be provided of all forms of online and offline advertising (including from print to broadcast media, and online search, retail, entertainment and social media platforms) should be included, as well as the relevant supporting services, so that their value and relevant market trends can be understood.

I.3.2.2 Political campaigning online and the industry of services which support it

The contractor should be able to describe in practical terms how political campaigns are organised in the various Member States, within and outside of election campaign periods. Such description should include the relationship between political parties, political campaigns, and other movements and organisations which engage in campaign and “issues” advertising, how these campaigns are planned, structured, rolled out, monitored and shaped, with a focus on online campaigning, but appropriately taking into account also the wider context.

Particular attention should be paid to the role played by the support services which contribute to the preparation, funding and dissemination of online political campaigns, including fundraising tools and providers, electorate analysis services, data brokers, campaign managers, opinion polling, marketing and messaging consultants.

The contractor should aim to provide a relevant overview of how political advertising is used to influence the political debate and electoral outcomes, and the understood impact of these activities, and to provide an account and analysis of recent developments in this area. This should include any evidence on how of online political advertising is being used with the effect of polarising and radicalising the political discourse, in disseminating disinformation and other forms of manipulation and scams, in circumventing electoral law and financial safeguards, and as tools for foreign interference in elections and for “issues” campaigning.

I.3.2.3 Overview of national legislation and practices

The activities under consideration here are carried out within a highly regulated environment which includes national electoral, media, advertising, financial and commercial laws and relevant professional standards and self-regulation, as well as EU law, including data protection and e-commerce rules, and in the context of European elections, European electoral rules. Given the cross-border nature of modern political advertising services, particularly online, it is essential that the relevant national rules and practices applicable to political and issues based advertising, both with the context of an electoral period and outside of it, are thoroughly mapped out. Also important is information on national monitoring and enforcement, to include the natures, powers, approaches, capabilities and scope of the responsible national authorities and other bodies which supervise activities in this area, such as standards bodies and industry associates. Relevant international standards and the organisations which prepare and monitor them should also be considered, also including electoral observation and the specific guidelines, handbooks and other tools which are used to observe online and offline political campaigning.

I.4 IMPACT ASSESSMENT

The impact analysis should be performed on three main types of policy options for future change (defined below) against the status quo, to enable the Commission to carry out its impact assessment.

I.4.1 Problem definition

Enhanced digitalisation of communications and the online environment have brought many opportunities for political actors to reach citizens, including by means of online political advertising, and for citizens to participate in the democratic debate. Online political advertising is known to be capable of having an impact on the democratic debate and on electoral outcomes. Numerous techniques and specific characteristics of the online environment mean that it is capable of being more cost effective than other forms of political campaign expenditure, which is in turn driving an increasing proportion of all campaign expenditure online. This effect is further intensified by the coronavirus pandemic, where sanitary measures have also driven more political debate and other activity online.

However, experience in recent elections, including the European elections, has indicated that online advertising in particular and the overall digitalisation of political campaigning have had negative impacts on electoral processes and on democracy and the democratic debate more widely. Efforts to interfere in elections and the democratic debate have also intensified overall, with novel forms of offline information manipulation also being observed.

These negative effects are currently under intense scrutiny and debate, both in academic and policymaking, but in broad terms they concern the following issues:

- The move of political advertising to the internet has in many Member States created difficulties with the application of traditional electoral rules (such as regarding transparency, equality between candidates, silence periods, spending limits and prohibitions regarding foreign funded political activity and bans on political advertising altogether) which are normally applicable to political advertising through conventional media (such as the press, TV, radio and on billboards). This is due to a variety of factors,

including because there is no clear shared definition of what constitutes political advertising, the national laws do not foresee monitoring and enforcement online, the competent national authorities lack the capacity or access to the relevant information to conduct such monitoring and enforcement, or because the relevant activity is frequently carried out outside the jurisdiction of the national authorities or outside regulated campaign periods as such;

- The difficulty in monitoring and enforcing applicable rules in the digital world, as well as the frequently cross-border nature of political advertising (and its financing, preparatory and dissemination components) have brought about a number of further issues. These include the influx of sums of money from undeclared sources (sometimes also generated online through anonymous donations or monetised content) to conduct online political campaign activity which is not properly notified to the competent authorities, which misleads or manipulates citizens, and which in other ways does not comply with relevant national party and campaign financing rules or other standards, such as with respect to silence periods or content rules.;
- These difficulties regarding the applicable rules have also created legal uncertainty for relevant service providers and actors in this domain, including online intermediaries and political consultancies and related enterprises, but also for political parties, campaign organisations, candidates and for citizens more widely. This legal uncertainty has prompted private actors to refrain from offering services across borders within the internal market, and it has also prompted Member States to take action individually to introduce or strengthen relevant obligations online and offline, with the attendant risk of exacerbating the differences among Member States and any distortion to the internal market;
- The new medium and the grey zones in which online political advertising can be distributed makes it more difficult for citizens to recognise political advertising and paid for messages as such. Citizens cannot always distinguish paid-for political material from news reporting, “organic” content shared by other users, and content self-created by other users, including political parties and other political actors;
- New techniques for the dissemination of advertising by online intermediaries or other service providers involved in its preparation and dissemination, combined with vastly increase use of personal user information, enable political adverts to be artificially (as in not amplified and directed online, and tailored to a citizen’s or a group of citizens’ specific profile. Novel forms of offline advertising have also been observed, such as free “newspapers” disseminating COVID-related conspiracies There is insufficient public awareness of how these techniques work and how they are used, how to recognise their use and how to guard themselves against them. The use of these micro-targeting techniques can also be used for fostering divisive and polarising narratives, and leaving room for citizens to be manipulated and misled.

These issues affect the integrity of democratic processes in Europe. They raise questions regarding the freedom of citizens to make informed and un-coerced decisions in elections, and are believed to have distorted the democratic debate and the working of the political process in Europe. In this context, the ease with which political advertising can be prepared and disseminated and the lack of transparency on how it was financed show how vulnerable European democratic processes are to internal and external interference, including from third

countries. This erodes citizens' confidence and trust in the integrity of the electoral processes and of the democratic institutions governing these.

This lack of effective transparency on sources of financing and how online advertising is distributed prevents journalists, civil society organisations and other relevant stakeholders from investigating expenditure in political campaigning and ensuring that the participants are held to account. This leads to reduced political accountability.

This increases the need for transparency in this area, both to enable individuals to understand the context behind the material they encounter online and to ensure that other actors, such as the media, NGOs and other political candidates, parties and campaigns, can continue to play their respective, essential roles (including participating in the debate, checking facts, investigating and reporting on events and political actors etc) in the democratic process with respect to online activities.

Experience, including from the 2019 European elections, also suggests a risk of increased national compartmentalisation of the advertising services market with respect to political activity at the European level, resulting in increased administrative and compliance costs, and uncertainty for economic actors in the internal market. This also creates challenges for monitoring and enforcement by relevant national authorities.

Finally, in the absence of clear rules applicable in the internal market, economic actors such as platforms may become, in particular if they have a gateway role, de facto enablers and or quasi regulators of political ads. There is also in many cases uncertainty as regards the applicable laws, and how to adapt online activities and the economic actors' terms of service to the political context.

I.4.2 Policy objectives

The provisional objectives for a possible Commission initiative are set out below. The contractor will refine these objectives on the basis of the evaluation, and the research done to support this report overall. These objectives will be discussed especially at the beginning of the assignment (at the kick-off meeting).

I.4.2.1 General objective

The general objective of an EU policy initiative in this area is to increase the transparency of political adverts and define requirements for economic operators, EU political parties and other actors in the political process, to help improve the resilience of our democracies and to reduce the opportunity for interference in elections in Europe.

I.4.2.2 Specific objectives

An initiative on transparency of political advertising would aim to

- enable all citizens and groups of citizens, including actors in the public interest and public authorities, to be systematically and clearly informed of the source, funding and purpose of any political advertisement, including through awareness raising;
- increase the accountability of all actors (whether within or outside of the EU) which seek to influence the political debate and political outcome within the EU and its Member States, support the equal and open access to the political debate for all actors, and support access to accurate information by ensuring that relevant laws are clear and effectively enforced;

- discourage covert or otherwise manipulative interference in the democratic process, reduce the opportunities for citizens to be misled or misinformed, including as regards key information on electoral processes, reduce the opportunities for other distortions of the political process (such as through the circumvention of applicable rules or through the use of distortive techniques such as microtargeting) and increase confidence and trust in this process; and
- increase legal certainty for actors in this market, including by harmonising transparency requirements on relevant economic operators across the Union, thus creating a level playing field for businesses and removing distortions of competition in the internal market.

These specific objectives will ensure that relevant fundamental rights and standards are upheld effectively both in the digital and offline worlds, to ensure that the full transparency attained acts as a deterrent to the misuse of political advertising and related techniques, and to support the enforcement of electoral law in elections.

These objectives could be complemented by exploration of binding or soft-law provisions applicable to European and national political parties. Provisions could support the monitoring and enforcement of relevant rules, as well as commitments made under self-regulatory instruments.

Any initiatives would be expected to articulate efficiently with existing relevant EU legislation in the area such as the GDPR, including initiatives in the pipeline such as the Digital Service Act.

Political advertising should be understood broadly in this context. It is defined in certain jurisdictions in order to engage certain electoral laws, such as those on campaign finance limits and on permitted and required content. The terms partisan advertising, campaign advertising and issues based advertising are also common, including in the terms of service of online intermediaries, as well as in non-EU jurisdictions. It is not the objective of this study to establish a particular definition of political advertising, but it will be necessary to consider whether and to what extent one might be needed, and the concept should be approached broadly.

Transparency would include the provision of relevant information in an easily accessible form to enable citizens, competent authorities and other relevant stakeholders to ascertain, in particular at the time when the advert is accessed, but also for a reasonable (and potentially specified) period afterwards:

- The origin of the political message;
- Whether a given message online has been paid for;
- Who ultimately paid for the advert and how much, and what services (for instance behavioural profile targeting) were paid for;
- Further possible information to ensure fairness in the context of political advertising.

Transparency in this respect takes into account new technological developments and their impact in terms of exposure to political ads and specific techniques being used in their preparation and dissemination, such as micro-targeting.

This will enable citizens to critically assess the material they receive online (including when using social media platforms and other services which can include the presentation of political advertising) and competent authorities to exercise their oversight functions. It will also support democratic checks and balances, by strengthening the ability of the media, intermediaries and other actors to play their role in the political process. Transparency should support accountability and the monitoring and enforcement by competent authorities of relevant rules.

Clarification and specific reinforcement of a transparency obligation in this particularly sensitive area would help ensure a level playing field for relevant economic operators. Clarification would be expected to include the scope of application of such obligations, including determining the actors and activities covered, the substance of the obligation and to whom it is owed, and the conditions according to which it must be discharged. It would also clarify obligations and/or provide for soft law measures for political parties in Europe and to the Member States (to adopt obligations enforceable nationally on political actors as regards expenditure and conduct of political advertising). It may be necessary to consider whether there is an accompanying need to privilege the access and promotion of certain official information, such as regarding the administration of elections. Provisions could also provide enabling frameworks for co-regulation for detailed standards in specific areas.

Concerned market actors would most probably include advertising service providers and providers of intermediary services. These could include the political consultancy/specialist analysis and public relations service providers involved in the preparation of advertising, its planning and dissemination. Advertising could be covered online only, or online and offline.

I.4.3 Main policy options

The Commission has identified the following four options as the main routes for any possible future initiative in this area, reflecting different degrees of intervention by the European legislator. Based on the assessment of the relevant context and the analysis of the problem description and intervention logic, the contractor will elaborate on these options, including describing the actions needed to implement them in detail. The actions and policy options will have to be evaluated in terms of efficiency (costs, benefits and their distribution among stakeholders affected), effectiveness (against the specific EU objectives defined for this initiative), coherence (with other key EU policies and, where relevant, national policies) as well as their degree of proportionality (plus subsidiarity, if relevant).

The contractor will identify under options 3 and 4 a number of sub-options reflecting differing technical approaches to achieving increased transparency, with different ways of triggering relevant obligations and of framing the obligations envisaged in terms of scope and impact on the internal market and how relevant national and European measures might interact.

After assessing the expected impacts of the various options/sub-options, these will be compared (normally net of the baseline) based on the four key criteria specified above, using multi-criteria analysis techniques (including sensitivity analysis) if relevant.

Finally, for the preferred option(s), the contractor will:

- draft information detailing subsidiarity and proportionality aspects of the preferred option.

- propose a plan for future monitoring and evaluation (in particular key success criteria), developing as needed possible operational objectives, baseline data and targets.

Policy Option 1: Status quo

The first policy option is not to propose any new actions that would require a new EU policy cycle. The status quo is, however, neither neutral in its outcomes, nor stable, given:

- the rapid and radical changes taking place in this area owing to continued technological advances (and the resulting economic, industrial, political and social effects to be assessed under the baseline);
- ongoing national legislative projects to address political advertising and related issues (currently under discussion, for instance in Ireland and the Netherlands);
- any “no regret” policies that could be taken outside of any new EU political cycle (e.g. strengthening the enforcement of existing laws, including through redirection of available resources and better coordination among existing responsible authorities, in case there is scope for this).

Policy Option 2: Non-legislative measures to clarify the current EU and national framework

In the light of the current EU and national legal frameworks, guidance and recommendations could be issued by the Commission to support clearer enforcement of existing laws (as was done in the Recommendation which formed part of the 2018 electoral package) and self-regulatory standards such as the Code of Practice on disinformation. This option would seek to achieve more transparency conduct political actors and market actors purely through soft measures. Support for national capacity building, shared capabilities in the domain of monitoring and enforcement of relevant laws, and awareness raising and similar interventions could be envisaged to support recommendations, guidelines and other voluntary standards.

Policy option 3: targeted legislative intervention to introduce an enforceable obligation to provide a certain minimum standard of transparency, tailored to the various economic actors in the relevant market

Under this option an intervention is envisaged which would introduce/clarify obligations to provide specific disclosure of certain information regarding a political advert, which could be placed on the provider of an advertising service in the political context (suitably defined either by reference to national laws or specifically in the measure itself or by some other means), and on other participants in this process, potentially including the purchaser of the advert, the providers of ancillary services to the advertisement (e.g. supporting its preparation or dissemination), platforms and intermediaries, and others as relevant. The impact of obligations in this respect should be considered online and offline, bearing in mind the specificities of the media involved.

The scope of an obligation, the intended beneficiaries, its intended subjects and variations on the obligations’ scope depending on certain conditions regarding the subjects of the obligation or other elements in the context, could be explored under sub-options which the Commission would expect bidders to propose. For instance, obligations could be graduated according to the size of a market actor, or only be engaged once a *de minimis* threshold has been cleared.

Also, certain obligations might only be engaged during specific periods, such as a common European electoral campaign period.

This option would envisage policy measures that would fit within the existing EU and national frameworks and which would aim to keep the need for harmonisation to a minimum (least change option). This option would ensure that the interventions are complementary and supportive of national electoral laws where possible given the intervention's overall aims, whilst strengthening legal certainty on the part of political advertisers, market actors and citizens.

Supporting soft measures could be envisaged in the form of recommendations, guidelines and other voluntary standards, such as support for national capacity building, shared capabilities in the domain of monitoring and enforcement of relevant laws, equal access to the political debate, privileged access for certain information and awareness raising and similar interventions. A sub-option for certain soft measures should consider the use of co-regulation to give binding force to aspects of self-regulatory standards, such as to establish in law obligations to make sufficient information available for implementation of such standards to be audited, to impose sanctions for the failure to implement such standards, to establish the process whereby standards are agreed among market participants (e.g. Article 40 GDPR), and to establish procedural safeguards for users within a voluntary regime.

Policy Option 4: minimum harmonised political campaigning rules for elections in Europe

Under this option an intervention is envisaged which would introduce minimum common rules for political and issues based advertising, potentially including spending limits, specific disclosure rules for political actors, silence periods and limits on the use of specific dissemination techniques such as algorithmic targeting based on derived personal data or permitting refinement to groups below a specific limited size. The contractor should propose different sub-options covering selected elements from this list. Restrictions on the use of political and issues based adverts during campaign periods or on the basis of some other condition could also be considered as sub-options.

This 'maximalist' option would nevertheless envisage interventions which aim to fit within the existing EU legal frameworks. This option would provide a minimum standard applicable in all Member States, while also strengthening the overall compliance with relevant national electoral laws, and strengthening legal certainty on the part of political advertisers, market actors and citizens.

Supporting soft measures including support for national capacity building, shared capabilities in the domain of monitoring and enforcement of relevant laws, and awareness raising and similar interventions could be envisaged to support recommendations, guidelines and other voluntary standards. Supporting measures could consider additional commitments, for instance to ensure that official information regarding elections is privileged, or to provide for accessibility requirements etc. A sub-option for certain soft measures should consider the use of co-regulation to give binding force to aspects of self-regulatory standards, such as to establish in law obligations to make sufficient information available for implementation of such standards to be audited, to impose sanctions for the failure to implement such standards, to establish the process whereby standards are agreed among market participants (e.g. Article 40 GDPR), and to establish procedural safeguards for users within a voluntary regime.

I.4.4 Impacts to analyse

For each of the policy options, including the baseline scenario, the contractor should analyse the most significant impacts, provisionally identified as possibly including:

➤ **Impacts on citizens**

- To what extent would the option facilitate citizens' ability to recognise a political advert, and obtain information about how much was spent on it, who funded this and for what purpose, and where relevant, the means by which the advert was targeted to the citizen?
- To what extent does the option reduce the likelihood or impact of the identified risk factors, such as the dissemination of disinformation and other forms of information manipulation, and the interference in elections in Europe by malicious domestic actors or third-countries?

➤ **Impacts on political parties**

- To what extent does the option support compliance with relevant rules intended to maintain an open and accessible political process?
- To what extent does the option support openness in political and issues-based campaigning and a transparent political debate?
- To what extent would the option restrict a political actors' freedom to engage with citizens and to campaign legitimately?

➤ **Impacts on service providers**

- To what extent would the option restrict the opportunities to provide advertising services in Europe?
- To what extent would the option limit the range of services available on the EU market?

➤ **Impacts on Member States**

- To what extent will the option strengthen the compliance and enforcement of relevant national laws regulating elections and advertising?
- To what extent will the option improve the coordination and cooperation between the Member States?
- Which budgetary consequences will the different options have, positively and negatively, immediately and in the long run?
- Does it lead to additional administrative burden?

➤ **Impacts on fundamental rights**

- What would be the impact on fundamental rights enshrined in the EU Charter of Fundamental Rights, and would such impacts be beneficial (promotion of fundamental rights) or negative (limitation of fundamental rights)?
- How could the option be adjusted to enhance promotion of or limit restriction to certain fundamental rights?

If a risk is identified in the analysis of the problems, a risk assessment should be performed, to evaluate how best to deal with this risk. In particular, the study should seek to identify possible unintended/indirect consequences. In addition, the contractor should be ready to clarify those estimations of costs if questions are raised by the Regulatory Scrutiny Board after submission of the final report.

I.4.5 Suggested sources of information

Relevant EU legal acts

- 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) <https://eur-lex.europa.eu/eli/reg/2016/679/oj>
- Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (codified version) (Text with EEA relevance) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02010L0013-20181218>
- Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32000L0031>
- Act concerning the election of the members of the European Parliament by direct universal suffrage [https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601035818435&uri=CELEX:01976X1008\(01\)-20020923](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601035818435&uri=CELEX:01976X1008(01)-20020923)
- Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014R1141-20190327>
- Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:01993L0109-20130127>
- Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:01994L0080-20130701>

Studies

The 2019 post-electoral survey <https://www.europarl.europa.eu/at-your-service/files/be-heard/eurobarometer/2019/post-election-survey-2019-complete-results/report/en-post-election-survey-2019-report.pdf>

Standard Eurobarometer 90 – Media use in the European Union, December 2018 <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/86432>

Special Eurobarometer 477 Democracy and elections <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/search/477/surveyKy/2198>

Flash Eurobarometer469 Illegal content online
<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/search/online/surveyKy/2201>

Flash Eurobarometer 464 Fake News and Disinformation Online
<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/search/online/surveyKy/2183>

Special Eurobarometer 447 Online Platforms
<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/search/online/surveyKy/2183>

adding EU JRC – Technology and Democracy: understanding the influence of online technologies on political behaviour and decision making”- forthcoming.

EU JRC – Understanding our political nature: how to put knowledge and reason at the heart of policymaking <https://ec.europa.eu/jrc/en/facts4eufuture/understanding-our-political-nature>

EU JRC - Artificial Intelligence and Digital Transformation: early lessons from the COVID-19 crisis <https://ec.europa.eu/jrc/en/publication/eur-scientific-and-technical-research-reports/artificial-intelligence-and-digital-transformation-early-lessons-covid-19-crisis>

EU JRC – AI governance in the public sector: three tales from the frontiers of automated decision-making in democratic settings <https://ec.europa.eu/jrc/en/publication/ai-governance-public-sector-three-tales-frontiers-automated-decision-making-democratic-settings>

EU JRC – Understanding Citizens’ Vulnerabilities (II): From Disinformation to Hostile Narratives <https://ec.europa.eu/jrc/en/publication/understanding-citizens-vulnerabilities-ii-disinformation-hostile-narratives>

EU JRC – The Future of Government 2030+
http://publications.jrc.ec.europa.eu/repository/bitstream/JRC115008/futurgov_web_lq_v2.pdf

EP Research service – Regulating disinformation with artificial intelligence
[http://www.europarl.europa.eu/RegData/etudes/STUD/2019/624279/EPRS_STU\(2019\)624279_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2019/624279/EPRS_STU(2019)624279_EN.pdf)

EP Research service – Automated tackling of disinformation-Major challenges ahead
[http://www.europarl.europa.eu/RegData/etudes/STUD/2019/624278/EPRS_STU\(2019\)624278_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2019/624278/EPRS_STU(2019)624278_EN.pdf)

EP Research service – Disinformation and propaganda – impact on the functioning of the rule of law in the EU and its Member States
[http://www.europarl.europa.eu/RegData/etudes/STUD/2019/608864/IPOL_STU\(2019\)608864_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2019/608864/IPOL_STU(2019)608864_EN.pdf)

EP Research service – Disinformation and Science: Report of an investigation into gullibility of false science news in central European countries
[http://www.europarl.europa.eu/RegData/etudes/STUD/2020/653300/EPRS_STU\(2020\)653300_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2020/653300/EPRS_STU(2020)653300_EN.pdf)

EP Research service – Online disinformation and the EU's response
[http://www.europarl.europa.eu/RegData/etudes/ATAG/2018/620230/EPRS_ATA\(2018\)620230_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2018/620230/EPRS_ATA(2018)620230_EN.pdf)

EP Research service – Institutions and foreign interferences
[http://www.europarl.europa.eu/RegData/etudes/STUD/2020/655290/IPOL_STU\(2020\)655290_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2020/655290/IPOL_STU(2020)655290_EN.pdf)

EP Research service – The evolving consequences of the coronavirus 'infodemic': How viral false coronavirus-related information affects people and societies across the world
[http://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652083/EPRS_BRI\(2020\)652083_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652083/EPRS_BRI(2020)652083_EN.pdf)

EP Research service – Disinformation, 'fake news' and the EU's response
[http://www.europarl.europa.eu/RegData/etudes/ATAG/2017/608805/EPRS_ATA\(2017\)608805_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2017/608805/EPRS_ATA(2017)608805_EN.pdf)

EP Research service – The legal framework to address “fake news”: possible policy actions at the EU level
[http://www.europarl.europa.eu/RegData/etudes/IDAN/2018/619013/IPOL_IDA\(2018\)619013_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2018/619013/IPOL_IDA(2018)619013_EN.pdf)

EP Research service – Foreign influence operations in the EU
[http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625123/EPRS_BRI\(2018\)625123_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625123/EPRS_BRI(2018)625123_EN.pdf)

EP Research service – Online Platforms' Moderation of Illegal Content Online
[http://www.europarl.europa.eu/RegData/etudes/STUD/2020/652718/IPOL_STU\(2020\)652718_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2020/652718/IPOL_STU(2020)652718_EN.pdf)

EP Research service – Europeanising European Public Spheres
[http://www.europarl.europa.eu/RegData/etudes/STUD/2020/654628/IPOL_STU\(2020\)654628_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2020/654628/IPOL_STU(2020)654628_EN.pdf)

EP Research service – Disinformation and propaganda – impact on the functioning of the rule of law in the EU and its Member States
[http://www.europarl.europa.eu/RegData/etudes/STUD/2019/608864/IPOL_STU\(2019\)608864_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2019/608864/IPOL_STU(2019)608864_EN.pdf)

EP Research service – New aspects and challenges in consumer protection - Digital services and artificial intelligence
[http://www.europarl.europa.eu/RegData/etudes/STUD/2020/648790/IPOL_STU\(2020\)648790_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2020/648790/IPOL_STU(2020)648790_EN.pdf)

EP Research service – The impact of the General Data Protection Regulation (GDPR) on artificial intelligence
[http://www.europarl.europa.eu/RegData/etudes/STUD/2020/641530/EPRS_STU\(2020\)641530_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2020/641530/EPRS_STU(2020)641530_EN.pdf)

EP Research service – The impact of algorithms for online content filtering or moderation - Upload filters
[http://www.europarl.europa.eu/RegData/etudes/STUD/2020/657101/IPOL_STU\(2020\)657101_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2020/657101/IPOL_STU(2020)657101_EN.pdf)

EP Research service – Artificial intelligence, data protection and elections
[http://www.europarl.europa.eu/RegData/etudes/ATAG/2019/637952/EPRS_ATA\(2019\)637952_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2019/637952/EPRS_ATA(2019)637952_EN.pdf)

Commission documents

Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee – Report on the 2019 elections to the European Parliament COM(2020) 252 final https://ec.europa.eu/info/sites/info/files/com_2020_252_en_0.pdf

Commission Staff Working Document accompanying the Report on the 2019 elections to the European Parliament https://ec.europa.eu/info/sites/info/files/swd_2020_113_en.pdf

Code of Practice on Disinformation https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=54454

Commission Staff Working Document – Assessment of the Code of Practice on Disinformation - Achievements and areas for further improvement (SWD(2020)180) https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=69212

Commission Recommendation of 14.2.2018 on enhancing the European nature and efficient conduct of the 2019 elections to the European Parliament https://ec.europa.eu/commission/sites/beta-political/files/recommendation-enhancing-european-nature-efficient-conduct-2019-elections_en.pdf

Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions – Securing free and fair European elections A Contribution from the European Commission to the Leaders' meeting in Salzburg on 19-20 September 2018 COM/2018/637 final <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1537434682871&uri=CELEX%3A52018DC0637>

Commission guidance on the application of Union data protection law in the electoral context COM(2018) 638 final https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-data-protection-law-electoral-guidance-638_en.pdf

European Commission and the High Representative of the Union for Foreign Affairs and Security Policy Joint Action Plan Against Disinformation https://eeas.europa.eu/sites/eeas/files/action_plan_against_disinformation.pdf

Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – Report on the implementation of the Action Plan Against Disinformation JOIN(2019) 12 final, https://eeas.europa.eu/sites/eeas/files/joint_report_on_disinformation.pdf

Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – Tackling COVID-19 disinformation - Getting the facts right JOIN/2020/8 final <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020JC0008>

Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions – Strengthening Citizens' Rights in a Union of Democratic Change EU Citizenship Report 2017 COM/2017/030 final <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A52017DC0030>

Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions Towards more democratic European Parliament elections Report on the implementation of the Commission's recommendations of 12 March 2013 on enhancing the democratic and efficient conduct of the elections to the European Parliament /* COM/2014/0196 final */ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52014DC0196>

Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions under Article 25 TFEU On progress towards effective EU Citizenship 2011-2013 COM(2013) 270 final

Digital Services Act – deepening the internal market and clarifying responsibilities for digital services (Roadmap, Inception Impact Assessment and consultation documentation): <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12417-Digital-Services-Act-deepening-the-Internal-Market-and-clarifying-responsibilities-for-digital-services>

Digital Services Act package – ex ante regulatory instrument of very large online platforms acting as gatekeepers (Roadmap, Inception Impact Assessment and consultation documentation): <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12418-Digital-Services-Act-package-ex-ante-regulatory-instrument-of-very-large-online-platforms-acting-as-gatekeepers>

Council documents

Conclusions of the Council and of the Member States on securing free and fair European elections <https://data.consilium.europa.eu/doc/document/ST-6573-2019-REV-1/en/pdf>

European Council meeting (21and 22March2019)–Conclusions <https://data.consilium.europa.eu/doc/document/ST-1-2019-INIT/en/pdf>

Conclusions of the Council – Complementary efforts to enhance resilience and counter hybrid threats <https://data.consilium.europa.eu/doc/document/ST-14972-2019-INIT/en/pdf>

Parliament documents

European Parliament Resolution of 10 October 2019 on foreign electoral interference and disinformation in national and European democratic processes (2019/2810(RSP)) https://www.europarl.europa.eu/doceo/document/TA-9-2019-0031_EN.html

European Parliament recommendation of 13 March 2019 to the Council and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy concerning taking stock of the follow-up taken by the EEAS two years after the EP report on EU strategic communication to counteract propaganda against it by third parties (2018/2115(INI)) https://www.europarl.europa.eu/doceo/document/TA-8-2019-0187_EN.html

European Parliament request for legislative proposal: Digital Services Act: Improving the functioning of the Single Market 2020/2018(INL)
[https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2018\(INL\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2018(INL)&l=en)

European Parliament request for legislative proposal: Digital Services Act: adapting commercial and civil law rules for commercial entities operating online 2020/2019(INL)
[https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2019\(INL\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2019(INL)&l=en)

European Parliament own-initiative procedure (Resolution): Digital Services Act and fundamental rights issues posed 2020/2022(INI)
[https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2022\(INI\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2022(INI)&l=en)

The Parliament's stocktaking report on the 2019 European Elections (rapporteur MEP Durand) should be taken into account once available

The Parliament's report on the framework mechanism for the Rule of Law (rapporteur MEP Simecka) should be taken into account when available

Other

EDPB Guidelines 8/2020 on the targeting of social media users
https://edpb.europa.eu/sites/edpb/files/consultation/edpb_guidelines_202008_onthetargetingofsocialmediusers_en.pdf

EDPB Statement2/2019 on the use of personal data in the course of political campaigns
https://edpb.europa.eu/sites/edpb/files/files/file1/edpb-2019-03-13-statement-on-elections_en.pdf

EDPS Opinion10/2018 on the Commission Package on free and fair European elections
https://edps.europa.eu/sites/edp/files/publication/18-12-18_opinion_on_election_package_en.pdf

I.5 METHODOLOGICAL GUIDELINES

The standards of quality that are expected from the final report are as follows:

- gathering of relevant information and data and consultation of key stakeholders
- logical structure in accordance with Impact Assessment methodology
- clear connection between data, findings and conclusions
- readability for the non-specialist – existing deficiencies could be illustrated by case studies
- information that should be included in annexes (i.e. tables, results, statistics, sources including contact references of the respondents, specific questionnaires)

The contractor must choose methodological tools in line with the Better Regulation Guidelines. The objective is to carry out an integrated assessment of the direct and indirect impacts of the proposals by using the appropriate analytical method(s) and participatory approaches with experts and the inter-service steering group of the Commission.

The opinions of key stakeholders, including the 28 Member States, should also be taken into account where possible.

To the extent that the contractor will be given restricted information, it is expected to respect the confidentiality of this information by subscribing to a confidentiality clause.

I.6 DELIVERABLES

The Commission's approval will be granted after all its comments on the interim and final report and the deliverables have been effectively implemented by the contractor to the Commission's full satisfaction.

In their proposal, tenderers should describe the methodologies, data collection and analysis tools that they intend to use for addressing the problem questions and sub-questions. Drafting a logic model of the intervention will be part of the assignment in the inception phase of the work.

Work will begin on the date on which the contract enters into force (the date of the signature by the last contracting party). The research and analysis carried out by the contractor in performance of this contract must be set out in the reports described below. It must be submitted in English. The draft final report and final report must contain an executive summary document of about 3 pages in length, following the structure of the impact assessment. In addition, the contractor will submit power point presentations using infographics to the Commission along with the interim report and final report.

I.6.1 Services and/or products to be provided

Inception Report

Within 8 weeks from the signature of the contract, the contractor will submit the inception report. The Commission will have 15 working days to validate and provide comments on the report. The contractor must submit a revised inception report within 5 working days of receiving the Commission's comments.

Interim Report

Within 12 weeks from the signature of the contract, the contractor will submit the Interim Report. The Commission will have 15 working days from receipt to make comments on the draft final report. The contractor will submit additional information or another report within 10 working days of receiving the Commission's comments.

Draft Final Report

Within 22 weeks from the signature of the contract, the contractor will submit the draft final report. The Commission will have 15 working days to validate and provide comments on the report.

Final Report

The contractor shall submit the final report no later than 24 weeks from the date of entry into force of the specific contract.

I.6.1.1 Inception report

The inception report will include a full literature review on the topic, a draft skeleton of the final report, and a draft methodology chapter on the tools proposed by the contractor in their tender to carry out the impact assessment as well as the necessary timeline to implement these methodological tools. This chapter will already include draft questionnaires for Member State authorities and for relevant market actors (including as a minimum political parties and political advertising services providers) containing the information available and a draft intervention logic. For the avoidance of doubt, the design of any questionnaires will clearly

and explicitly justify on the basis of a gap analysis the questions to be used. All deliverables will follow close discussions with the Commission during the inception meeting and subsequent calls.

The contractor will provide a detailed explanation of how they intend to address each of the problem questions (judgement criteria proposed, data and indicators to be collected). It will detail the instruments for information collection and analysis, and present a detailed work programme for the remainder of the contracting period.

Annexed to the inception report, the contractor will submit a draft questionnaires for the Member State authorities and other stakeholders, prefilled with all the information already available, or with supporting descriptions of the other material already obtained.

I.6.1.2 Interim report

The Interim Report will draw conclusions from the analysis of the data processed. Special attention should be paid to developments not previously identified and potential new lines for research. Furthermore, the Interim Report will describe the problems, evaluate their magnitude, and provide evidence concerning its conclusions. It should also contain a preliminary assessment of impacts of the proposed policy options (including any sub-options and newly identified options), their analytical comparison and their adequacy to address the problems identified. The Interim Report will already demonstrated how all the available information will be applied in the final analysis. The Interim Report will be presented by the contractor and discussed with the Commission during a meeting held for that purpose.

I.6.1.3 Draft final report

The draft final report will conclude the analysis of the evidence collected and will already follow the structure and objectives of the final report. The draft final report provides the contractor with the opportunity to present their preliminary conclusions to the Commission, assess the analysis and its implications, and discuss any difficulties encountered in the process of carrying out an analysis of the possible policy actions.

I.6.1.4 Final report

The final report will present the literature review, the research findings, and the conclusions and recommendations of the impact assessment. It will be made up of:

- an executive summary sheet of 3 pages for the impact assessment;
- the impact assessment report, including tables of content;
- technical annexes, including the technical details and data used;
- a Power Point presentation of the work done, the conclusions and recommendations as well as a description of the intervention logic of the impact assessment, the policy option(s) and their impacts, making use of infographics.

The final report (except the slide presentation, which will be delivered in electronic format only) must be submitted in five copies including one 'master' for reproduction and in an electronic format compatible with the Commission's computer facilities.

The Commission may publish the results of the report or parts of it. For this purpose, tenders must ensure that there are no restrictions of confidentiality or based on the intellectual

property rights of third parties. Should they intend to use, for the purpose of the report, data which cannot be published, this must be explicitly mentioned in the bid.

In conformity with the Commission's guidelines on impact assessments, the final report, in part or in full, may be published on the Commission's website, allowing stakeholders to be informed and to provide feedback and evidence in relation to the problem, and possible additional considerations as to public options and their likely impact.

In view of its publication, the final report by the contractors must be of high editorial quality.

I.6.1.5 Minutes from the meetings

The contractor is expected to draft the minutes from the meeting with the Commission and submit them for the approval of the latter within 2 days after the relevant meeting takes place.

Timing of meetings and reports

Phase	Date	Meeting	Deliverables
	<i>Initial date (D)</i>	<i>Signature of the specific contract by the Commission.</i>	
Inception Phase	<i>D + max 10 working days</i>	<i>Kick-off meeting: At this meeting, the Commission will provide any additional information required for implementation of the evaluation. The contractor may raise specific questions or request complementary information on the assignment. The meeting will also be used to discuss in detail the working plan, to explain and clarify the tasks and the approach from the start. A preliminary draft of the inception report will be discussed during the meeting.</i>	
	<i>D + 8 weeks</i>		<i>Inception report</i>
	<i>Max. 15 working days after reception of inception report</i>	<i>Inception report meeting. The contractor may be requested to present the report to an Interservice Steering Group.</i>	<i>Minutes of the meeting</i>
Interim Phase	<i>D + 12 weeks</i>		<i>Interim report</i>
	<i>Max. 15 working days after reception of Interim report</i>	<i>Interim Report meeting The contractor may be requested to present the report to an Interservice Steering Group.</i>	<i>Minutes of the meeting</i>

Final phase	<i>D + 22 weeks</i>		<i>Draft final report</i>
	<i>Max. 15 working days after reception of draft final report</i>	<i>Draft final report meeting</i> <i>The contractor may be requested to present the report to an Interservice Steering Group.</i>	<i>Minutes of the meeting</i>
	<i>D + 24 weeks</i>		<i>Final report</i>

The Contractor will be requested to stay in regular touch with the Commission to discuss progress on a weekly basis.

The contractor may be requested to hold up to three additional meetings in Brussels or online.

The contractor shall observe the deadlines for the deliverables irrespective of vacation periods and public holidays that may occur within the duration of the project.

The tasks will be performed at the contractor's premises. However, meetings between the contractor and the Commission will be held at the Commission's premises in Brussels or online.

I.6.2 Communication and coordination requirements

The Commission body is the Directorate General Justice (DG Justice). Due to the cross-cutting impact and the political significance of this initiative, DG Justice will be assisted by an inter-service steering group including the services most concerned. This decision ensures that horizontal multi-sectorial aspects, in particular other legal, economic and social impacts, shall be taken fully into account and so happens as soon as possible in the process.

The task of the inter-service group is to monitor the progress of the assessment and supervise the completion of the impact assessment report. The group will assist the evaluators, contribute to the definition of the evaluation work, follow-up the evaluators' work and make remarks on the deliverables received. The steering committee will also participate in the foreseen meetings.

The contractor assists DG Justice and the inter-service steering group during its meetings in the preparation and conduction of the impact assessment. This may consist of analysis (e.g. statistical, cost-benefit, risk or multi-criteria analysis) of existing data, collection of additional information, providing general advice or presenting the current state of play of the report.

The meetings of this group are informal, are held in English (or in French) and take place in Brussels.

I.7 Price

The maximum contract price is **EUR 350 000**.

I.8 Time schedules and organisational arrangements

I.8.1. Duration of the tasks and of the contract

The duration of the tasks to be performed under the Specific Contract is **6 months**.

I.8.2. Contract implementation

The Contracting Authority orders services by sending a *request for services* by e-mail to all Contractors.

The Contractors send their specific tenders to the Contracting Authority within 15 working days, after the date of sending the request for services by e-mail. Within 5 working days, the Contractors shall express by e-mail their availability to carry out the services required.

The Contracting Authority evaluates the specific tenders and selects the most economically advantageous one on the basis of the award criteria set out in the tender specifications of the framework contracts and repeated under Article II.5. When doing so, it takes into account any conflicting interests which may negatively affect the performance of the Specific Contract. The Contracting Authority awards and sends the Specific Contract to the successful Contractor for its signature.

The Contractor must send back to the Contracting Authority the Specific Contract duly signed and dated in paper format within 5 working days of receipt.

I.8.3. Organisational arrangements

- Contractors should submit their tender by email to the following email address:
JUST-04-PROCUREMENT@ec.europa.eu
- The project leader in DG JUST is Harry PANAGOPULOS
harry.panagopulos@ec.europa.eu
- The Contractor will provide the contact details of the project leader on his/her side who will act as the single point of contact in relation to this project for the interactions with the Contracting Authority's project leader.

I.9. Structure of the tenders

Tenders must be:

- Signed by the tenderer or his duly authorised representative;
- Perfectly legible so that there can be no doubt as to words and figures.

The Contractors must ensure that their submitted tenders contain all the information and documents required by the Contracting Authority at the time of submission as set out in the tender specifications.

All costs incurred for the preparation and submission of tenders are to be borne by the Contractors and will not be reimbursed.

Tenders must be split in two separate files, a technical offer and a financial offer:

I.9.1. Technical offer

The technical offer contains all the information required for the tender, except the price. It should contain at least the following:

- i. a (retro-)planning;
- ii. Detailed curriculum vitae will be provided if none has been provided earlier, notably at the time of the tender. They will include educational background, degrees and diplomas, professional experience, research work, publications and linguistic skills which are relevant for the assignment. The CVs shall be presented preferably in accordance with the Contracting Authority Recommendation on a common European format for curricula vitae, published in OJ L79 of 22 March 2002, p. 66.
- iii. The tenderers should also provide with their proposal the list of staff members that will form the team and indicate their role and assignment in the team.

I.9.2. Financial offer

- i. Prices are fixed amounts, including all expenses;
- ii. Travel and subsistence expenses necessary to realise the tasks under the Specific Contract will be charged at a flat rate calculated on the basis of Contractor's usual cost practices and will be integrated in the offer of the Contractor as a fixed price. These expenses will be taken into consideration in the total costs presented in the offer.

PART II – GENERAL PROVISIONS

II.1. Legal effects of the invitation to tender and submission of a tender

This request for services is in no way binding on the Contracting Authority. The Contracting Authority's contractual obligation commences only upon signature of the contract with the successful tenderer.

Up to the point of signature, the Contracting Authority may cancel the procurement procedure without the tenderers being entitled to claim any compensation. This decision must be substantiated and the tenderers notified.

The period of validity of the tender, during which tenderers may not modify the terms of their tenders in any respect, is 6 months from the date of submission.

Submission of a tender implies acceptance of all the terms and conditions set out in the procurement documents and, where appropriate, waiver of the tenderer's own general or specific terms and conditions. The submitted tender is binding on the tenderer to whom the contract is awarded for the duration of the contract.

II.2. Data protection

If processing a reply to the invitation to tender involves the recording and processing of personal data (such as name, address and CV), such data will be processed pursuant to Regulation (EU) 2018/17257 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC. Unless indicated otherwise, any personal data will be processed solely for evaluation purposes under the call for tenders by the Head of Unit 04 – Programme and Financial Management in the Directorate-General for Justice and Consumers. Details concerning the processing of your personal data are available on the privacy statement at: https://ec.europa.eu/info/data-protection-public-procurement-procedures_en.

The tenderer personal data may be registered in the Early Detection and Exclusion System (EDES) if the tenderer is in one of the situations mentioned in Article 136 of the Financial Regulation. For more information, see the Privacy Statement on http://ec.europa.eu/budget/explained/management/protecting/protect_en.cfm.

II.3. Format requirements related to studies

II.3.1. General principles

The Contractor must deliver the study and all publishable deliverables in full compliance with the corporate visual identity of the European Contracting Authority, by applying the graphic rules set out in the European Contracting Authority's Visual Identity Manual, including its logo. The graphic rules, the Manual and further information are available at: http://ec.europa.eu/dgs/communication/services/visual_identity/index_en.htm.

⁷ OJ L 295, 21.11.2018, p. 39

A simple Word template will be provided to the Contractor after contract signature. The Contractor must fill in the cover page in accordance with the instructions provided in the template. The use of templates for studies is exclusive to the European Contracting Authority's Contractors.

II.3.2. Requirements for publication on Internet

The Contracting Authority is committed to making online information as accessible as possible to the largest possible number of users including those with visual, auditory, cognitive or physical disabilities, and those not having the latest technologies. The Contracting Authority supports the Web Content Accessibility Guidelines 2.0 of the W3C.

For full details on the Contracting Authority policy on accessibility for information providers, see: http://ec.europa.eu/ipg/standards/accessibility/index_en.htm.

For the publishable versions of the study, abstract and executive summary, the Contractor must respect the W3C guidelines for accessible pdf documents as provided at: <http://www.w3.org/WAI/>.

II.4. Contacts during the procurement procedure

Contacts between the Contracting Authority and Contractors are prohibited throughout the procedure save in exceptional circumstances and under the following conditions only:

II.4.1. Submission phase (before the time-limit for receipt of tenders)

- Upon request, the Contracting Authority may provide additional information solely for the purpose of clarifying the procurement documents.
- Any request for additional information must be made in writing only to JUST 04 PROCUREMENT functional mailbox.
- The Contracting Authority may, on its own initiative, inform interested parties of any error, inaccuracy, omission or any other clerical error in the text of the procurement documents.
- Any additional information including that referred to above will be sent simultaneously to all Contractors invited to tender.
- Questions on the tender specifications submitted within 2 working days prior to the deadline for submission of offers will not be answered.

II.4.2. Opening of tenders

Once the Contracting Authority has opened the tender, it becomes its property and it shall be treated confidentially.

II.4.3. Evaluation phase (after the opening of tenders)

The Contracting Authority may correct obvious clerical errors in the tender after confirmation of the correction by the tenderer. Such information, clarification or confirmation shall not substantially change the tender.

II.4.4. Award phase

The Contractors will be notified of the outcome of this procurement procedure by e-mail only. The notification will be sent to the e-mail address provided in the tender. The same e-mail address will be used by the Contracting Authority for all other communications with the Contractor. It is the Contractor's responsibility to provide a valid e-mail address and to check it regularly.

II.5. Evaluation and contracting (*ARTICLE 2.4 OF THE TECHNICAL SPECIFICATIONS OF THE FRAMEWORK CONTRACTS*)

The Contracting Authority shall evaluate the specific tenders and select the most economically advantageous one on the basis of the award criteria set out below. When doing so, it takes into account any conflicting interests which may negatively affect the performance of the Specific Contract (*ref. Article II.7 of the Framework Contracts*). It will then award and send the Specific Contract to the successful Contractor.

Quality criteria :

N°	Award criteria	Weighting
1	<p>Content and structure of the tender</p> <ul style="list-style-type: none">• The tender is self-standing, contains only essential information (in conformance with the size limit, if applicable) and is specific to the task; additional evidence supporting the tender is provided in annexes• Clear, correct and understandable language and structure; good use of glossaries if relevant	15 points (<i>minimum required 9</i>)
2	<p>Proposed methodology and tools:</p> <ul style="list-style-type: none">• Quality and appropriateness of proposed methodology for data collection and analysis• Appropriateness of the methods proposed to address the call specificities/challenges• To the extent relevant, conformance with the Contracting Authority Better Regulation guidelines/toolbox and coverage of relevant impacts/assessment dimensions	45 points (<i>minimum required 27</i>)
3	<p>Appropriateness, composition and organisation of the team proposed in relation to the work to be performed:</p> <ul style="list-style-type: none">• Adequate team size; clear and appropriate definition of roles and responsibilities within the team;• Appropriate allocation of resources to specific tasks• Appropriate quality control with regard to both validating the information collected and in-depth proof-reading of deliverables/reports prior to their submission (including i.a.	40 points (<i>minimum required 24</i>)

	language checks/final editing, accuracy of calculations and removing spurious details)	
Total		100 points (<i>minimum required 70</i>)

Financial evaluation:

Each offer will be assessed in terms of the total price for the proposal on the basis of the specific maximum unit prices set in the Framework Contract, broken down by categories of experts and travel and subsistence expenses. During the reopening of competition, tenderers are allowed to propose lower prices per profile than those indicated in the price list.

Award of contract:

Only bids that have reached a total score of a minimum of 70% and a minimum score of 60 % for each criterion will be taken into consideration for awarding the Specific Contract.

The Specific Contract will be awarded to the tender which offers the best price-quality ratio determined in accordance with the formula below:

<p>Quality/Price analysis = (Technical Score X 0.7) + [(Cheapest price*/Price offered) x 100] x 0.3</p>
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**Cheapest price = Price of the tender with the cheapest price offer
(provided the minimum quality threshold are met)*

e-signed

Irena MOOZOVA

Director of Directorate D: Equality and Union citizenship

Annexes :

- I. Template financial offer form
- II. Draft of specific contract
- III. Template absence of conflict of interest form
- IV. Template quality assessment grid