



## Commission and Parliament Propose Changes to Electoral Law in the EU

Tomasz Zając

Two EU institutions have put forward proposals for changes to electoral law that aim to improve the electoral process at both the national and European levels. The European Parliament's proposal envisages, among other things, the election of some candidates to the body from a supranational list common to all Member States. However, the introduction of such changes would require changes to the treaties, which many countries, including Poland, do not agree with. The Commission's proposals aim, among other things, to introduce greater transparency of political advertising in the Member States.

A year before the European Parliament (EP) elections, proposals put forward by the EU institutions to strengthen democracy in Europe are back in the public discussion. The EP is [once again seeking to initiate a change in the rules for electing MEPs](#). In a report from last year, it proposed the adoption of a regulation that would introduce transnational electoral lists, among other changes.

In November 2021, the European Commission (EC) presented a package of proposals, including one for regulation of political advertising and a proposal for amendments to two directives on the electoral rights of EU citizens living in another Member State ("mobile EU citizens").

**Political Advertising Regulation.** One of the reasons why the EC decided to regulate political advertising is because of the growing influence of political communication (especially online) on the electoral process. Over the last few years, media have repeatedly described situations in which attempts have been made to influence election results by manipulating online content. Examples include the activities of the Cambridge Analytica company or the "Jorge" team, in which a former employee of the Israeli secret services is alleged to have influenced the course of more than 30 election campaigns around the world, including in Europe.

According to the EC's analysis, only three Member States have legislation explicitly addressing political advertising on

the internet. This makes it difficult to run transnational election campaigns and introduces the possibility of an actor circumventing national regulations by reaching voters with advertising from a third country with less-stringent standards.

Other reasons for the Commission's decision to regulate this issue include problems with clear identification of political advertising by voters. According to a 2020 Eurobarometer survey, 37% of EU citizens encountered online content they were unable to determine was an advertisement or not (in the Baltic States, Czechia, and Slovakia, the percentage was over 60%).

To respond to these challenges, the EC proposed a regulation to enhance the transparency of political advertising, including advertising commissioned in connection with national referendums and elections to national parliaments of Member States. It is intended to be complementary to the [Digital Service Act](#), which already regulates online advertising. The proposed regulation would require such advertising to state that it is political advertising, who paid for it, and which election or referendum it relates to. Infringements would be subject to administrative (including financial) penalties to be imposed by the relevant Member State authority.

A key issue that EU institutions will have to resolve in the context of the new regulation is how to limit political advertisements aimed at selected audiences based on

specific demographic and social characteristics (“targeted” advertising). The EC’s proposal would introduce, as a general rule, a ban on the use of sensitive data in this process, meaning data allowing the identification of political opinions, ethnic origin, religious beliefs, etc. However, use of such data will be allowed if the user has given explicit consent, separately and specifically for the purpose of political advertising.

However, this approach is problematic given online “consent fatigue”, which results in users automatically accepting all consent requests they encounter online regarding the processing of personal data, the result of too many similar messages appearing while using the internet. Consent then is not the result of an informed decision, but rather an attempt to quickly bypass impediments when using the network, thus invalidating the intention behind the EC’s solution. The EP proposed a total ban on the use of sensitive data in its amendments, but some Member States, including Poland and Finland, oppose such a ban. They argue that this approach would be too restrictive and disproportionate to the intended purposes.

**The Electoral Rights of “Mobile EU Citizens”.** Why the Commission decided to revise the directive on “mobile EU citizens” can be found in, among others, its “EU Citizenship Report”, published in 2020. It highlighted low voter turnout among this category of citizens, ranging from 0.1% in Croatia to 24% in Malta (although data is not available for all Member States). The EC estimated that in 2019, prior to the UK’s exit from the EU, there were 17 million “mobile citizens”, 15 million of which had voting rights, or more than 3% of all eligible voters. In addition to low turnout, other issues diagnosed in the EC report were the lack of adequate information about the rights of this group of voters and the complicated process of registering to vote or standing as a candidate.

To solve the problems described in its report, the EC proposed that “mobile EU citizens” should be able to use a single declaration (covering all Member States) to join the electoral roll or declare their candidacy for either EP or local elections in their country of residence. The proposal for amendments to the directive governing this issue also obliges states to set up a body that will actively inform people residing on their territory of their electoral rights.

This information also will have to be translated into the second most-widely spoken EU language in the country concerned.

**Changing the EP Electoral Law.** Parliament would like to make the electoral process of its MEPs more European. Campaigns for this body in the Member States often focus on national issues, and European political parties play a negligible role in them. One of the EP’s main demands for a change in the law is transnational lists of candidates. This would mean that each voter would be able to cast two votes—one for a candidate on a national list and the other for a candidate elected from a single pan-European list. In the latter case, the constituency would cover the whole EU, and voters would choose 28 MEPs in 2024 (there are currently 705 MEPs in the EP), with the number of MEPs determined by the European Council.

In addition, the proposal envisages the introduction of a system of “leading candidates” (*spitzenkandidaten*), which is a procedure for electing the president of the EC from candidates put forward in the election campaign by political parties running for the EP. This would, however, require treaty changes. Other proposed changes include lowering the minimum age of voters to 16 and setting a common election date for 9 May in all Member States.

**Conclusions and Perspectives.** The enactment of a regulation on political advertising would raise the standards of transparency of election campaigns in EU countries and reduce the vulnerability of citizens to manipulation. The chances of introducing the EC’s proposal are high because, even if some Member States do not agree to a total ban on targeted ads, it will be more beneficial to pass the act based on the Commission’s original proposal than for it to fail. One year out from the EP elections, a change that increases the transparency of elections and is the visible result of the work of EU institutions could be perceived favourably by European citizens.

In turn, the EP’s proposed changes to electoral law have little chance of coming into force. To do so would require treaty revisions and consequently, unanimity to proceed, but some Member States oppose this. The EP hopes, however, that by maintaining the debate on its proposals, this will accelerate their implementation in a future, more favourable political configuration.