

**ANNEX A**

GENERAL SCHEME HEAD NO.	COMMENT
<b>PART 1 – PRELIMINARY AND GENERAL</b>	
2. Interpretation	Where a concern arises in respect of any definitions within the General Scheme, they are discussed under the operative heads below.
<b>PART 2 – ESTABLISHMENT OF ELECTORAL COMMISSION</b>	
<b>Chapter 1 – Preliminary and General</b>	
Heads 3 to 4	Facebook welcomes the establishment of the Electoral Commission. Facebook does not wish to make any submission in respect of these Heads.
<b>Chapter 3 – Functions of Electoral Commission</b>	
Head 28	Facebook does not wish to make any submission in respect of this Head. Facebook’s submission in respect of the Electoral Commission’s function of the regulation of online political advertising during election periods is set out under Part 4 below.
<b>PART 4 – REGULATION OF ONLINE POLITICAL ADVERTISING</b>	
120. Buyers of online political advertisements	Subject to the points made in respect of Head 127 below, Facebook does not wish to make any additional submission in respect of this Head.
121. Public information requirements for online political advertisements	<p>Facebook respectfully submits that the definition of ‘political advertisement’ contained in this Head is highly problematic because intermediaries like Facebook <b>cannot detect the purpose or intent of advertisers</b>; all we can currently do with our technologies and processes is detect the <b>content</b> of an ad and assess whether that content is <b>related to elections, politics, or social issues</b>.</p> <p>For this reason, Facebook would suggest that the General Scheme instead define “political advertisement” in line with a more objective definition which could include ads that are:</p>

- 1) Made by, on behalf of, or about a candidate for public office, a political figure, a political party or advocates for the outcome of an election to public office;
- 2) About any election, referendum, or ballot initiative, including “go out and vote” or election campaigns; or
- 3) About social issues or sensitive topics that are heavily debated, may influence the outcome of an election, or relate to existing or proposed legislation such as civil and social rights, crime, economy, environmental politics, health, immigration, political values and governance, and security and foreign policy.

This definition of political advertisements, would allow intermediaries like Facebook to impose transparency obligations and other requirements on a wide category of ads that could influence political discourse, without having to speculate at scale as to the advertisers’ purpose or intent (which, as noted above, simply is not feasible).

In addition, Facebook is concerned by requirements relating to the transparency notice, which, as currently drafted, (a) envisages the disclosure of large amounts of personal information and user data which, in turn, triggers GDPR and confidentiality concerns; (b) creates limitations on advertisers by requiring them to determine from the outset the intended purpose and duration of any individual advertisement; (c) goes beyond what would appear to be proportionate to the aim of the requirements, when compared, for example, with the current practices of industry leaders such as Facebook; and (d) exceeds requirements that are applied to offline advertisers, such as those who produce election posters (and who are only required to print the names of the printer and publisher on the poster). The individual elements of the transparency notice are addressed in detail in Facebook’s submission.

The Digital Services Act will impose EU-wide standards and obligations for platforms in a variety of spaces, including online advertising transparency. Implementing a different set of standards when this regulation is on the horizon would directly contradict the clear aim of the Digital Services Act and the European Democracy Action Plan, which is to create one common standard across the EU and to avoid regulatory fragmentation on content, political advertising and matters pertaining to elections integrity.

Facebook is also concerned about the obligation in Head 121 for online platforms to notify the Electoral Commission as soon as may be after such notices have been displayed, and we would question the value of requiring online platforms to submit separate reports to the Electoral Commission for each and every transparency notice as opposed to promptly including relevant information in the online archive or library envisaged under Head 121.

<p>122. Obligations on online platforms and sellers of online political advertisements</p>	<p>Head 122 would require online platforms to appoint a person of “authority within either a third party or the accounting unit of a political party” as a “person responsible” for purposes of “identifying and verifying” certain “information and documentation” provided by advertisers to online platforms. To the extent the “person responsible” would be a third party, there are substantial privacy, commercial confidentiality, and platform security concerns with granting them access to advertisers’ information and documentation.</p> <p>Instead of the required appointment of a “responsible person” a more practical framework may be achieved through the appointment of an agreed “point of contact” between the online platform and the Electoral Commission, who would be in a position to act as a bridge of cooperation between the two entities without recourse to the imposition of criminal liability. Facebook would also be willing to work with the Electoral Commission in developing a reporting mechanism whereby persistent refusal or non-compliance with warnings on the part of a buyer would trigger greater enforcement action on an escalated basis against that buyer, as have been successfully developed in the context of online enforcement in other jurisdictions.</p>
<p>123. Identification and verification of buyers</p>	<p>Further to the points made at Head 122 above, and specific to this Head, while an account may be opened by the buyer on the online platform, verification must be required prior to “establishing a business relationship.” This obligation does not acknowledge the possibility that a business / commercial relationship may already exist with a buyer prior to their purchasing of online political advertising arising from service purchased for an unrelated purpose.</p>
<p>124. Online political advertisements commissioned from outside of the State</p>	<p>Facebook reiterates the points made in respect of Head 122 above.</p>
<p>125. Discretion to apply additional due diligence measures</p>	<p>Facebook reiterates the points made in respect of Head 122 above.</p>
<p>126. Exemptions from public information requirements</p>	<p>Subject to the points made in respect of Head 122 above, Facebook does not wish to make any additional submission in respect of this Head.</p>
<p>127. Obligations on buyers of online political advertisements</p>	<p>Facebook welcomes the onus of responsibility being placed on buyers with respect to the provision of information and, otherwise, does not wish to make any submission in respect of this Head.</p>
<p>129. Powers of authorised officers</p>	<p>Facebook submits that any powers exercisable against sellers should be reasonable and proportionate. Otherwise, Facebook does not wish to make any submission in respect of this Head.</p>

130. Penalties	Facebook submits that a more practical framework may be achieved through the appointment of an agreed “point of contact” between the online platform and the Electoral Commission, who would be in a position to act as a bridge of cooperation between the two entities without recourse to the imposition of criminal liability. Otherwise, Facebook does not wish to make any further submission in respect of this Head.
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