
European Commission Consultation on the
European Democracy Action Plan

OPEN SOCIETY EUROPEAN POLICY INSTITUTE'S RESPONSE

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EUROPEAN POLICY
INSTITUTE

The Open Society European Policy Institute is the EU policy and advocacy branch of the Open Society Foundations network, based in Brussels. It works to influence and inform decision-making on EU laws, policy, funding, and external action to maintain and promote open societies in Europe and beyond.

In September 2020, Open Society European Policy Institute submitted its response to the public consultation launched by the European Commission on its plans for a new push for European democracy, which include a European Democracy Action Plan (EDAP).

Open Society European Policy Institute's submission, developed in collaboration with other Open Society Foundations programmes, provides recommendations for ambitious EU action in the areas of election integrity and political advertising, media freedom and media pluralism, countering disinformation, and supporting civil society and active citizenship.

Alongside its own submission to the consultation, Open Society European Policy Institute also contributed to the development of a [civil society vision for the EDAP](#) bringing together input and recommendations from 48 civil society groups working to advance democracy, human rights, media freedom, digital rights, an enabling space for civil society, and the rule of law.

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INTRODUCTION

The Commission's Political Guidelines announced a European Democracy Action Plan under the headline ambition of a new push for European Democracy. The Commission intends to present the Action Plan towards the end of 2020.

The aim of the European Democracy Action Plan is to ensure that citizens are able to participate in the democratic system through informed decision-making free from interference and manipulation affecting elections and the democratic debate.

The Commission has started the preparation of the European Democracy Action Plan and would like to consult the public on three key themes:

- Election integrity and how to ensure electoral systems are free and fair;
- Strengthening media freedom and media pluralism;
- Tackling disinformation.

In addition, the consultation also covers the crosscutting issue of supporting civil society and active citizenship.

When providing your contribution, you may opt to fill in one or more of the four sections, according to their relevance to your areas of interest. Please note that a specific public consultation on the Digital Services Act package is open until 8 September 2020 and covers also elements relevant in the context of the European Democracy Action Plan.¹

¹ <https://ec.europa.eu/digital-single-market/en/news/consultation-digital-services-act-package>

I. QUESTIONS ON ELECTION INTEGRITY AND POLITICAL ADVERTISING

Fair democratic debates and electoral campaigns as well as free and fair elections in all Member States are at the core of our democracies. The space for public debate and electoral campaigns has evolved rapidly and fundamentally, with many activities taking place online. This brings opportunities for the democratic process, public participation and citizen outreach but also challenges, inter alia concerning the transparency of political advertising online and possible threats to the integrity of elections. Ahead of the 2024 European Parliament elections, changes to the role of European political parties might also be considered.

TRANSPARENCY OF POLITICAL ADVERTISING

Q1. Have you ever been targeted² with online content that related to political or social issues, political parties (European or national), political programmes, candidates, or ideas within or outside electoral periods ('targeted political content')?

- 1. No, never
- 2. Yes, once
- 3. Yes, several times
- 4. I don't know

Q2. If you receive such targeted political content, are you checking who is behind it, who paid for it and why you are seeing it?

- 1. No, I am not interested
- 2. I don't know how to do it
- 3. Yes, occasionally
- 4. Yes, all the time
- 5. I don't receive targeted political content

2 Paid for ads and any form of personalised content promoted to the user

Q3. To what extent do you agree with the following statements related to targeted political content you have seen online?

	FULLY AGREE	SOMEWHAT AGREE	NEITHER AGREE NOT DISAGREE	SOMEWHAT DISAGREE	FULLY DISAGREE	I DON'T KNOW / NO REPLY
1. Targeted content was labelled in a clear manner					X	
2. It was easy to distinguish paid for targeted content from organic content					X	
3. It was easy to identify the party or the candidate behind the content					X	
4. The content included information on who paid for it					X	
5. The information provided with the content included targeting criteria					X	
6. The ad was linked to a database of targeted political content					X	
7. The targeted political content offered the possibility to report it to the platform				X		

Q4. Which of the following initiatives/actions would be important for you as a target of political content?

	NOT AT ALL	A LITTLE	NEITHER A LOT NOR A LITTLE	A LOT	ABSOLUTELY	DON'T KNOW
1. Disclosure rules (transparency on the origin of political content)					X	
2. Limitation of micro-targeting of political content, including based on sensitive criteria, and in respect of data protection rules					X	
3. Creation of open and transparent political advertisements archives and registries that show all the targeted political content, as well as data on who paid for it and how much					X	
4. Political parties to disclose their campaign finances broken down by media outlet					X	
5. Prohibit foreign online targeted political content			X			
6. Prohibit online targeted political content altogether						X
7. Rules limiting targeted political content on the election day and just before					X	
8. Other						

Q5. Online targeted political content may make use of micro-targeting techniques allowing advertisers to target with high precision people living in a specific location, of a certain age, ethnicity, sexual orientation or with very specific interests. Do you think that:

	FULLY AGREE	SOMEWHAT AGREE	NEITHER AGREE NOT DISAGREE	SOMEWHAT DISAGREE	FULLY DISAGREE	I DON'T KNOW / NO REPLY
1. Micro-targeting is acceptable for online political content and it should not be limited					X	
2. Criteria for micro-targeting of political content should be publicly disclosed in a clear and transparent way for every ad	X					
3. Micro-targeting criteria should be strictly limited	X					
4. Micro-targeting criteria should be banned				X		

Response from Open Society European Policy Institute

A blanket ban on micro-targeting of all political ads could have negative repercussions for voter-registration campaigns and smaller political players who would not be able to reach their niche audience without some level of targeting. In the context of local elections, it could become exceedingly hard for political advertisers to reach their constituencies without some level of location-based targeting. Moreover, if a broad definition of political ads, which includes issue-advertising, is applied, a ban on micro-targeting could also disproportionately affect local media, small grassroots organisations and transnational civic movements.

However, limitations on micro-targeting by political advertisers would reduce the potential harms of political ads. For this reason, the use of targeted advertising must be regulated more strictly in favour of less intrusive forms of advertising that are not based on sensitive personal information and do not require extensive tracking of user interaction with content.

If micro-targeting for political advertising and issue-based advertising is allowed, such ads should only be allowed to target based on information such as age, location and, where necessary, employment and gender. Any targeting based on sensitive personal data, as defined by the GDPR³, should always be banned unless the user gives explicit consent.

Providing for limitations on the number of targeted people and data sources could also limit the harms of hyper-targeted messaging to particular groups and targeting based on inferred data, posted or shared online content, presumed attitudes or profiling based on imported datasets. The legislator could also consider establishing a minimum number of people to target in order to prevent the hypertargeting of at-risk groups.

Following the creation of a mandatory ad library for all online platforms, a counter speech mechanism should be established to allow political advertisers to target the same group as the one targeted by an ad found in the ad library by a different political advertiser. This would, for example, allow one candidate to reach the same group as their opponent. Such a measure would allow for counter speech and apply only to political advertisers. This should be seen as an application of the right of reply as established in international law and applied to news publishers already [see *Eker v Turkey*]⁴. This would allow for overcoming voter segmentation and polarisation linked to political micro-targeting.

In addition, the use of micro-targeting should be monitored even when based on non-sensitive categories of information (age, location, gender, employment). Following the creation of a mandatory ad library for all platforms, the Commission or a different EU body, such as the Fundamental Rights Agency (FRA) or the European Data Protection Supervisor (EDPS), should be tasked with reviewing online targeting and online messaging that may be discriminatory or may contravene the EU Charter of Fundamental Rights.

In any case, the European Commission should thoroughly investigate the online advertising market, in particular micro-targeting systems, to better understand data processing and algorithmic ad delivery algorithms on online platforms and assess their impact on human rights and democracy. Such mechanisms should be reviewed by a European-level auditing body to better understand the implications of the online ecosystem on civic and political rights, including the right to privacy, access to information and opinion formation, as well as equality and discrimination. Based on such a thorough assessment, if necessary, the legislator should consider the possibility of banning micro-targeting altogether – be it for all ads or for political ads only.

3 Under the EU General Data Protection Regulation (GDPR), the following personal data is considered as 'sensitive' and is subject to specific processing conditions:

- Personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs;
- Trade-union membership;
- Genetic data, biometric data processed solely to identify a human being;
- Health-related data;
- Data concerning a person's sex life or sexual orientation.

References: Article 4(13), (14) and (15) and Article 9 and Recitals (51) to (56) of the GDPR.

4 In the *Eker versus Turkey* case of the European Court of Human Rights, the court found that the requirement for a newspaper publisher to print a reply did not breach the Convention. See: Judgment *Eker v. Turkey* – requirement for a newspaper publisher to print a reply correcting an article.pdf.

Q6. EU countries regulate offline political advertising on traditional media (e.g. press, television) in the context of local, national or EU elections. These rules limit the amount of airtime or maximum expenditure permitted for political advertising on broadcast TV or print media. Do you think similar rules should also apply to online targeted political content?

- 1. Yes
- 2. No
- 3. I don't know

Response from Open Society European Policy Institute

While most countries have very detailed regulations on the transparency of political finance and limitations on political campaigning, few European countries have adapted these rules to the digital age. Many European countries' electoral regulations include silence periods, dedicated ad space on broadcasters, restrictions on the design and content of political ads and spending caps, but these measures are rarely adapted and do not equally apply to the new campaigning reality online.⁵

The Cambridge Analytica scandal showed how the segmentation of customers and the identification of increasingly narrower and homogeneous groups can lead not only to targeting but also to attempts of manipulation of and voter suppression against specific minorities. Restrictions on the maximum expenditure permitted for online advertising or the maximum number of online ads may incentivise broader messaging that speaks to a wider heterogeneous audience rather than the kind issue-specific advertising targeted at specific segments of the population that we mostly see today. However, there are a number of drawbacks and potential negative consequences of such a regulation:

- Both limitations on the number of ads and in the maximum expenditure for online political ads may incentivise political advertisers to find loopholes in the regulation. For instance, political parties could end up supporting so-called 'influencers' to advocate on their behalf online, supporting click and troll farms or requesting donations to come in the form of a supportive online ad rather than cash donations that then become subject to electoral law;
- Limiting the number of ads brings up the question of equal allocation of advertising space across and within political advertisers. While large political parties will call for a proportionate allocation of advertising space, small fringe parties may benefit disproportionately from receiving a similar advertising space as that allocated to well-established political parties. This could ultimately encourage a splintering of political parties and provide disproportionate resonance to fringe positions.

⁵ Electoral bodies are usually tasked with monitoring political party financing as well as advertising. However, these capacities tend to apply only to the offline sphere. EU institutions could play a role in setting standards on the capacities of electoral bodies to audit campaign finances and advertising properly, including in their online dimension.

In addition, a limitation on the number of political ads should clearly detail on whom it is imposed. An allocation of ads or maximum expenditure online per political party may lead to a centralisation of online advertising budgets in the party headquarters, diverting it from local and regional political party groups. In certain electoral systems, it may also incentivise a splintering of political parties, as this might free up additional online advertising space. A middle-ground solution could be to limit online ads expenditure by placing a relative barrier on online ads as a percentage of all campaign spending.

There is definitely a necessity to update national electoral legislation to reflect the new reality of online campaigning. However, this will not suffice without complementary measures by the European Commission to ensure greater transparency and accountability of online platforms.

THREATS TO ELECTORAL INTEGRITY

Q1. Do you believe the following are real and existing threats to the electoral process in the EU and its Member States?

	YES	NO	DON'T KNOW
1. Intimidation of minorities	X		
2. Intimidation of political opposition	X		
3. Micro-targeting of political messages, that is messages targeted to you or a narrowly defined group	X		
4. Information suppression, that is the purposeful lack of information on a topic	X		
5. Disinformation or fake accounts run by governments, including foreign governments	X		
6. Divisive content, that is content created to divide society on an issue	X		
7. The amplification of content that makes it difficult for you to encounter differing voices	X		
8. Intimidation of women candidates	X		
9. I or someone I know has been targeted based on sensitive criteria such as gender, ethnicity or sexual orientation	X		
10. Content where I could not easily determine whether it was an advertisement or a news post	X		
11. Other			

Q1.1 IF Q1=YES for any answer option

- 1. Have you felt personally intimidated/threatened by targeted political content?
- 2. Could you tell us more about your experience?

Response from Open Society European Policy Institute

For the past number of years, our organisation, its founder, George Soros and a wide range of civil society organisations have been targeted by disinformation campaigns, smear campaigns and conspiracy theories misrepresenting our mission and work. These have often taken the form of large-scale online attacks, carried out by players hostile to free expression, human rights and democracy.

As revealed by the New York Times and reported by several other sources, in 2018, Facebook hired a PR firm to discredit digital rights activists, George Soros and the Open Society Foundations (OSF).

There has been a concerted effort to demonise our founder – an effort that has contributed to death threats and the delivery of a pipe bomb to Mr. Soros's home in October 2018.

Orchestrated smear campaigns, hate speech and online attacks against the Open Society Foundations, its partners and its founder are widespread in Europe. In a number of EU countries, including Hungary, Poland and Italy, such attacks are often conducted by or connected to anti-EU, far-right and authoritarian government representatives, politicians and political parties.

The attacks on George Soros and OSF are often used by hostile governments and actors to discredit the important work of civil society and damage public support for their efforts.

On the Facebook case:

<https://www.nytimes.com/2018/11/14/technology/facebook-data-russia-election-racism.html>

<https://www.ft.com/content/8bc0102a-e883-11e8-8a85-04b8afea6ea3>

<https://www.theguardian.com/technology/2018/nov/21/facebook-admits-definers-pr-george-soros-critics-sandberg-zuckerberg>

On the spread of conspiracy theories, hate speech, disinformation and orchestrated online attacks against the Open Society Foundations, George Soros, civil society organisations and human rights defenders in Europe (examples):

<https://www.coe.int/widget/web/commissioner/-/the-shrinking-space-for-human-rights-organisations?inheritRedirect=true>

<https://freedomhouse.org/article/hungary-government-intensifies-smear-campaign-against-civil-society>

<https://www.bbc.com/news/world-europe-40554844>

https://www.repubblica.it/politica/2018/10/19/news/marcello_foa_intervista_haaretz_george_soros_finanziato_delegazione_pd_ue_pd_insorge-209415899/

EUROPEAN POLITICAL PARTIES

Q1. Is there scope to further give a stronger European component to the future campaigns for EU elections? Please list initiatives important to you in this regard

	NOT AT ALL	A LITTLE	NEITHER A LOT NOR A LITTLE	A LOT	ABSOLUTELY	DON'T KNOW
1. Better highlighting the links between the national and European Political Parties, for example by displaying both names on ballot papers and in targeted political content					X	
2. More transparency on financing (e.g. information about how much national parties contribute yearly to the European Political Parties budgets)					X	
3. Bigger budgets for European Political Parties			X			
4. Strengthening the European campaigns by European Political Parties in Member States				X		
5. Better explaining the role of European Political Parties in the EU					X	
6. Other				X		

Response from Open Society European Policy Institute

The Conference on the Future of Europe should be an opportunity to enhance the EU-wide dimension of European elections through the creation of transnational lists allowing voters to vote directly for European candidates, regardless of their regional or national constituencies.

All too often, the political debates leading up to the European elections are not truly European but remain focused on domestic issues. To move towards a more genuine EU election process, political parties should be entitled to present transnational lists. This would entail that a

political party presents one political manifesto and one list of candidates to all EU citizens across the territory of the whole Union in order to create an EU-wide constituency.

The creation of transnational lists could eventually nudge political parties to compete for ideas, votes and seats on a pan-EU scale. That would engage citizens more in EU-wide debates on issues in which the EU has competences and roles to play rather than being seen by voters as a second-order election that repeats national debates. That would also make the result less of a collection of national election results and more pertinent to the agenda of the EU institutions in their subsequent term. That would help to improve the EU's democratic accountability and the connections between its priorities and the concerns of citizens.

EUROPEAN ELECTIONS

Q1. In your opinion what initiatives at national level could strengthen monitoring and enforcement of electoral rules and support the integrity of European elections (multiple selections possible)?

- 1. Strengthened sharing of information and monitoring activity across borders and between authorities
- 2. Technical interfaces to display all political advertisements as defined by online service providers
- 3. Technical interfaces to display all advertisements (political or not)
- 4. Clear rules for delivery of political ads online in electoral periods, similarly to those that exist in traditional media (TV, radio and press)
- 5. Independent oversight bodies with powers to investigate reported irregularities
- 6. Enhanced reporting obligations (e.g. to national electoral management bodies) on advertisers in a campaign period
- 7. Enhanced transparency of measures taken by online platforms in the context of elections, as well as meaningful transparency of algorithmic systems involved in the recommendation of content
- 8. Privacy-compliant access to platform data for researchers to better understand the impact of the online advertisement ecosystem on the integrity of democratic processes
- 9. Greater convergence of certain national provisions during European elections
- 10. Stronger protection against cyber attacks
- 11. Higher sanctions for breaches of the electoral rules
- 12. Other - please specify

Please explain your answer

Member States' governments should take measures to permit civil society election observation and citizen election observation in European, national and local elections, in line with their OSCE commitments and ensure access for such observer groups to all election-related documents and processes.

Strengthening civil society access and resources for domestic election observation would also contribute to developing a new approach to election monitoring from Election Observation towards Political Process Observation. Whereas election observation often focuses on technical processes, media coverage and silence periods around election day, the disinformation narratives that shape election campaigns, and often influence election outcomes, usually start well ahead of the formal electoral period.

EOMs should start their work earlier, develop clear methodologies on social media monitoring and establish deeper and more genuine collaboration with local partners and civil society groups who are best placed, if properly equipped and resourced, to provide continuous monitoring of online disinformation and follow political developments, starting long before the electoral period and continuing throughout the entire political process.

Q2. In your opinion what initiatives at European level could strengthen monitoring and enforcement of rules relevant to the electoral context?

- 1. Strengthened sharing of information and monitoring activity across borders and between authorities;
- 2. European-level obligations on political advertising service providers;
- 3. European-level shared online monitoring and analysis capability being made appropriately available to national authorities;
- 4. Cross border recognition of certain national provisions;
- 5. Other

Response from Open Society European Policy Institute

An important tool for monitoring the enforcement of electoral rules is the monitoring of elections by civil society observers. The EU should dedicate funding from the MFF cohesion budget to support civil society observer groups in the EU Member States as key stakeholders in the promotion of election integrity. Such funding should not take away from the already limited budget for the Rights and Values programme. Additionally, domestic observation missions should be provided with support in terms of capacity building and tool development to improve the monitoring of cybersecurity, social media and new election technologies.

The EU should set standards and good practices for the deployment of new election technologies and should create guidelines for these to be more closely monitored by election management bodies, election observation missions and expert missions. Similarly, the EU should develop standard methodologies for monitoring social media, online targeting of voters and internet shutdowns, as well as counter online manipulation offline, by supporting general media literacy (including that amongst legislators) and voter education.

In this sense, the European Cooperation Network on Elections should be strengthened to facilitate cooperation, sharing of lessons learnt and capacity building. While the Member States retain competence over election management, there is an important coordinating and capacity building role

for the European Commission. The Network should provide guidance on updating national electoral law to account for new forms of digital campaigning, share best practices on election infrastructure, encourage reforms to allow for citizen monitoring, issue guidelines for election during a pandemic and support coordination among Data Protection Authorities to improve data protection in elections.

Overall, EU institutions should also consider ways to contribute to a new approach to election monitoring across Europe, with the aim of shifting from Election Observation to Political Process Observation. Whereas election observation often focuses on technical processes, media coverage and silence periods around election day, the disinformation narratives that shape election campaigns, and often influence election outcomes, usually start well ahead of the formal electoral period.

EOMs should start their work earlier, develop clear methodologies on social media monitoring and establish deeper and more genuine collaboration with local partners and civil society groups who are best placed, if properly equipped and resourced, to provide continuous monitoring of online disinformation and follow political developments starting long before the electoral period.

Together with the Council of Europe and the OSCE, the EU could play a significant role – both as a norm-setter and donor – in developing guidelines for and providing resources to national election management bodies and domestic civil society groups that would be best placed to monitor online political campaigns and disinformation online throughout the entire political process.

II. QUESTIONS ON STRENGTHENING MEDIA FREEDOM AND MEDIA PLURALISM

Freedom of expression and freedom and pluralism of the media are enshrined in the Charter of Fundamental Rights of the European Union (Article 11), and their protection is underpinned by Article 10 of the European Convention on Human Rights. They are essential elements of a healthy democratic system. Whilst in general the EU and its Member States score well on a global scale, there are signs of deterioration (as shown by the Media Pluralism Monitor) and the sector is facing challenges from threats to the safety of journalists (including strategic lawsuits against public participation – ‘SLAPP lawsuits’) to the transformation of the sector, with digital technologies and new players transforming the established business model of advertising revenue. The COVID-19 pandemic has worsened the situation, both in the EU and outside of the EU, from restrictive national legislation to critical loss of revenues for the media sector.

Initiatives to strengthen media freedom and media pluralism will build in particular on the analysis and areas covered by the upcoming Rule of Law Report, with a focus on improving the protection of journalists, their rights and working conditions. Please note that the Commission also intends to propose, by the end of the year, an Action Plan for the Media and Audiovisual sector to further support the digital transformation and the competitiveness of the media and audiovisual sectors and to stimulate access to quality content and media pluralism.

SAFETY OF JOURNALISTS /CONDITIONS FOR JOURNALISTIC ACTIVITIES

Q1. Are you aware of issues regarding safety of journalists and other media actors or conditions for journalistic activities in your country?

- 1. Yes (please justify)
- 2. No (please justify)
- 3. I do not know

Response from Open Society European Policy Institute

The killings of Daphne Caruana Galizia in Malta (2017) and Ján Kuciak in Slovakia (2018) shed light on the numerous threats faced by journalists in EU Member States. More recently, in 2019, Lyra McKee was shot dead while covering a demonstration in Northern Ireland, and Vadym Komarov died of severe injuries following an attack in Ukraine. Journalists are exposed, on a daily basis, to censorship, intimidation, online and offline harassment, abusive lawsuits and physical violence for doing their work and exercising their fundamental right to freedom of expression. At particular risk are journalists who report on the misuse of power, corruption, human rights violation, criminal activity, terrorism and fundamentalism. Even in countries where democratic systems are in place, press freedom is at risk: there is a real need for immediate, coordinated, continent-wide action to protect journalists and media against these threats.

The Media Freedom Rapid Response's (MFRR) initiative⁶, implemented by a consortium led by the European Centre for Press and Media Freedom (ECPMF), monitors and responds to violations of press and media freedom in EU Member States and candidate countries.

A 2020 annual report⁷ by the partner organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists recorded 142 serious threats to media freedom, including 33 physical attacks against journalists, 17 new cases of detention and imprisonment, 43 cases of harassment and intimidation and two new cases of impunity for murder.

Q1.1 If yes, what kind of issue?

- 1. Lack of proper sanction applied to perpetrators of attacks against journalists
- 2. Abuse of defamation laws or other laws aiming at silencing journalists and news media
- 3. Lack of legal safeguards for journalistic activities
- 4. Lack of institutions to protect journalists
- 5. Online hate speech
- 6. Cyberbullying
- 7. Physical threats
- 8. Other – please specify

Response from Open Society European Policy Institute

Threats to the exercise of journalism in European countries are wide-ranging,⁸ but overall, there has been a negative trend in recent years, with increasing verbal and physical attacks to journalists, online harassment and surveillance and more concentration of media ownership. The rise of populist politics is debilitating press freedom⁹ in a region where it was once most secure, with an increasing number of democratically elected leaders showing intolerance towards critical media and taking steps to curtail their independence. Journalists have access to protection mechanisms, but a significant number of those attacked or threatened are freelancers or bloggers who are not protected by employers who would normally strive to ensure the safety of their correspondents. Politically motivated judicial and administrative harassment against media workers also occurs in the form of accusations of terrorism, spreading of false information and pressures to reveal confidential sources. There is also a growing hostility towards journalists online, from sexual harassment on Twitter to death threats via Facebook. Journalists and bloggers are targeted by online threats of violence and hate speech, often anonymously by trolls and social media users. These threats are rarely investigated. Daily online harassment

6 <https://www.mappingmediafreedom.org/>

7 <https://www.ecpmf.eu/wp-content/uploads/2020/04/Annual-Report-CoE-Platform-Safety-Journalists-Annual-report-2020-EN.pdf>

8 <https://www.ecpmf.eu/wp-content/uploads/2020/04/Annual-Report-CoE-Platform-Safety-Journalists-Annual-report-2020-EN.pdf>

9 <https://rsf.org/en/2020-rsf-index-europes-journalists-face-growing-dangers>

of journalists is widespread and pernicious across the continent according to a 2019 report by Index on Censorship titled 'Journalists face an onslaught of online harassment'¹⁰, based on data submitted to Mapping Media Freedom. This report reviewed 162 incidents involving investigative journalists from 35 European countries between May 2014 and September 2018.

A recent report by Index on Censorship¹¹ shows that powerful and wealthy individuals use an array of laws and regulations across Europe to attempt to intimidate and silence journalists who disclose inconvenient truths in the public interest. 'These legal threats and actions are crippling not only for the media, but for our democracies', states Index. Instead of being empowered to hold power to account, i.e., to play their critical role in democratic societies, journalists face extortionate claims for damages, criminal convictions and, in some cases, even prison sentences while carrying out their work.

Q2. Are you familiar with the concept of 'strategic lawsuits against public participation' (SLAPPs)?

- 1. Yes
- 2. No
- 3. Don't know

Q2.1 If yes, are you aware of such lawsuits in your own Member State?

- 1. Yes
- 2. No
- 3. Don't know

Response from Open Society European Policy Institute

Strategic Lawsuits Against Public Participation (SLAPP) are lawsuits brought forward by powerful actors (e.g., companies, public officials in their private capacity, high profile persons) to harass and silence those speaking out in the public interest. Typical victims are those with a watchdog role, such as journalists, activists, informal associations, academics, trade unions, media and civil society organisations.

Recent examples of SLAPPs include PayPal suing SumOfUs for a peaceful protest outside PayPal's German headquarters; the co-owners of Malta's Satabank suing blogger Manuel Delia for a blog post denouncing money laundering at Satabank; and Bollere Group suing Sherpa and ReAct in France to stop them from reporting human rights abuses in Cameroon. In Italy, more than 6,000 or two-thirds of defamation lawsuits filed annually against journalists and media outlets are dismissed as meritless by a judge. When Maltese journalist, Daphne Caruana Galizia, was brutally killed, there were 47 SLAPPs pending against her.

10 <https://www.indexoncensorship.org/wp-content/uploads/2019/01/index-report-online-harassment-webv3.pdf>

11 <https://www.indexoncensorship.org/wp-content/uploads/2020/06/a-gathering-storm.pdf>

In a recent interview¹² with the European Center for Press and Media Freedom, Gazeta Wyborcza's deputy editor-in-chief, Piotr Stasiński, complained against this practice and said that the Polish government wants 'to bury us under an avalanche of lawsuits'.

On May 20, more than 20 civil society organisations sent an open letter to the European Commission¹³ concerning the threat of vexatious litigation against journalists, arguing that 'the weaponization of the law by powerful economic actors has for too long resulted in the suppression of scrutiny and the consequent weakening of the rule of law in the European Union'.

The Commission later responded and said in a letter, 'the European Democracy Action Plan will aim to improve the resilience of our democracies, including actions to strengthen media freedom and pluralism with a focus on improving the protection of journalists, their rights and working conditions. Possible responses to the issue of abusive use of lawsuits is part of the reflection in view of this Plan, to be adopted before the end of the year'.¹⁴

Find more in the policy paper 'Ending Gag Lawsuits in Europe - Protecting Democracy and Fundamental Rights', signed by 119 civil society organisations.¹⁵

Q3. In your opinion, on which SLAPP related aspects should the European Union level action be taken (multiple answers possible):

- 1. Regular monitoring of SLAPP cases in the European Union
- 2. Financial support for journalists facing SLAPP lawsuits
- 3. Rules on legal aid for journalists facing SLAPP lawsuits
- 4. Cross-border cooperation to raise awareness and share strategies and good practices in fighting SLAPP lawsuits
- 5. EU rules on cross-border jurisdiction and applicable law
- 6. None of the above
- 7. Other - please specify

12 <https://www.ecpmf.eu/gazeta-wyborcza-stasinski-they-want-to-bury-us-under-an-avalanche-of-lawsuits/>

13 <https://www.ecpmf.eu/letter-to-the-european-commission-concerning-the-threat-of-vexatious-litigation-against-journalists-activists-and-others/>

14 <https://www.ecpmf.eu/wp-content/uploads/2020/07/Reply-from-DG-Justice-to-SLAPPs.pdf>

15 <https://www.ecpmf.eu/ending-gag-lawsuits-in-europe-protecting-democracy-and-fundamental-rights/>

Response from Open Society European Policy Institute

The EU must end gag lawsuits used to silence individuals and organisations that hold those in positions of power to account through a set of anti-SLAPP measures:

- 1. An anti-SLAPP directive:** A directive at EU-level is needed to establish a minimum standard of protection against SLAPPs across Member States. Such a directive should introduce sanctions against claimants bringing abusive lawsuits and should establish procedural safeguards for SLAPP victims, such as shifting the burden of proof to the plaintiff. The Whistle-Blower Directive sets an important precedent, protecting those who report a breach of Union law in a work-related context. Now, the EU must ensure a high standard of protection against gag lawsuits for everyone who speaks out, irrespective of the form and context, in the public interest. The scope of the directive must cover any citizen or organisation, including journalists, activists, trade unionists, academics, digital security researchers, human rights defenders, media and civil society organisations.
- 2. Review the Brussels I and Rome II Regulations:** Rules from the *Brussels I Regulation (recast)*, which grant claimants the ability to choose where to make a claim, must be amended to end forum shopping in defamation cases. Forum shopping forces defendants to hire and pay for defence in countries whose legal systems are unknown to them and where they are not based, which is beyond the means of most and falls foul of the principles of fair trial and equality of arms. The *Rome II Regulation* does not regulate which national law will apply to a defamation case, which allows claimants to select the most favourable substantive law. This leads to a race to the bottom in which victims may be subject to the lowest standard of freedom of expression applicable to their case.
- 3. Funding to support all victims of SLAPPs:** The EU should use funding from its Justice Programme to train judges and legal practitioners on SLAPPs, support all victims of SLAPPs through legal aid and financial support and create a public EU register of companies that engage in SLAPPs.

Find more in the policy paper 'Ending Gag Lawsuits in Europe - Protecting Democracy and Fundamental Rights', signed by 119 civil society organisations.¹⁶

Q4. Do you think that the EU should act to strengthen safety of journalists and other media actors / improve conditions for journalistic activities?

- 1. Yes (please justify)
- 2. No (please justify)
- 3. I do not know

¹⁶ <https://www.ecpmf.eu/ending-gag-lawsuits-in-europe-protecting-democracy-and-fundamental-rights/>

Response from Open Society European Policy Institute

Journalists must be protected for the sake of the values enshrined in EU Treaties, the internal market and the resilience of European democracy against internal and external threats, including disinformation (see also the report by the Reuters Institute 'What can be done? Digital Media Policy Options for Strengthening European Democracy').¹⁷

Both the EU Rule of Law Mechanism and the EDAP should include strong recommendations to hold Member States to account and ask them to take all steps and measures to create and enforce an enabling environment for journalists' safety and protection, in line with the EU Guidelines on Freedom of Expression Online and Offline.

Besides the physical safety of (freelance) journalists and guarantee of editorial independence, the viability and sustainability of independent journalism are under threat in Europe. Without funding and new business models, independent professional journalism will wither away. Independent public service media is paramount within the fragile media ecosystem ever more dominated by the platforms' methodology to monetise content.

The instruments and principles available to guarantee journalists' safety are sufficient; what is lacking, however, is the political will to see their effective application. The 2019 report written by the Center for Media, Data and Society for the Media Development Investment Fund (MDIF) demonstrates that media capture is prevalent in Europe, arguing that 'dominant media groups controlled by a handful of moguls and government-financed media channels proliferated' over the past decade.¹⁸

Since 2011, the Centre for Media Pluralism and Media Freedom (CMPF), which is co-funded by the European Union, has aimed to develop innovative and relevant lines of research on media freedom and pluralism in Europe and beyond and to provide knowledge support to international, European and national policy and rulemaking processes.¹⁹

Q4.1 If yes, how?

- 1. By issuing guidance
- 2. By setting up dedicated structured dialogue with Member States
- 3. By providing financial support
- 4. Other – please specify

17 https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2019-11/What_Can_Be_Done_FINAL.pdf

18 <https://www.mdif.org/wp-content/uploads/2019/07/MDIF-Report-Media-Capture-in-Europe.pdf>

19 <https://cmpf.eui.eu/>

Response from Open Society European Policy Institute

To strengthen the safety of journalists and other media actors and improve conditions for journalistic activities, the EU should:

- Review relevant national laws and practice on the protection of journalists and media and provide recommendations to ensure their conformity with States' commitments to the values laid out in EU Treaties;
- Ensure that Member States' legal systems provide adequate and effective guarantees of protection to journalists which can be properly enforced, with scrutiny from EU institutions;
- Monitor progress on the implementation of the Council of Europe Recommendation CM/Rec(2016)4²⁰ of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors, which was endorsed by all EU Member States;
- Urgently review the necessity and proportionality of emergency laws and extraordinary measures undertaken by EU governments in response to the pandemic, particularly as they concern freedom of expression, media freedom and access to information. In some Member States, uncontrolled and unlimited state-of-emergency laws have had a severe chilling effect on the ability of the media to report and scrutinise the actions of state authorities;
- Adopt a directive to introduce procedural safeguards with a view to limiting the availability of SLAPPs against journalists, activists and citizens. The absence of such measures constitutes a significant threat to the proper functioning of the Union's institutional order, as expressed in a recent letter by over 25 international organisations.[16]; and
- Continue to urge the Maltese government to bring the case of Daphne Caruana Galizia to justice without undue delay and offer to provide technical and other assistance to the legal proceedings.²¹

Q5. Are you aware of any issues regarding the protection of journalistic sources in your country?

- 1. Yes (please provide concrete examples)
- 2. No
- 3. I do not know

Response from Open Society European Policy Institute

From the Panama Papers to the Cambridge Analytica scandal, whistleblowers have in recent years played a key role in highlighting vulnerabilities in democracies' financial and tech sectors that foreign authoritarian states can exploit.

²⁰ https://www.protectioninternational.org/sites/default/files/antislapp_letter_vp_jourova.pdf

²¹ We support the demands put forward by leading international press freedom organisations such as the Committee to Protect Journalists, Index on Censorship, ARTICLE19, Reporters without Borders, the European Centre for Press and Media Freedom and IFEX.

Since whistle-blowers are key sources of information for journalists, the EU should approve and implement new EU-wide rules to protect them from retaliation. As highlighted by the Alliance for Securing Democracy in their 'European Policy Blueprint for Countering Authoritarian Interference in Democracies', such rules should establish the following key principles:

- Ensuring that companies set up safe reporting procedures;
- Making it possible for whistle-blowers to go to public authorities when internal procedures yield inappropriate results;
- Permitting whistle-blowers to go to the media when there is collusion between wrongdoers and public authorities; and
- Prohibiting any kind of retaliation against someone who reports breaches of the EU law.

Reference: <https://securingdemocracy.gmfus.org/wp-content/uploads/2019/06/NEW-ASD-European-Blueprint-2019-03-July.pdf>

Q6. Are you aware of any difficulties that journalists are facing when they need access information / documents held by public authorities and bodies in your country?

1. Yes (please provide concrete examples)
2. No
3. I do not know

Response from Open Society European Policy Institute

Challenges to access to information take different forms. Although most European countries have put in place legal frameworks to ensure the right to access to information, media workers still often face constraints preventing them in practice from covering a story or speaking to a source.

In Hungary, the creation of informal blacklists of media outlets, application of high fees for access to public information, restrictions on reporting about parliamentary proceedings or about the situation in refugee camps and the bans preventing journalists from asking questions at press conferences have been widely reported.

A recent analysis published in the Balkan Insight states: 'by extending the deadline for answering FOI requests and suspending data protection regulations due to the COVID emergency, Hungary's government is continuing its assault on important democratic rights'.²²

²² <https://balkaninsight.com/2020/05/13/freedom-of-information-curbs-alarm-rights-activists-in-hungary/>

MEDIA INDEPENDENCE AND TRANSPARENCY

Q1. How would you characterise the situation with regards to independence of media and journalism in your country?

	NOT AT ALL	TO A LIMITED EXTENT	TO A GREAT EXTENT	DON'T KNOW
1. The government controls or exerts pressure on media outlets		X		
2. Powerful commercial actors control or influence editorial policy of media outlets			X	
3. Journalists are afraid of losing their job or of other consequences and avoid voicing critical opinions		X		
4. News media, in particular public broadcasters, provide balanced and representative information, presenting different views, particularly in times of electoral campaigns		X		

Q2. How important is the support for independent journalism (including free-lance journalists and bloggers/web journalists) and the protection of the safety of independent journalists to supporting democracy in the EU and internationally?

- 1. Very important
- 2. Important
- 3. Not important
- 4. Don't know

Q3. Do you feel sufficiently informed about the ownership of the media outlets you are consulting?

- 1. Yes
- 2. No (please explain)
- 3. I do not know

Response from Open Society European Policy Institute

Research by *Access Info Europe* and the *Open Society Program on Independent Journalism* into the law and practice in 20 European countries showed that in most countries, company law reporting obligations are insufficient to provide a detailed picture of the ownership and influences behind media companies. Only in 9 countries out of 20 can the public find out who the actual owners of the media are from reporting to media regulators or company registers. Disclosure to media regulators of beneficial (ultimate) owners of media outlets is not currently required in most countries.

There is no unified or standard approach to collecting or requiring disclosure of media ownership data to the public, particularly with regard to print and online media.

Find out more at: <https://www.access-info.org/media-ownership-transparency/>.

Q4. Should it be mandatory for all media outlets and companies to publish detailed information about their ownership on their website?

- 1. Yes (please explain)
- 2. No (please explain)
- 3. I do not know

Response from Open Society European Policy Institute

The public availability of accurate, comprehensive and up-to-date data on media ownership is an essential component of a democratic media system. It is impossible to take steps to address excessive media concentrations and conflicts of interest without the tools to identify the owners. Public knowledge of owners' identities helps to ensure that abuses of media power can be assessed, publicised, openly debated and even prevented.

The EU has made great strides in improving public access to beneficial ownership information in recent years, but, given the importance of media pluralism for democratic debate and the difficulties in accessing corporate registries, the public would benefit from dedicated national and EU initiatives that would improve the accessibility and dissemination of information on media ownership.

Broadcast, print and comparable online media should all be required to submit sufficient information to a national media authority to allow identification of their beneficial and ultimate owners back to natural persons. This information should be available to the public in an accessible format free of charge and should be published in a regularly updated and centralised database. Media authorities should ensure that this information is collected and always made available to the public.

Access Info Europe and the Open Society Program on Independent Journalism have developed 10 detailed recommendations on the Transparency of Media Ownership, which are available here: https://www.access-info.org/wp-content/uploads/TMO_Recommendations_05_November_2013.pdf

Q5. Should content by state-controlled media, where governments have direct control over editorial lines and funding, carry specific labels for citizens?

- 1. Yes (please explain)
- 2. No (please explain)
- 3. I do not know

Response from Open Society European Policy Institute

Yes, in principle. However, 'honest' state-supported media are likely to be already transparent about this.

The real problem arises when media are controlled by powerful business interests that are aligned with governments, both of which have strong interests to hide their connections to the media. In such cases, any mandatory labelling is likely to encourage further obfuscation of control over editorial lines in practice. The UK's Telegraph newspaper, owned by powerful Conservative donors, is a significant case study in this sense.

Q6. Do you think information from independent media and trustworthy sources should be promoted on online intermediary services (such as search engines, social media, and aggregators)?

- 1. Yes (please explain)
- 2. If yes, please give examples of how it could be achieved and how to distinguish sources to be promoted?
- 3. No (please explain)
- 4. I do not know

Response from Open Society European Policy Institute

Yes, in principle. However, in reality, this would require widespread agreement on standards for qualifying 'independence' and 'trustworthiness' in a highly charged and politically divisive environment.

We err towards a Newsguard-style browser plugin model which automatically flags search results and social media posts with green, red or yellow flags and reveals further factual details, such as their ownership and funding source, when hovering over them.

Its broad inclusiveness is a strength: although it flags as green sources that many would consider dubious (i.e., Daily Mail in the UK), the plugin provides extensive background on the entities behind news and posts and is very effective at red-flagging egregious and manipulative sources that readers may be unfamiliar with, such as sources from other countries.

The real power of this plugin model comes from the prospect of including it in browsers, rolling it out in an update and switching it on by default (leaving the possibility for users to opt-out).

Boosting news sources flagged as 'green' through fair and equitable upranking on browser search results and social media platforms could also be an effective way of promoting independent and reliable journalism.

Q7. Do you think further laws or institutions should be put in place in your country to strengthen media independence and transparency in any of the following areas?

- 1. Transparency of state advertising and state support to news media/journalism
- 2. Transparency of media ownership
- 3. Promotion of information from independent media and trustworthy sources
- 4. Ownership limitations of commercial actors
- 5. Ownership limitations of political actors
- 6. Rules to prevent foreign (extra-EU) based manipulative and hatespreading websites from operating in the EU
- 7. Other - Please specify
- 8. No, what is in place is sufficient
- 9. No
- 10. I do not know

Q8. Do you think that the EU should act to strengthen media independence and transparency in any of the following areas? (Multiple answers possible)

- 1. Transparency of state advertising and state support to news media / journalism
- 2. Transparency of media ownership
- 3. Promotion of information from independent media and trustworthy sources
- 4. Ownership limitations of commercial actors
- 5. Ownership limitations of political actors
- 6. Other - please specify
- 7. No
- 8. I don't know

Response from Open Society European Policy Institute

Ahead of the 2019 European Parliamentary elections, Reporters without Borders (RSF) launched a series of proposals calling on the European Union to defend press freedom, editorial independence and media pluralism amidst evidence of serious deterioration of freedom of expression in the continent.²³

²³ <https://rsf.org/en/campaigns/eu-elections-10-proposals-reinforcing-press-freedom-europe>

Among those proposals, RSF called on the appointment of a European Commissioner in charge of Freedom, independence and diversity of news and information; a renewed approach to competition policy aimed at promoting diversity of news and information; and the strengthening of press freedom in EU treaties.

Q9. If you answered yes to some of the options of the previous question, how should the EU act in these areas?

- 1. By issuing guidance
- 2. By setting up dedicated structured dialogue with Member States
- 3. By providing financial support
- 4. By adopting legislation
- 5. Other – please specify

Q10. EU countries have rules applying to media content such as news or current affairs, in general (e.g. rules on editorial independence, objectivity/impartiality), and in particular during elections (rules on scheduling and the balance of the programmes, moratoria on political campaign activity, opinion polls). Do you think similar rules should apply online?

- 1. Yes
- 2. No
- 3. I don't know

Q11. Should the role of and cooperation between EU media regulators in overseeing respect for such standards, offline and online, be reinforced?

- 1. Yes
- 2. No
- 3. I don't know

CROSS-BORDER COOPERATION, MEDIA AND PRESS COUNCILS, SELF-REGULATION

Q1. Are you aware of the existence of a press or media council or another media self/co-regulation body supervising journalistic ethical standards and conduct in your country?

- 1. Yes
- 2. No

Q1.1 Do you think press or media councils should be established in all EU countries?

- 1. Yes (please explain)
- 2. No (please explain)

Q1.2 In order to address the challenges in the media sector, which activities should be prioritised by press and media councils or other media self/co-regulation bodies?

- 1. Incentivising exchanges of best practices and promoting journalistic standards, in particular online
- 2. Providing support for journalists in the process of digitalisation of media sector
- 3. Ensuring effective complaints handling mechanisms
- 4. Establishing links between journalists and citizens to increase trust
- 5. Contributing to the fight against disinformation online
- 6. Other - please specify

Response from Open Society European Policy Institute

All these options are desirable. There are no silver-bullet solutions to the challenges of how information is consumed and reaches people in a digital information ecosystem.

Q2. What role, if any, should the EU play to facilitate cross-border cooperation?

- 1. Provide financial support to media councils or other media self/coregulation bodies
- 2. Set up an EU-level coordination network
- 3. Promote citizens' awareness about their activities
- 4. Other (please specify)
- 5. No role

III. QUESTIONS ON TACKLING DISINFORMATION

Designed to intentionally deceive citizens and manipulate our information space, disinformation undermines the ability of citizens to form informed opinions. Disinformation can also be a tool for manipulative interference by external actors.

SCOPE

Q1. The April 2018 Commission Communication on Tackling online disinformation: a European Approach defines disinformation as verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm.²⁴

Do you think this definition should be broadened and complemented to distinguish between different aspects of the problem?

- 1. Yes (please specify)
- 2. No (please specify)
- 3. Don't know

Response from Open Society European Policy Institute

The definition should clearly specify that disinformation does not cover the creation and dissemination of illegal content, which is prohibited by law both online and offline. It should also include what is specified in the footnote above, i.e., disinformation does not include inadvertent errors, clearly identified partisan news and commentary or satire and parody (which often deliberately, maliciously or misleadingly distort facts).

The definition should also explicitly clarify that risks of public harm or violation of others' fundamental rights and policies should be 'demonstrable and significant' in order for the public supervisory bodies to intervene against disinformation.

Any policy recommendation or action to counter disinformation must be based on evidence related to the negative impact of false and misleading information on the public's right to know and the right of individuals to seek and receive, as well as to impart information and ideas of all kinds. Therefore, restrictions on people's fundamental rights, such as freedom of expression, can only be imposed if:

²⁴ Public harm includes threats to democratic processes as well as to public goods such as Union citizens' health, environment or security. Disinformation does not include inadvertent errors, satire and parody, or clearly identified partisan news and commentary.

- They are provided for by the law;
- They respect the essence of fundamental rights and freedoms; and
- They are necessary and proportionate to the objective of preventing or addressing a demonstrable and significant risk of public harm.

[For further detail, see: https://edri.org/files/online_disinformation.pdf, pp. 7-8]

Q2. So far, the European Commission has addressed the spread of disinformation through a self-regulatory approach, which has resulted in a Code of Practice on Disinformation being subscribed by major online platforms and trade associations representing the advertising industry. Do you think that this approach should be:²⁵

- 1. Continued as it is currently pursued (status quo)
- 2. Pursued but enlarged to a wider range of signatories
- 3. Pursued but combined with a permanent monitoring and reporting programme
- 4. Pursued but on the basis of a substantially reviewed Code of Practice
- 5. Pursued but accompanied by a regulatory framework fixing basic requirements for content moderation, data access and transparency, as well as respective oversight mechanisms
- 6. Pursued but accompanied by a regulatory package fixing overarching principles applicable to all information society services and establishing more detailed rules for dealing with disinformation under such general principles
- 7. Replaced by special regulation on disinformation
- 8. abandoned altogether, as all forms of restriction or control on content posted online by internet users and which is not illegal in nature (e.g. illegal hate speech, incitement to terrorism) could endanger freedom of speech
- 9. Other (please explain)

Response from Open Society European Policy Institute

Different self-regulatory initiatives have been tried, and while they may have helped advance the conversation between the platforms and policymakers, these initiatives have not provided any meaningful solution. A notable example in the EU is the fact that actions by platforms in the context of the EU Code of Practice against Disinformation failed to deliver results and the promised transparency that would have been necessary to adequately assess platforms' efforts to comply with the Code. By focusing on content takedowns, platforms have so far provided insufficient information on critical issues and processes such as information suppression, content curation and distribution, targeting mechanisms and ad delivery optimisation.

²⁵ This question complements the questionnaire for the public consultation on the Digital Services Act, which focuses on illegal content.

Unfortunately, the failed self-regulatory process means that precious time has passed while the phenomenon has worsened. Therefore, the EU must design a comprehensive, multi-faceted plan, including regulatory measures for different actors in the disinformation space, without delay.

The following are a **set of public policy measures that EU and national policymakers should commit to engage in as a matter of priority:**

- Regulate the transparency of online advertising, including the requirement of mandatory, functioning and comprehensive ad archives. Mandate the labelling of bots and content disseminated by Government-controlled entities, state institutions and political parties.
- Ensure the enforcement of the GDPR towards online platforms and political parties, including restrictions on micro-targeting (such as on the basis of sexual orientation, religion, disability, ethnicity, etc.) and fines for non-compliance.
- EU regulation (for instance through the Digital Services Act) should include measures aimed at disincentivising the widespread dissemination of disinformation and divisive content. Such regulatory measures should help push the market towards more human rights-respecting, democracy-enabling business models, those which are not entirely driven by invasive advertising and widespread surveillance of users.
- An access to data framework that respects individuals' data protection rights is necessary to enable civil society, researchers and journalists to analyse and evaluate content being shared on platforms for public interest auditing and oversight. For more info, see the report from EPC & AlgorithmWatch.²⁶ Mandatory APIs to enable third-party access to data may be necessary in this respect.
- Algorithmic systems must be auditable and overseen. EU Regulation should enable third-party algorithm inspection in the public interest (i.e., inspection and auditing should be conducted by independent third parties and not by the platforms).
- Establish a decentralised cooperation framework on disinformation that includes necessary funding schemes in support of civil society organisations working to combat disinformation across Europe. See more from EU DisinfoLab on this idea.²⁷
- The European Commission should take proactive steps against the 'disinformation industry' (companies dedicated to the sale of fake profiles, 'click farms', 'like farms', etc.) and include the necessary measures into EU law so that online platforms detect these fraudulent users.
- Empower an independent auditing body specifically tasked with overseeing and monitoring what online platforms are doing to address disinformation on their networks.
- The European Commission should seek to establish best practices in upgrading electoral law for the digital age.

²⁶ https://algorithmwatch.org/wp-content/uploads/2020/06/GoverningPlatforms_IViR_study_June2020-AlgorithmWatch-2020-06-24.pdf

²⁷ <https://www.disinfo.eu/advocacy/our-position-on-the-joint-communication-tackling-covid-19-disinformation-getting-the-facts-right>

- Complete the ePrivacy Regulation reform to ensure that all individuals in Europe enjoy the right not to be tracked online and cannot be forced to enable such tracking in exchange for accessing content online.
- Create a binding Code of Conduct for all European-wide political parties to self-enforce a system of internal sanctioning for any disinformation generated and disseminated through their own ranks.
- Ensure that all EU Member States are actively working to guarantee individuals' right to access to information and are publishing all necessary information about any matter of public interest, particularly the COVID pandemic. In addition, the EU should urgently and carefully scrutinise any emergency power adopted by EU Member States that gives national institutions the power to disproportionately criminalise the production and dissemination of disinformation. For further information about this, please see this report from AccessNow²⁸.

Dos: The process of developing such legislative package must be transparent and meaningfully inclusive of input from civil society and especially from groups that represent the most vulnerable, marginalised and racialised in society.

Don'ts: New legislative initiatives should never impose general monitoring obligations on digital platforms or incentivise them to use automated filtering systems that endanger the freedom to receive an information as well as data protection and that are incompatible with EU law. Outsourcing legality decisions on speech governance to corporate actors, without judicial oversight or proper redress mechanism, would translate into a dangerous privatisation of law enforcement activities. For this reason, the EDAP should set out a plan to avoid legislating on harmful but legal content in the DSA. Instead of imposing obligations on platforms to police harmful but legal content, the EU should mandate them to be transparent about how content is moderated, their terms of service and community guidelines and their redress mechanisms.

28 <https://www.accessnow.org/cms/assets/uploads/2020/04/Fighting-misinformation-and-defending-free-expression-during-COVID-19-recommendations-for-states-1.pdf>

Q3. Have you ever encountered the following measures to reduce the spread of disinformation on social media platforms?

	YES	NO	DON'T KNOW
1. Alerts when attempting to share or publish content that has failed a fact-check by journalists or a fact-checking organisation		X	
2. Notifications to users who have previously engaged with content or sites that have failed a fact-check by journalists or a fact-checking organisation		X	
3. Clear labels above content or sites that have failed a fact-check by journalists or a fact-checking organisation		X	
4. Mechanisms allowing you to report disinformation	X		

Q4. Q3.1 If yes, on which platforms have you encountered this?

- 1. Google
- 2. Facebook
- 3. Twitter
- 4. YouTube
- 5. WhatsApp
- 6. Other (Please specify)

Response from Open Society European Policy Institute

In spite of what the question states, the options provided in table Q3 are examples of mechanisms rather than measures to counter disinformation. It is true that, most recently, mechanisms of this kind have started to appear on certain platforms (e.g., in relation to posts of Presidents Trump and Bolsonaro); however, they are not always clear for users. Moreover, such mechanisms usually fail to explicitly label posts as disinformation and often lead to unsatisfactory outcomes. In order to counter the spread of disinformation, the focus should be on outcomes and impact rather than on only the setting-up of technical mechanisms for reporting.

DISRUPTING THE ECONOMIC DRIVERS FOR DISINFORMATION

Q1. What type of measures should online platforms and advertising networks operators take in order to demonetise websites that create, present or disseminate disinformation?²⁹

	FULLY AGREE	SOMEWHAT AGREE	NEITHER AGREE NOT DISAGREE	SOMEWHAT DISAGREE	FULLY DISAGREE	I DON'T KNOW / NO REPLY
1. Establish and regularly update lists of websites identified by fact-checkers as systematic sources of disinformation (black list approach) and publish them	X					
2. Establish and regularly update lists of websites identified by fact-checkers as systematic sources of disinformation (black list approach) and remove the ad accounts concerned		X				
3. Establish and regularly update lists of websites identified by fact-checkers as systematic sources of disinformation (black list approach) and temporarily suspend the ad accounts concerned	X					
4. Establish and regularly update lists of websites identified by fact-checkers as occasional sources of disinformation (grey list approach) and give the advertisers the possibility to selectively exclude such websites	X					

²⁹ Please note that this question refers to monetisation of websites that systematically publish false or misleading information, which is not illegal in nature. Monetisation via advertisement placements of web sites publishing illegal content is addressed within the context of a separate questionnaire for the public consultation on the Digital Services Act.

	FULLY AGREE	SOMEWHAT AGREE	NEITHER AGREE NOT DISAGREE	SOMEWHAT DISAGREE	FULLY DISAGREE	I DON'T KNOW / NO REPLY
5. Block ad accounts only for those websites that engage in deceptive behaviour (e.g. spamming, misrepresentation of identity, scraping content from other sources, containing insufficient original content, etc.)						X
6. Ensure a systematic scrutiny of websites providing advertisement space and limit ad placements only on those websites that are considered trustworthy by reputable indexes (white list approach)						X
7. Ensure transparency of platforms vis-à-vis advertisers and provide for third-party verification (e.g. position of the ads, the content the ads are run next to, metrics)	X					
8. Other		X				

Q2. Paid-for content on issues of public interest is promoted on social media platforms both during and outside electoral periods. Due to the special prominence given to such paid-for content in news-feeds and other systems for displaying content online, users may be misled as to its credibility or trustworthiness, irrespective of the veracity of the content. Do you think that issue-based advertising / sponsored content of political context:

	FULLY AGREE	SOMEWHAT AGREE	NEITHER AGREE NOT DISAGREE	SOMEWHAT DISAGREE	FULLY DISAGREE	I DON'T KNOW / NO REPLY
1. Should be systematically labelled	X					
2. Should be systematically labelled and collected in public, searchable repositories	X					
3. Should be subject to the same rules as on political advertising (see above section)	X					
4. Should not be regulated					X	

INTEGRITY OF PLATFORMS' SERVICES

Q1. Do you think there should be targeted regulation at EU or national level to prohibit deceptive techniques such as the use of spam accounts and fake engagement to boost posts or products?

- 1. Yes
- 2. No
- 3. Don't know
- 4. Other

Q1.1 If you replied yes to the previous question, what do you think should be the most appropriate measures to tackle the above-mentioned manipulative techniques and tactics?

	FULLY AGREE	SOMEWHAT AGREE	NEITHER AGREE NOT DISAGREE	SOMEWHAT DISAGREE	FULLY DISAGREE	I DON'T KNOW / NO REPLY
1. Label the content as artificially promoted	X					
2. Demote the content to decrease its visibility	X					
3. Suspend or remove the content because the use of manipulative techniques is contrary to platforms' terms of service			X			
4. Suspend or remove the accounts engaging in manipulative techniques		X				
5. Invest in internal intelligence systems to detect manipulative techniques						X
6. Invest in artificial intelligence to detect manipulative techniques		X				
7. Other	X					

Response from Open Society European Policy Institute

Artificial intelligence and ADMs can be used to detect and label automated bots, spam accounts and deceptive techniques used to boost engagement on social media (fake engagement). However, it is important to stress that automated technologies should not be used to automatically suspend nor remove accounts without due process or to automatically scan and prevent content from being published (as in the case of upload filters).

As rightly pointed out by EDRI, 'filters are not equipped to make complex judgments on content posted online, they do not understand the context in which content is published and shared, and as a result, they often make mistakes. Such algorithmic tools do not take proper account of the legal use of the content, for example for educational, artistic, journalistic or research purposes, for expressing polemic, controversial and dissident views in the context of public

debates or in the framework of awareness raising activities. They risk accidentally suppressing legal speech, with exacerbated impacts on already marginalised individual internet users. Final decisions about suppressing accounts or contents should be made by humans, according to a due process allowing for appeal, internal review and possibly judicial review'.³⁰

In addition to asking platforms to detect and label automated bots, the EU should provide funding to civil society organisations to independently investigate artificially promoted content and bots because this often requires a thorough analysis across several platforms (see the 'Operation Infektion' detected by the Atlantic Council's Digital Forensics Research Lab as an example).³¹

ENHANCING USERS' AWARENESS

Q1. Do you agree that the following kinds of measures would help enhance user's awareness about how platforms operate and prioritise what users see first?

	FULLY AGREE	SOMEWHAT AGREE	NEITHER AGREE NOT DISAGREE	SOMEWHAT DISAGREE	FULLY DISAGREE
1. Promoting content from trustworthy sources	X				
2. Promoting factual content from public authorities (e.g. on election date)		X			
3. Providing tools to users to flag false or misleading content	X				
4. Demoting content fact-checked as false or misleading	X				
5. Labelling content fact-checked as false or misleading without demoting	X				
6. Platforms should inform users that have been exposed to fact-checked content	X				
7. Removing content which is found false or misleading and contrary to terms of service (e.g. threatening health or public safety)				X	

30 <https://edri.org/trilogues-on-terrorist-content-upload-or-re-upload-filters-eachy-peachy/>

31 <https://www.atlanticcouncil.org/in-depth-research-reports/report/operation-secondary-infektion/>

Which sources do you consider as trustworthy?

Trustworthy sources are those that:

- Clearly mark opinion pieces as opinions;
- Disclose authorship as well as possible conflicts of interest or political affiliation (transparency);
- Indicate where information was obtained and how it was verified;
- Provide links to their primary and secondary sources;
- Have processes and resources in place to promote accuracy and correct error;
- Abide by the key principles of ethical, independent and professional journalism, which includes the investigation, verification, contextualisation and communication of information in the public interest.

Q2. In your opinion, to what extent, if at all, can the following measures reduce the spread of disinformation?

	NO CONTRIBUTION	MINOR CONTRIBUTION	LITTLE CONTRIBUTION	MAJOR CONTRIBUTION	DON'T KNOW
1. Demotion of posts or messages that have failed a fact-check by journalists or a fact-checking organisation in the newsfeed				X	
2. Alerts if attempting to share content that has failed a fact-check by journalists or a fact-checking organisation			X		
3. Notifications to users who have previously engaged with content that has failed a fact-check by journalists or a fact-checking organisation			X		
4. Clear labels above content that has failed a fact-check by journalists or a fact-checking organisation			X		

	NO CONTRIBUTION	MINOR CONTRIBUTION	LITTLE CONTRIBUTION	MAJOR CONTRIBUTION	DON'T KNOW
5. Mechanisms enabling readers to flag content that is misleading			X		
6. Mechanisms to block sponsored content from accounts that regularly post disinformation				X	
7. Closing of fake accounts and removal of automated social media accounts like bots				X	
8. Closing of accounts that continuously spread content that has failed a fact-check by journalists or a fact-checking organisation				X	
9. Allowing more diversity in suggestion algorithms designed to find videos, posts or sites that you might be interested in				X	
10. Other				X	

Q2.1 IF your answer=10, Please specify:

Whereas the effectiveness of fact-checking in countering disinformation is still disputed and needs further research, taking proactive steps against the disinformation industry would meaningfully contribute to addressing the root causes and neutralising the adverse impact of disinformation on rights and democracy.

Transparency is needed towards individual users to avoid misleading advertisements and empower users with reliable information and towards national authorities for oversight and accountability. **Access to data for public interest scrutiny** should be facilitated in this sense, taking into consideration existing work and proposals by civil society and academia.

At the same time, enhancing online accountability of platforms cannot work without **understanding the economic and commercial interests** of players in the ecosystem in encouraging harmful behaviour and without **raising the costs of abusing personal data** for platforms.

Meaningful **transparency** actions to counter the spread of disinformation and address its adverse impact should include:

- The creation of **independent auditing bodies** allowing for oversight by national governments and EU institutions, with the aim to hold platforms accountable for their failure to deal with harms to democratic processes;
- **Mandatory annual transparency reports** by ad platforms. Such reports should include detailed information and explanations about policies and internal processes for tackling disinformation, down- and up ranking criteria for content selection, presentation and curation mechanisms, ad targeting and ad delivery policies, policies surrounding the display of 'accurate' information (e.g., data on COVID-19 and elections) and appeal mechanisms for wrongful content takedown.
- **Mandatory ad libraries** for all platforms, based on technical standards, to be developed by the European Commission for the design and functioning of advertisement libraries of digital platforms;
- **Disclosures on why content is shown:** companies should provide more meaningful information on the origin of content and explain why it is being shown to users since this context is key to evaluating information. This should include information on why certain ads are presented and what demographics those ads are targeting. Standards for such disclosures should be mandatory, clear and enforceable.
- **Labelling of bots, primarily automated accounts, and government- / State- / party- controlled or funded content.**

However, transparency measures may not suffice to ensure platforms' accountability. The Digital Services Act should address the overarching issue of **platform accountability** not by focusing on fines for platforms but by ensuring that users have a choice through enforced **data portability and interoperability**. It is likely that however high the fines may be, they could hardly represent a significant threat to the profits made by the biggest online platforms through their current business model. Fines should therefore be accompanied with technical and structural remedies such as mandatory data portability, interconnections and/or interoperability. It is the perspective of users leaving their platforms in droves that could become a strong incentive for those platforms to move towards a more rights-respecting business model in the medium to long-term.

In addition, to **address the dominant business model** that provides platforms with incentives to host disinformation, the EU should follow the recommendations identified by the civil society's vision for the European Democracy Action Plan in 'A comprehensive plan to innovate democracy in Europe'³²:

32 Civil society vision for the European Democracy Action Plan, 'A comprehensive plan to innovate democracy in Europe', September 2020, <https://epd.eu/wp-content/uploads/2020/09/a-civil-society-vision-for-the-european-democracy-action-plan-input-paper.pdf>

- Thoroughly **enforce the GDPR** as a means to address surveillance and manipulation-based business models. For this to happen, national data protection authorities must be given, by their Member States, the political support and financial resources to investigate infringements of the ePrivacy directive and the GDPR as stated in the Commission's first GDPR review. In particular, the Commission should uphold the GDPR principles of data minimisation and data protection by design and by default. Users should opt for tracking used for advertising and content curation instead of platforms tracking users by default.
- Rapidly **adopt a strong and clear ePrivacy Regulation**, especially in view of limiting online tracking and making profiling more transparent for users.

Q3. To what extent, if at all, do you support the following measures to reduce the spread of disinformation?

	DO NOT SUPPORT AT ALL	DO NOT SUPPORT	NEITHER SUPPORT NOR DISCOURAGE	SUPPORT	SUPPORT FULLY	DON'T KNOW
1. Demotion of posts or messages that have failed a fact-check by journalists or a fact-checking organisation in the newsfeed					X	
2. Alerts if attempting to share content that has failed a fact-check by journalists or a fact-checking organisation					X	
3. Notifications to users who have previously engaged with content that has failed a fact-check by journalists or a fact-checking organisation					X	
4. Clear labels above content that has failed a fact-check by journalists or a fact-checking organisation					X	
5. Mechanisms enabling readers to flag content that is misleading					X	

	DO NOT SUPPORT AT ALL	DO NOT SUPPORT	NEITHER SUPPORT NOR DISCOURAGE	SUPPORT	SUPPORT FULLY	DON'T KNOW
6. Mechanisms to block sponsored content from accounts that regularly post disinformation					X	
7. Closing of fake accounts and removal of automated social media accounts like bots				X		
8. Closing of accounts that continuously spread content that has failed a fact-check by journalists or a fact-checking organisation				X		
9. Allowing more diversity in suggestion algorithms designed to find videos, posts or sites that you might be interested in					X	
10. Other						

Q3.1 IF your answer=10, Please specify:

Closure of accounts should be the measure of last resort because it bears the risk of being the most invasive towards the rights and freedom of the different subjects.
 Less risky options, such as temporary suspensions, should always be preferred.

In all cases, both suspensions and removal or closure of accounts should follow a clear and transparent due process.

Q4. Which information would you like to receive when reading the information on social platforms:

	YES	NO	DON'T KNOW
1. Better information about the source of the content	X		
2. Whether the content is sponsored or not	X		
3. Information about the micro-targeting (why the information is addressed to you)	X		
4. Whether there are advertisements linked to the content	X		
5. Liability of the provider for supplying false or misleading information			X

Other: please list

Point 5 (i.e., liability of the provider for supplying false or misleading information) is unclear.

If the question is about whether we want platforms to be liable for false or misleading information, our answer is 'No'. Platforms should be liable if they do not comply with their own legal obligations, but they should not be made directly liable for third-party content.

If the question is about whether we, as users, want to be able to easily find information about which liability regime applies to the platform, then the answer is 'Yes'.

Q5. As a user, when you come across information that you perceive as false or misleading, which options should be available to deal with such content? (More than one reply is possible)

	FULLY AGREE	SOMEWHAT AGREE	NEITHER AGREE NOT DISAGREE	SOMEWHAT DISAGREE	FULLY DISAGREE	I DON'T KNOW / NO REPLY
1. Removing that content from your feed	X					
2. Removing that content from your feed and excluding similar content from being algorithmically promoted in your feed	X					
3. Flagging the content to the platform for fact-checking	X					

	FULLY AGREE	SOMEWHAT AGREE	NEITHER AGREE NOT DISAGREE	SOMEWHAT DISAGREE	FULLY DISAGREE	I DON'T KNOW / NO REPLY
4. Receiving feedback about the action taken by the platforms after flagging, including possible demotion	X					
5. Flagging the content to competent authorities						X

Q6. End-to-end encrypted messaging services (such as WhatsApp, Telegram or Signal) can be used to spread false and harmful content. In your view, should such platforms introduce measures to limit the spread of disinformation, with full respect of encryption and data protection laws? (More than one reply is possible)

	FULLY AGREE	SOMEWHAT AGREE	NEITHER AGREE NOT DISAGREE	SOMEWHAT DISAGREE	FULLY DISAGREE	I DON'T KNOW / NO REPLY
1. Introduce easy-to-find reporting or flagging system for users	X					
2. Limit the possibility to forward the same content to many users			X			
3. Limit the amount of people in a discussion group			X			
4. In exceptional cases, proactively contact users about potential disinformation wave or promote authoritative content (e.g. in cases like Covid-19 pandemic)	X					
5. Other (please elaborate)	X					

Response from Open Society European Policy Institute

The spread of disinformation, false and misleading content and conspiracy theories on mobile instant messaging applications, like WhatsApp, Telegram and Signal, has boomed across the world, including Europe, during the COVID-19 pandemic. This represents a growing challenge for fact-checkers and election observers, particularly because most false claims take the form of rumours which are harder to debunk than stories with clearly identifiable sources. WhatsApp started partnering with fact-checking organisations across the globe to help people verify claims made in viral messages and is reportedly piloting features to reduce how frequently the same message can be shared on different groups and to enable users to verify whether the assertions made in messages they have received on the app are true. Such initiatives, which are welcome and must be reinforced, should not depend on the good will of the platform.

Access to content that is massively shared in private and closed groups remains a pressing challenge that needs to be addressed since it prevents third parties, such as researchers, fact-checkers and election observers, from collecting evidence about disinformation on instant messengers and from assessing how it can threaten the integrity of democratic processes and the public interest.

Considering the amount of harmful content spread over instant messaging applications, it is important to have a political and regulatory strategy to address this. Such a strategy could include the following measures:

- Institutionalising privileged data-sharing partnerships with civil society organisations, academia or independent journalists for public interest scrutiny;
- Ensuring that the content-hosting platforms produce high-quality, workable APIs with data and interaction with the platform; and
- Ensuring that any transparency measures are designed to be in compliance with the GDPR.

No regulation should ever oblige the providers of instant messaging applications to weaken or otherwise open their encrypted messaging services.

Q7. Do you easily find information about how content is fact-checked on online platforms, and by whom?

1. Yes
2. No
3. Don't know

Q8. If your post is being fact-checked or labelled, do you know how to contest this if you do not agree?

1. Yes
2. No
3. Don't know

Q9. Which information should online platform publish about their factchecking/content moderation policy?

	YES	NO	DON'T KNOW
1. If they pay directly the factcheckers or if they work with an external factchecking organisation	X		
2. How they decide which posts are factchecked	X		
3. How many posts are factchecked	X		
4. How to flag posts to be factchecked	X		
5. Other, (please specify)	X		

Response from Open Society European Policy Institute

Regulations should request platforms to publish clear information on the fact-checkers that they employ and the methodology followed. This should include information about fact-checkers' statements of interest, their funding, the sources and the criteria on which they rely in order to establish whether content is disinformation. Platforms should also be asked to provide information on their criteria for choosing certain fact-checking groups over others as recent research shows that users have low trust towards fact-checking organisations although they are generally supportive of fact-checking on social media platforms.

In addition, regulations should request platforms to:

- Establish mandatory transparency registers of ads;
- Clearly label primarily automated accounts and bot-driven communications as such; and
- Label content disseminated by State- and Government-controlled entities or political parties as such.

New legislative initiatives should never impose general monitoring obligations on digital platforms or incentivise them to use automated filtering systems that endanger the freedom to receive an information as well as data protection and are incompatible with EU law. Outsourcing legality decisions on speech governance to corporate actors, without judicial oversight or proper redress mechanism, would translate into a dangerous privatisation of law enforcement activities. For this reason, the EDAP should set up a plan to avoid legislating on harmful but legal content in the DSA. Instead of imposing obligations on platforms to police harmful but legal content, the EU should mandate them to be transparent about how content is moderated, about their terms of service and community guidelines and about their redress mechanisms.

Q10. Do you think it should be mandatory for online platforms to offer oversight bodies that enable users to seek recourse in case their account has been locked or content they have posted has been deleted?

- 1. Yes
- 2. No
- 3. Don't know

Q11. Do you think it should be mandatory for online platforms to provide points of contact for each Member State in their language?

- 1. Yes
- 2. No
- 3. Don't know

Q12. What kind of data and/or transparency tools do users/researchers/factcheckers need to be better able to detect and analyse disinformation campaigns, including by foreign state and non-state actors? Please specify.

Platforms should allow third-party oversight by granting users, researchers and fact-checkers access to:

- Aggregated and anonymised URLs datasets of public posts shared by unique accounts in a data-friendly format;
- Platforms' advertising library APIs which should include information about the position of the ads, the content the ads are run next to, metrics, the advertiser identity, engagement and reach and ad targeting and delivery criteria for all advertising, including commercial advertising;
- Anonymised shared-link dataset; and
- Anonymised demographic information (age, gender and location) about users who shared, clicked on or liked links to disinformation sources, as well as information platforms may already have about these users' political affinities.

In addition, platforms, such as social media sites, video portals and search engines, should be equally transparent in all EU Member States about:

- The processes and policies they have in place for tackling disinformation;
- The algorithmic infrastructure that optimises content selection and presentation as well as curation and advertising, including the criteria for determining what content is down ranked and up ranked, as well as what information is suppressed;
- Their policies and appeal mechanisms for reinstating paid and unpaid content that was wrongfully taken down;
- The way content is treated, including demonetising, friction and warnings, geo-blocking and counter-messaging;
- Their processes and practices for labelling content, including how 'accurate' information is identified and displayed (e.g., on COVID-19 or elections);

- The way data is collected, stored and used for targeting content (both paid and unpaid);
- Disclosing why content is shown: companies should provide more meaningful information on the origin of content and why it is being shown to users because this context is key to evaluating information. This should include information on why certain ads are being presented and what demographics are targeted by those ads. Some platforms already do this on a voluntary basis, but the standards for such disclosures should adhere to certain mandatory standards, ensuring they are easily accessible and understandable;
- Primarily automated accounts: platforms should work to define and label bots and to inform users when an account is primarily automated (i.e., whether they are interacting with a real person or not);
- Government-, State- and party- controlled or funded content: platforms should ensure that content and accounts that are directly or indirectly controlled or funded by State authorities, governments or political parties are accurately labelled as such.

In all cases, platforms should also be transparent about their relation with the fact-checkers and the decisions made following fact-checking³³.

Q13. How should the EU respond to foreign state and non-state actors who interfere in our democratic systems by means of disinformation (multiple answers possible)?

	YES	NO	DON'T KNOW
1. Analyse and expose state-backed disinformation campaigns	X		
2. Conduct public awareness-raising campaigns	X		
3. Support independent media and civil society in third countries	X		
4. Impose costs on state who conduct organised disinformation campaigns	X		
5. Develop more effective public outreach and digital communication strategies	X		
6. Other, (please specify)	X		

33 For example, Facebook has recently been accused of pressuring its independent fact-checkers to change their rulings. See more at: <https://www.fastcompany.com/90538655/facebook-is-quietly-pressuring-its-independent-fact-checkers-to-change-their-rulings>.

Response from Open Society European Policy Institute

The EU has put in place a number of initiatives aimed at countering foreign interference through disinformation, such as the 'EU versus Disinformation' campaign run by the EEAS StratCom Task Force. To date, these initiatives have not delivered significant results in the battle against disinformation.

Rather than focusing on debunking disinformation or even prohibiting content based on its validity, which carries risks for freedom of expression, EU efforts should concentrate on minimising the potential impact of disinformation by addressing the business models that incentivise the dissemination of disinformation online. In this sense, enhancing online accountability of platforms cannot work without an ongoing understanding of the economic and commercial interests of the players in the ecosystem in encouraging harmful behaviour and without raising the costs for personal data abuse.

Currently, foreign and domestic hate speech campaigns, disinformation and other types of online content deemed problematic go viral and come out at the top of recommended content as a result of the current 'attention-seeking' profiling model of digital markets. Platforms, especially so-called social media, make profits by collecting, analysing and selling user data. Promoting controversial content that drives user engagement is key to the targeted advertisement-based business models of most of these platforms. Sensational, shocking or polarising content retains people's attention and maximises their screen time, which in turn generates more profiling data and time to show advertisements – which creates profit for the platforms. As long as this chain of incentives is left intact, no content removal or filter law in the world will be able to solve the problem and prevent damage from the spread of problematic online content.

The ways in which dominant platforms use behavioural or personal data remain opaque. While the GDPR provides tools to counter personal data abuse, its enforcement is only partial. Targeting sections of the public without their consent in this way is only possible if an organisation has engaged in profiling based on unlawful data controlling and processing. In this way, data protection rules offer an effective indirect route to combating online disinformation while preserving freedom of expression. The European Commission, together with national Data Protection Authorities, should prioritise platforms' compliance with the GDPR through fines.

To this purpose, see the recommendations provided under question Q2 of this same section [Enhancing users' awareness].

Q14. In your opinion, should content by state-controlled media outlets be labelled on social media?

- 1. Yes
- 2. No
- 3. Don't know

IV. QUESTIONS ON SUPPORTING CIVIL SOCIETY AND ACTIVE CITIZENSHIP

As a crosscutting issue, civil society faces increasing pressure, but plays a key role in the democratic system, holding those in power to account and stimulating public debate and citizen engagement, as well as in combatting some of the identified threats. In addition to this, participatory and deliberative democracy gives citizens a chance to actively and directly participate in the shaping of planned or future public policies. A major element in the context will be the upcoming Conference on the Future of Europe.

Q1. Do you think civil society is sufficiently involved in shaping EU policies, notably through consultation?

- 1. Yes
- 2. No
- 3. Don't know

If Q1=2 What more could be done?

The dialogue between EU institutions and civil society needs further strengthening since the participation of civil society in policy processes plays a crucial role in the promotion and protection of democracy and human rights. In order to respect, protect and encourage the role that civil society plays to defend and promote the values enshrined in Article 2 of the EU Treaty, the EU should:

- Pursue a policy of 'transparency by default' in decision-making, which would allow for better monitoring by citizens and civil society organisations (CSOs) of the entire legislative process, particularly those organisations with little capacity to follow EU developments. This includes crucial negotiations which have so far escaped the transparency reforms of recent years, such as trilogues and discussions within Council. The EU institutions should also ensure that practical obstacles to citizens exercising their right to access documents under Articles 11 and 15 TEU are removed as much as possible.
- Strengthen the efforts started with the Better Regulation initiative to review the terms of engagement with civil society organisations for all EU institutions, in line with Article 11 TEU, in order to ensure an open, transparent, meaningful, regular and inclusive structured dialogue. To this end, create a legal framework for structured dialogue by initiating an inter-institutional agreement on civil dialogue with European civil society.
- Avoid box-ticking, one-way and one-off consultations and ensure that organisations can contribute in a timely and informed manner to EU policy making at the inception phase; for example, by increasing CSO participation in expert groups. Consultations should also seek to be inclusive, avoid technical jargon and ensure participation by grassroots, non-Brussels-based organisations.
- Take account of the capacity constraints in many CSOs when organising public consultations; for example, by ensuring they are informed well in advance about forthcoming consultations and that there is adequate time for organisations to provide quality input. CSOs should also be proactively consulted in the evaluation and review of policy and legislation and as part of any other feedback cycles that are established.

- Recognise the critical role of civil society organisations in representing and advancing the needs, rights and interests of various groups of society by proactively seeking their input on all policy and legislation, ensuring that there is the right balance between civil society and other interests in the views that are sought and that no one sector dominates the public debate.
- Recognise and promote the role of civil society organisations and philanthropic organisations also in helping to mobilise citizens on the ground.
- Ensure meaningful and sustained representation of minority, racialised, vulnerable, underrepresented and underprivileged groups at all stages of policy- and decision- making processes, including strategic discussions, policy development, evidence gathering and impact assessments. When assessing the representativeness of EU policy processes and reflecting on the impact of policies on different groups, the Commission should consider the lived realities of individuals and the historical and social context of discrimination because categories, such as race, gender and class, intersect in ways that will impact people's experience and the effectiveness of the policies that are proposed.³⁴
- Ensure CSOs can thrive and participate in consultations on EU matters by protecting their access to funding as ruled in the recent CJEU judgement on the Hungarian Transparency Law³⁵.
- Sustain and consider increasing EU funding for CSOs as part of the next MFF and particularly within subheading 7 of Cohesion and Values and the 'Rights and Values' fund.

Q2. Do you think civil society should be more involved in concrete EU-level actions to promote democratic debate?

1. Yes
 2. No
 3. Don't know

Response from Open Society European Policy Institute

Civil society in Europe continues to experience, as organisations and individuals, a variety of attacks that take the form of intimidation, harassment, stigmatisation, spurious allegations of wrongdoing, criminal prosecution and violence, including physical attacks. To ensure the full implementation of Art. 11 TEU, the EU should take concrete actions against the closing space for civil society in Europe and strive to secure an enabling environment for CSOs, activists, human rights defenders and social movements to protect and promote human rights within the European Union.

34 For more information on an intersectional approach, see:

European Network Against Racism (ENAR), 'Briefing on Intersectionality and Policy-Making on Discrimination in the European Union', March 2018: https://www.enar-eu.org/IMG/pdf/2018_intersectionality_enar_briefing_for_online_final.pdf ;
European Network Against Racism (ENAR), 'Intersectional Discrimination in Europe: Relevance, Challenges and Ways Forward', September 2020: <https://www.enar-eu.org/intersectionalityreport>

35 Case C-78/18 Commission v Hungary, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-06/cp200073en.pdf>

In particular, the Commission should:

- Strive to involve civil society throughout the entire policymaking process, acknowledging that phases that are not initiated by the Commission are usually closed or hard to access for CSOs (e.g., Council negotiations, trilogues). To this end, consider formalising civil society participation and meaningful contribution in high-level dialogues, taking stock of positive experiences in certain areas of EU external action (e.g., Eastern Partnership Civil Society Forum; CSO participation in certain bilateral human rights dialogues with third countries).
- Ask all EU leaders to speak up to support civil society and stand alongside targeted individuals and organisations.
- Ensure that Commissioner Jourova, whose revised mandate explicitly includes upholding freedom of association, has the support and resources to monitor developments around the situation of civil society and swiftly initiate legal action when EU law and the Charter of Fundamental Rights are breached.
- Always include the respect for freedom of expression, association and assembly as part of all fundamental rights impact assessments for EU legislative proposals and as part of the continued monitoring by the Commission of existing EU and national legislation.
- Ensure that the MFF allocates enough resources for CSOs to develop medium- to long-term plans to promote fundamental rights and the rule of law (beyond specific time-bound EU related projects), sustain their watchdog roles and respond to threats. This should include a dedicated budget line for national organisations working on Article 2 TEU; adapt modalities to the rule of law situation in the country to adequately protect CSOs in difficult environments; provide funding for litigation activities and ensure that specific emergency funding is available to assist human rights defenders at risk.
- Ensure regular and comprehensive monitoring and analysis to understand the challenges faced by civil society across Europe. Documentation by civil society and the EU Agency for Fundamental Rights (FRA) on civic space should feed on a continuous assessment of how EU values are upheld and taken up in subsequent accountability mechanisms.
- Review the mandate of the FRA to enable it to receive and investigate complaints and to carry out country specific assessments in Member States when negative trends are identified.
- Develop guidance on freedom of association and assembly and on how EU law can be used to protect civic space; tap into civil society's expertise by bringing CSOs' perspectives in the development of such guidance.
- Map the protection mechanisms available in EU Member States and at the EU level to protect human rights defenders and CSOs at risk.
- Work with CSOs to design a 'Rapid Response System' that can detect and act on the first signs of attacks against civil society and human rights defenders, including a helpline, legal assistance and temporary relocation.
- Take legal action at EU level, where laws in Member States limit civic space, in violation of the Charter of Fundamental Rights and EU law and increase the transparency of infringement proceedings, as well as effective participation of civil society in the process. Consideration should be given to the use of expedited procedures and interim measures when there is an attested chilling effect on individuals and CSOs involved in defending EU values and/or a risk of irreparable harm.

- Support CSOs capacity to engage in strategic litigation at national and EU level when EU law and fundamental rights are violated, including interventions before the Court of Justice of the EU.
- Ensure that the current and future EU instruments to strengthen respect for the rule of law in the EU, such as the Article 7 procedure, EU legal action and the upcoming annual Rule of Law cycle, assess and address abuses of fundamental rights.
- Ensure that a shared framework and coordinated plan for action are agreed between the Council, Parliament and Commission to prevent and remedy violations of Article 2 TEU. Any Article 2 TEU monitoring and accountability mechanism should be transparent based on independent sources and include a formal role for civil society.

See: HRDN, 'Civil Society on the Frontline: 5 Points for EU Action 2019-2024', 2019. <https://hrdn.eu/2017/wp-content/uploads/2019/07/CIVIL-SOCIETY-ON-THE-FRONTLINE-2019-FINAL-002.pdf>

Q3. Do you think actions should be taken at EU level to strengthen cooperation among civil society actors across borders?

- 1. Yes
- 2. No
- 3. Don't know

Response from Open Society European Policy Institute

The EU could consider legal instruments to reduce cross-border barriers and facilitate EU-wide engagement in the public interest by civil society and philanthropy. The Commission could encourage Member States towards the mutual recognition of public benefit organisations and develop tools to facilitate tax-effective cross-border philanthropy, which remains complex and burdensome to date.

Q4. Do you think the EU should provide more financial support for civil society (for example under the 'Rights, equalities and citizenship' programme)?

- 1. Yes
- 2. No
- 3. Don't know

Q5. Are you aware of measures to increase media and information literacy/develop media literacy skills? What type of action do you deem to be most efficient/most appropriate in this area:

- 1. Formal education in school/university
- 2. Education online via social media platforms
- 3. Life-long learning
- 4. Exchange of best practices in expert fora
- 5. Don't know

Q6. Do you think that more participatory or deliberative democracy at the European level, with more possibilities for public deliberation and citizen engagement, beyond public consultations, would be:

- 1. A good thing
- 2. Neither good nor bad
- 3. A bad thing
- 4. Don't know

Response from Open Society European Policy Institute

The solutions to the national, regional and global challenges faced demand the free exchange of ideas and thought, and everyone should have a voice in shaping the policies that affect them.

While there is a high level of interest from civil society and the people living in Europe to be involved in shaping EU policies, the EU consultation process does not always allow this to happen. The online EU public consultations of the European Commission are highly technical and mainly used by organised interest groups. They are not user-friendly and accessible to the public who is barely aware that such tools exist as a form of e-participation. Moreover, the minimum standards of consultation in the policy-making process are only binding for the European Commission.

The failure of existing forms of citizen participation in the EU to bridge the democratic deficit calls for a need to democratise online consultations and institutionalise a structured process for civil dialogue along the recommendations that we provided in response to Question 1 of this section. The Conference on the Future of Europe should be an opportunity to unlock necessary reforms to make the democratic process in Europe permanently more inclusive, participatory and transparent.

In addition, deliberative democracy processes, be they citizens' assemblies or other, can be an important component of democratic participation. They should not be considered as the panacea to democratic deficit but they can be highly beneficial to tackle long-term, transnational, intergenerational policy issues with high ethical stakes such as climate change.

If well designed, deliberative processes can lead to better decision-making, enhance citizens' understanding of the issue at stake, reduce polarisation, increase democratic legitimacy for action in a specific area as well as public trust in the institutional system overall. However, it is critical that they follow principles of transparency, integrity, accountability and inclusiveness, that they adopt best practices when it comes to their preparation, design, facilitation and evaluation and finally, that they are embedded in representative democracy institutions rather than being *ad hoc* exercises with uncertain influence on policy-making. The principle of accountability is particularly important to keep in mind at the EU-level because of the multitude of institutions and levels of governance involved in decision-making and implementation. As the EU tries original ways of engaging with its citizens, it should also encourage and equip Member States to do so.

Q6.1 If given the opportunity, would you take part in a European participatory or deliberative democracy event?

- 1. Yes, absolutely
- 2. Yes, probably
- 3. Maybe
- 4. Probably not
- 5. No, not at all
- 6. Don't know

Q7. Are you familiar with the European Citizens' Initiative?

- 1. Yes, I have taken part in one before
- 2. Yes, but I have not taken part in one before
- 3. Not sure
- 4. No, I do not know what a European Citizens' Initiative is

