

STUDY

Requested by the LIBE Committee



Resilience of Democracy and European Elections against New Challenges



Policy Department for Citizens' Rights and Constitutional Affairs
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Resilience of Democracy and European Elections against New Challenges

Abstract

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, identifies new challenges to democratic resilience and electoral processes, systematically mapping the EU responses to counter them. The study focuses both on external and internal challenges and assesses the responses of the Union particularly in the run-up to the 2024 European Parliament elections. It also provides specific policy recommendations to further enhance the protection of democracy in the Union.

This document was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

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LIST OF ABBREVIATIONS

APPF	Authority for European Political Parties and Political Foundations
CSOs	Civil Society Organisations
DoD	Defence of Democracy
DSA	Digital Services Act
ECNE	European Cooperation Network on Elections
EDAP	European Democracy Action Plan
EDMO	European Digital Media Observatory
EEA	European Economic Area
EEAS	European External Action Service
EESC	European Economic and Social Committee
EIU	Economist Intelligence Unit
EMFA	European Media Freedom Act
ESTF	East StratCom Task Force
FARA	Foreign Agents Registration Act
FIMI	Foreign Information Manipulation and Interference
LIBE	Civil Liberties, Justice and Home Affairs Committee
MENA	Middle East and North Africa
MEPs	Members of the European Parliament
NaD	Network against Disinformation
NGOs	Non-governmental organisations
NIS	Network and Information Systems
RAS	Rapid Alert System

- RFI** Requests for Information
- VLOPs** Very Large Online Platforms
- VLOSEs** Very Large Online Search Engines

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EXECUTIVE SUMMARY

Background

2024 is set to be a huge test for democratic politics. In what has been labelled 'super-election' year, more than 60 countries and approximately a quarter of the world's population are heading to the polls to choose their parliaments or presidents. Elections are being held in three of the largest democratic political systems: the United States of America, India and the European Union, with the tenth direct elections of the European Parliament taking place between 6-9 June. Within the Union, national elections are planned in Portugal, Croatia, Austria, and Lithuania. Elections are also due to take place in a former Member State, the United Kingdom. These elections are being held while democracy is being challenged in many parts of the world. While it continues to be the home of most developed democracies in the world, Europe – and the European Union (EU) in particular – is also encountering significant challenges to democracy.

On the one hand, peace and democracy are threatened by Russia's war of aggression. Since 22 February 2022, the military invasion of Ukraine has brought 'classic' warfare back to the EU's Eastern vicinity. And, while the war in Ukraine continued unabated, the terrorist attacks on 7 October 2023 triggered another deadly conflict in the Gaza strip between Israel and Hamas. Wars at the borders of the EU risk spreading beyond the territories of Ukraine and Gaza, turning them into regional conflicts with obvious, negative implications for individual freedoms and rights. Challenges are not only due to the changing international context. In several European countries, parties with sympathetic positions towards authoritarian leaders and countries are gaining grounds. Their electoral success could both weaken democratic solidarity among European countries and roll back democratic rights and principles at home. The consolidation of "illiberal democracies" – with countries preserving the institutions of 'electoral democracy' while weakening all other necessary elements of 'substantive democracy' – has not spared the Union. At the same time, the protection of personal data and free expression – with major incidents such as spyware scandals in several EU countries and the EU – are a strong reminder of the necessity to protect individual freedoms and rights in a rapidly transforming digital context.

In such a difficult context, it should not come as a surprise that democracies around the world are discussing and have already put in place measures to strengthen the resilience of democracy and electoral processes. In this respect, the EU has been particularly active. As the President of the European Commission, Ursula von der Leyen, warned in her 2022 'State of the Union' speech: "for more than 70 years, our continent has marched towards democracy. But the gains of our long journey are not assured. Many of us have taken democracy for granted for too long".

Recent Eurobarometer surveys also show that EU citizens are increasingly concerned about elections: a large majority are worried that they could be disrupted by cyberattacks; that disinformation campaigns could sway voters and that foreign countries could interfere with electoral processes. The Commission has placed the protection of democracy among its programmatic priorities and, in 2020, presented its European Democracy Action Plan to strengthen democracy by promoting free and fair elections, strengthening media freedom and countering disinformation. In 2023, the Commission reviewed the implementation of the plan and identified areas which could be further developed.

The European Parliament has also taken the protection of democracy very seriously. As its President Roberta Metsola indicated when addressing the European Council on 21 March 2024, the 2024 EP elections "will be a test of our systems and makes our job of getting the message across even more essential." On the same occasion, President Metsola also stated: "We know how far other actors will go to try to disrupt our democratic processes. We are seeing attempts in many States to push

disinformation, misinformation and propaganda which come from actors hostile to the European project. It is a threat that we must be ready for”.

Aims

The overall objective of the study is to provide a systematic review and assessment of the wide-ranging and diverse set of policies and activities that the EU has already put in place, or is currently working on, to protect democracy and elections and bolster their resilience in the face of new challenges. The study is structured in three substantive chapters and a final chapter presenting policy recommendations.

Chapter one narrows down the focus of the study to *new* challenges. Challenges to democracy and elections come in very different forms. Some are long-standing, such as declining democratic participation and turnout or, for the EP elections, the need to make them less national and more European in political campaigning or candidate selection. Other challenges have come to prominence more recently. For instance, this is the case for all issues connected with technological innovation and cybersecurity. The new challenges faced by the EU come not only from third countries – i.e., foreign interferences in different forms – but also from within the EU, as with the electoral success of parties considered as endorsing illiberal positions.

Chapter two provides a systematic map of the field and reviews the key legislation and actions that the EU has put forward to protect democracy both from external and internal challenges, notably in the run-up to the 2019 and the 2024 EP elections. The chapter identifies nine dimensions of EU action: disinformation or foreign information manipulation and interference, online platforms regulation, institutional integrity, mechanisms for inter-institutional cooperation between the EU and Member States, cybersecurity, foreign funding, media freedom, inclusiveness and actions against hatred, and external action. It discusses policy developments and, when relevant, refers to the experience gathered in the context of the 2019 EP elections.

Chapter three focuses on the EU agenda ahead of the 2024 EP elections, analysing thoroughly the Defence of Democracy package presented by the Commission in December 2023. The chapter critically discusses the directive on interest representation on behalf of third countries, providing an overview of stakeholders’ reactions and the difficult steps ahead. It then extracts the key action points from the two recommendations – on inclusive and resilient electoral processes and on promoting the engagement and effective participation of citizens – specifically addressing the challenges to democracy identified in Chapter one.

In terms of methods, this study relies on a wealth of different sources – such as official documents from EU institutions, policy papers and academic studies –, articles by the specialised press, as well as empirical data extracted from several publicly available datasets.

The cut-off date for the analysis and findings of this study is end of March 2024.

Key findings

The study underscores that the EU has developed a wide-ranging approach to enhancing democratic resilience in the face of new challenges, cutting across several policy areas, envisaging a plurality of instruments, both legislative and non-legislative, and seeking to actively involve citizens and civil society organisations.

Chapter four, based on the evidence collected in the study, presents five concrete policy recommendations to further enhance the effectiveness of the EU’s institutional and policy responses. In short, it argues that the EU’s legislative planning for the next EP elections should start earlier, to ensure the timely conclusion and implementation of policies. It also asserts that the EU institutions should continue their efforts to engage with citizens while a dedicated parliamentary body should be

created in the EP to assess foreign interferences and scrutinise the work of the Commission. It further welcomes consultations with stakeholders, in a field where enhanced protection should not compromise fundamental rights. It also invites the EU to be thorough on the defence of EU values, for instance by sanctioning those Europarties whose members do not observe them in their programmes or actions. Finally, it calls for further engagement and cooperation with external partners and multilateral fora.

1. CHALLENGES

KEY FINDINGS

- Democracy is being severely challenged in many parts of the world and neither the European Union nor its Member Countries are immune from democratic setbacks. 2024 is a crucial 'super-election' year with elections in the EU and in several democratic countries.
- The turbulent international context with two wars in the EU's immediate vicinity – Russia's war in Ukraine and the conflict between Israel and Hamas in Gaza – fuels uncertainty and puts individual freedoms and rights further at risk.
- Challenges to democracy in the EU originate both from third countries and from within the Member states themselves. External and internal challenges are often intertwined.
- The evidence of disinformation campaigns, funding of political parties and interest representation groups, cyberattacks and other forms of hybrid warfare from third countries such as Russia, is strong and is intensifying.
- Significant challenges to democracy remain present within the Union. Among them, the rise of parties often considered as illiberal and the very low turnout of mobile EU voters are two important and difficult issues to address.

1.1. Democracy is not a given: the need to protect it

Democracy is being severely challenged in many parts of the world. Empirical evidence leaves little space for ambiguity: "Global Freedom declined for the 17th consecutive year",¹ "the year 2022 was a disappointing one for democracy",² "Global level of democracy is back to 1986. Advances in global levels of democracy made over the last 35 years have been wiped out".³ While it continues to be the home of most developed democracies in the world, Europe – and the European Union (EU) – is also encountering significant challenges to democracy. On the one hand, peace and democracy are threatened by Russia's war of aggression. Since 22 February 2022, the military invasion of Ukraine has brought 'classic' warfare back to the EU's Eastern vicinity. And, while the war in Ukraine continued unabated, the terrorist attacks on 7 October 2023 triggered another deadly conflict in the Gaza strip between Israel and Hamas. Wars at the borders of the EU risk spreading beyond the territories of Ukraine and Gaza, turning them into regional conflicts with obvious, negative implications for individual freedoms and civil rights.

The challenges are not only due to the changing international context. In several European countries, parties with sympathetic positions towards authoritarian leaders and countries are gaining grounds. Their electoral success could both weaken democratic solidarity among European countries and roll back democratic rights and principles at home. The consolidation of "illiberal democracies" – with countries preserving the institutions of 'electoral democracy' while weakening all other necessary elements of 'substantive democracy' – has not spared Europe. At the same time, the protection of personal data and free expression – with major incidents such as the Cambridge Analytica scandal in 2018 and the more recent spyware scandals in several EU countries in 2022 – are a strong reminder of the necessity to protect individual freedoms and rights in a rapidly changing digital context.

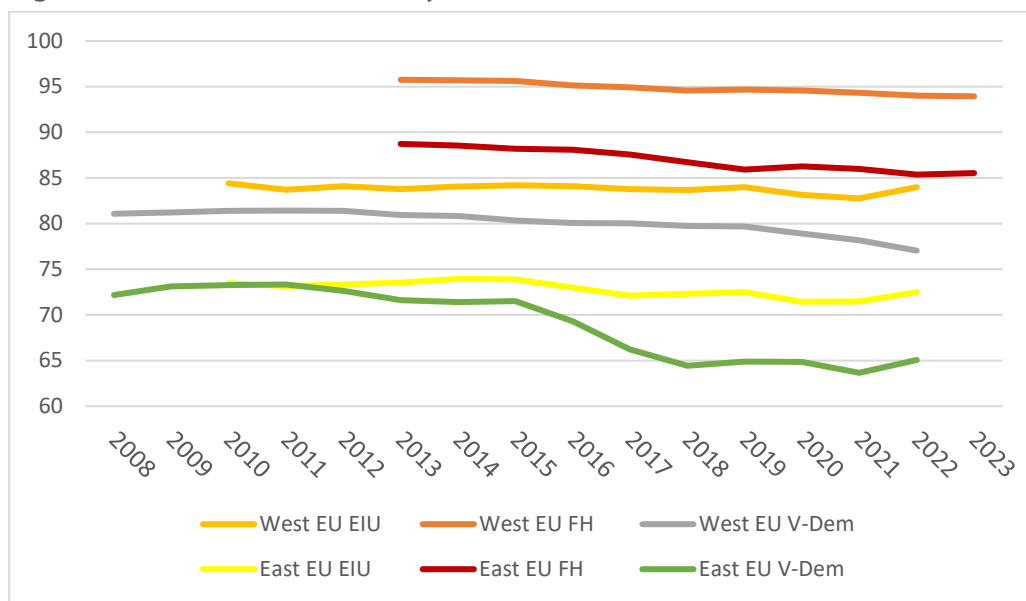
¹ Freedom House, *Freedom in the World. Marking 50 Years in the Struggle for Democracy*, March 2023.

² Economist Intelligence Unit (EIU), *Democracy Index 2022. Frontline Democracy and the Battle for Ukraine*, 2023.

³ V-Dem Institute. *Democracy Report 2023. Defiance in the Face of Autocratization*. March 2023.

Recent data from three cross-national surveys provide convergent evidence on the need to carefully monitor the state of democracy in the EU. Figure 1 shows that – over the last 15 years – the democratic scores (i.e., V-Dem's Liberal-Democracy Index; the EIU's Democracy Index and Freedom House's aggregate scores)⁴ for the 27 EU Member States have, in the aggregate, declined. Yet, while evidence of a modest downward trend is also present for Western Europe, the decline is clearly more marked for its Eastern Members. Obviously, aggregate scores cancel out significant cross-country variation within the two macro-regions. At the same, however, the convergent evidence provided by the three indexes is strong proof that the EU is not immune to 'democratic fatigue'.

Figure 1: The state of democracy in the EU Member States



Note: West EU includes Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Spain, Sweden; East EU includes Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovenia, Slovakia.

Sources: EIU: Economist Intelligence Unit; FH: Freedom House; V-Dem: Varieties of Democracy.

2024 is a 'super election' year. Elections are being held in three of the largest democratic political systems: the United States of America (USA), India and the EU. Within the EU, national elections are planned in Portugal, Croatia, Austria, and Lithuania (also in a former Member State, the UK). Given such a dense electoral calendar, it is inevitable that old and new challenges have come to the fore and measures to strengthen the resilience of democracy and elections have been considered or have already been implemented.

In her 2022 'State of the Union' speech, the President of the European Commission, Ursula von der Leyen, warned: "for more than 70 years, our continent has marched towards democracy. But the gains of our long journey are not assured. *Many of us have taken democracy for granted for too long*" (italics in the original). Acknowledging that democracies must be protected both from external threats and the issues that they face from within, she promised the presentation of a "Defence of Democracy package" to stop "any autocracy's Trojan horses" from attacking "our democracy from within".⁵ The package was included in the 2023 Work Programme of the European Commission⁶ together with other legislative

⁴ The values of the V-Dem index (originally ranging from 0 to 1) and the EIU democracy index (measured on a 0-10 scale) have been rescaled to 100 to ease comparability with Freedom House's aggregate scores.

⁵ European Commission, *2022 State of the Union Address by President von der Leyen*. Strasbourg, 14 September 2022, p. 17.

⁶ European Commission, *Commission work programme 2023. A Union standing firm and united*, COM(2022) 548 final, Strasbourg, 18 October 2022.

measures to strengthen the European Parliament (EP) elections, such as those on the transparency and targeting of political advertising, the statute and funding of European political parties and foundations and the electoral rights of mobile Europeans (see Chapter 2). The “Defence of Democracy package” – consisting of a legislative proposal for a directive to tackle the foreign funding of interest representation activities and two recommendations on the resilience of elections and citizens’ participation in policy-making – was presented in December 2023 (see Chapter 3).

Considering an average duration of about 19 months to finalise legislation – and almost two years in the case of directives⁷ – the legislative agenda ahead of the June 2024 EP elections appears particularly arduous. Belgium, which holds the Presidency of the Council of the EU in the first half of 2024, has made “defending rule of law, democracy and unity” a key priority of its semester. In particular, the Belgian Presidency has promised to continue delivering on different initiatives to protect elections, both by using already existing instruments (e.g., the Hybrid and Foreign Information Manipulation and Interference (FIMI) toolboxes mentioned in the Strategic Compass) and by finalising ongoing initiatives (e.g., the regulation on the transparency and targeting of political advertising). The Presidency is also committed to initiating “the work on the Defence of Democracy package”, particularly legislation on the foreign funding of interest representation.⁸

⁷ Bressanelli, E., Koop, C. and Reh. C., *Dataset on the duration of EU law-making (1999-2023)*, preliminary version, 2024.

⁸ Belgian Presidency of the Council of the EU, *Programme. Protect, Strengthen, Prepare*, First half of 2024, pp. 3, 9.

1.2. New challenges for EU democracy and elections

The challenges to democracy and elections come in very different forms. Some are traditional: declining democratic participation and turnout in advanced democracies has already been in the spotlight for quite some time. In the context of the EP elections, the 'national' rather than 'European' nature of the electoral contest – in terms of campaigns, candidate selection, party competition etc. – has triggered a long-standing debate on how to 'Europeanise' them. Others have come to prominence more recently. For instance, this is the case for all issues connected with technological innovation and digitalisation. In this field, the landscape is constantly changing and ever-expanding. However, new challenges are not necessarily or entirely 'new', but may just have come to prominence in recent years. A clear illustration is provided by a case of foreign interference in democratic processes, such as the foreign funding of political parties. The issue was well-known during the Cold War years, when the two superpowers were actively supporting their allied parties in other countries. Once the Cold War was over, however, the issue no longer attracted much academic or policy attention. Yet, Russian meddling in elections and democratic politics in Europe and elsewhere has brought it back to the spotlight, with countries changing their regulatory framework to tackle the issue, adopting new legislation, or adapting it to the changed circumstances.

In the paragraphs that follow, several challenges to European democracy and elections are illustrated. They are triggered by exogenous shocks (e.g., an international crisis) or by endogenous developments (e.g., changing European demographics) and are labelled as 'new' either because they are unprecedented or because their level of intensity or public salience is new. Whatever their trigger and level of 'newness' may be, they all require strong and "innovative responses" to be effectively tackled.⁹ Although here they are considered one by one, such challenges rarely happen in isolation. Sometimes, they are part and parcel of the very same "hybrid warfare" strategies of a third country. In other cases, they pile on top of other long-standing challenges, adding to their impact.

Finally, as the challenges to democracy and elections are different and varied, singling-out the main ones is itself challenging. One strategy for identifying them is based on the perception of EU citizens. A recent Eurobarometer on 'Democracy' asked EU citizens to identify the three most serious threats to *democracy* in their country, to be chosen among ten options.¹⁰ In most Member States (22 out of 27), the most serious threat is false and/or misleading information – generally known as 'disinformation' and 'misinformation' – circulating online or offline. The average for the EU-27 is 38 percent, with a peak of 48 percent in Malta. The second-ranked threat is growing distrust and scepticism towards democratic institutions, which is identified among the most serious threat by 32 percent of respondents for the EU-27 and as the main one by Croatian and Italian citizens. Ranking third is the lack of engagement and interest in politics and elections among regular citizens' (26 percent), which is the most serious threat for citizens in Latvia (38 percent) and Portugal (43 percent). In fourth place, we have 'lack of opportunities for citizens to voice their opinions' (23%) and, fifth, 'propaganda and false/misleading information from a non-democratic foreign source' (22%). In Bulgaria instead, the most serious perceived threat is covert foreign interference in the politics and economy of the country (almost half of respondents, compared to only 21 percent for the EU-27). Interestingly, the destabilisation of electoral infrastructure or processes – for instance, through cyber-attacks – ranks at the bottom of the list for almost all countries.

⁹ See, for instance, European Commission, *CORDIS Results Pack on challenges to democracy in Europe*, Second Edition, October 2021.

¹⁰ European Commission, *Flash Eurobarometer 522. Democracy. Report*, December 2023, p. 14.

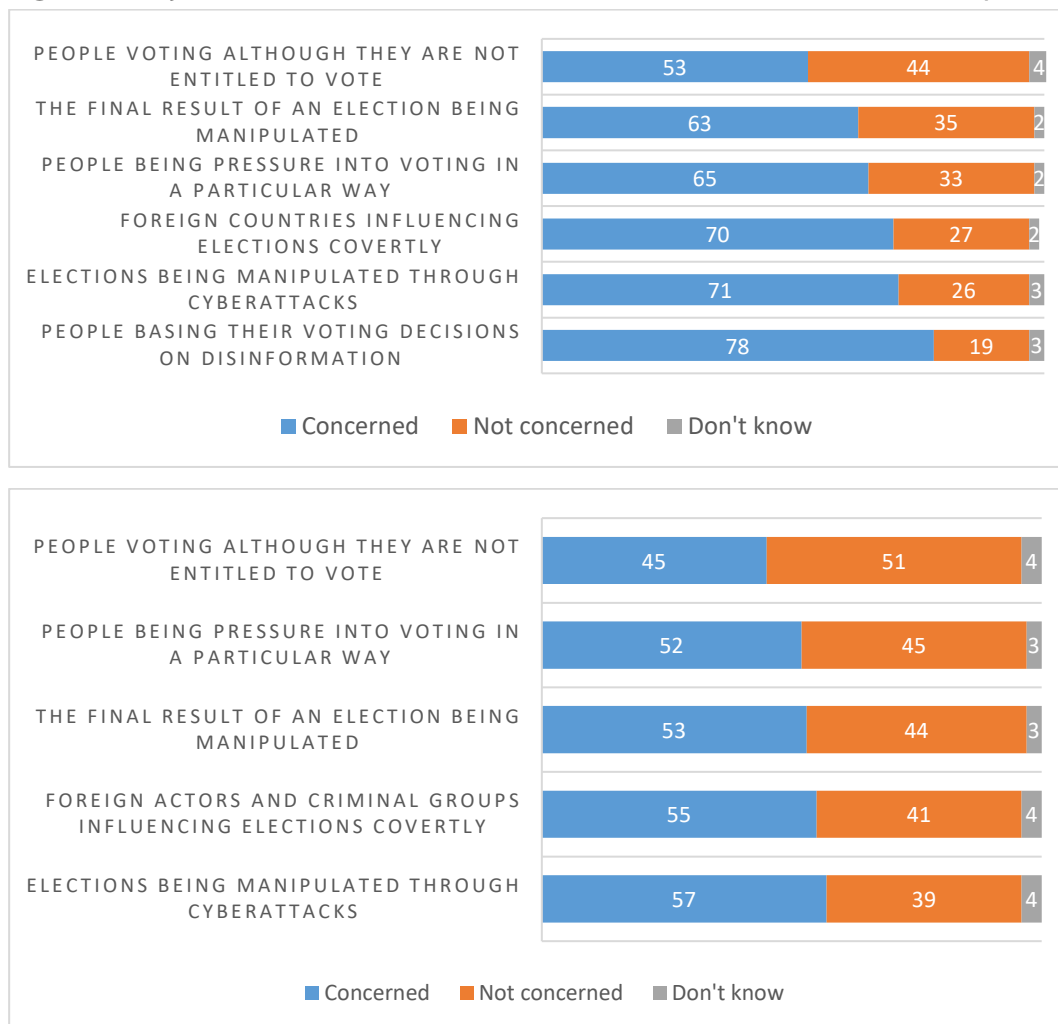
Another set of Eurobarometer questions has, by contrast, asked about the most significant concerns in the context of *elections* in Europe. They also added a longitudinal perspective, as the same question (albeit with a slightly different response set) was also present in another Eurobarometer survey taken in the aftermath of the 2019 EP elections.¹¹ The first element that clearly stands out (Figure 2) is that EU citizens were much more concerned in 2023 compared to 2020. In 2020, less than 6 citizens out of 10 were concerned about elections. In 2023, by contrast, there is only one response category about which fewer than 6 citizens out of 10 are concerned (i.e., “people voting although they are not entitled to vote”). The second aspect is that the increase features for all ‘concerns’: manipulation of the result; people coerced to vote in a particular way; foreign interferences;¹² cyberattacks. Third, cyberattacks are the most important concern in 2020 (indicated as such by 57 percent of respondents) and rank second in 2023 (with 71 percent of respondents ‘concerned’). What comes at the top of citizens’ concerns in 2023 is disinformation (oddly not included in the previous survey), with almost 8 citizens out of 10 indicating that an election could be swayed by it.

All in all, the list of threats to or concerns about (democracy or elections) presents a mixed bag of external and internal challenges. In what follows, we will review six of the key challenges, starting with foreign interferences – i.e., disinformation campaigns, the funding of political parties and interest representation groups, and cyberattacks – and then moving to internal issues such as the rise of illiberal parties and the voting participation of mobile EU voters.

¹¹ See European Commission, *Flash Eurobarometer 528. Citizenship and Democracy, Report*, December 2023 and European Commission, *Special Eurobarometer 507. Democracy in the EU*. March 2021.

¹² Note the slightly different wording of the response category for “foreign interferences” in the two waves.

Figure 2: Major concerns for EU citizens in the context of elections in Europe



Sources: above panel, Eurobarometer 528, Q9 (2023); below panel, Eurobarometer 507, QB1 (2021).

1.2.1. Foreign interferences

Foreign interferences - which have rapidly gained prominence in the EU policy agenda since the Russian annexation of Crimea in 2014 – can be defined as covert and malicious activities that are directly carried out by a foreign state-level actor, or on behalf of it by its proxies or agents. Malicious intent and lack of transparency are the two key components of foreign interferences, and the features that most clearly distinguish them from other activities carried out abroad by states.¹³ By contrast, the label of foreign influence captures cultural, diplomatic, and economic activities that neither aim to disrupt or sow tensions in another country nor need to take place secretly.¹⁴ Foreign interferences are often part of a broader strategy of “hybrid warfare” carried out by third countries which – through different means such as, *inter alia*, disinformation campaigns, the covert funding of parties and civil society organisations, cyberattacks against electoral infrastructure – seek to disrupt electoral processes and erode citizens’ trust in democratic institutions.¹⁵ Foreign interventions, particularly around

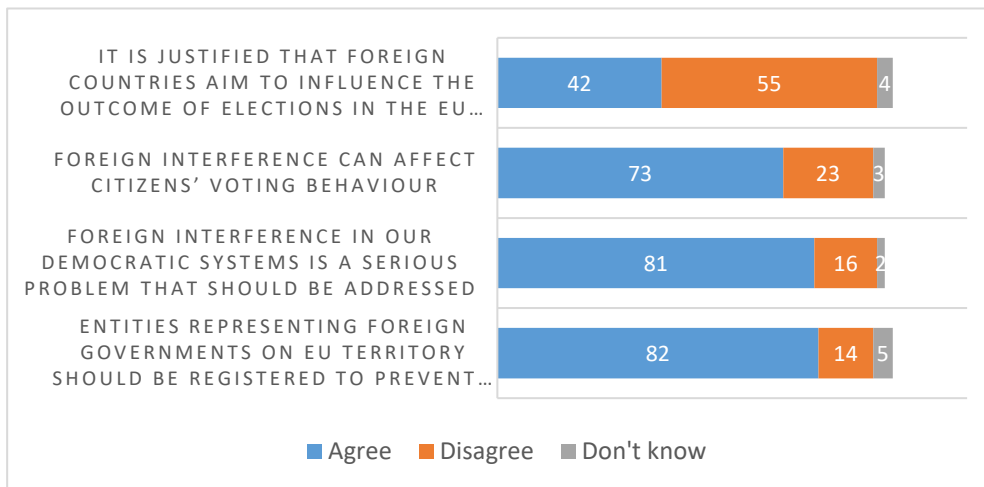
¹³ Berzina, K. and Soula, E., *Conceptualizing Foreign Interference in Europe*, The Alliance for Securing Democracy, Washington DC, 18 March 2020.

¹⁴ Cf. Australian Government. Department of Home Affairs. “Defining Foreign Interference”.

¹⁵ See, for instance, Bressanelli, E., Di Palma, A., Inglese, G., Marini, S. and Repetto, E., *Institutions and foreign interferences*, PE 655.290, European Parliament, Brussels, 2020, pp. 11-15.

electoral contests, not only challenge the key principle of self-determination and erode the democratic sovereignty of the targeted country, but they also bear very concrete policy implications, if elected representatives prioritise foreign interests (i.e., those of their ‘principal’ abroad) over domestic ones.¹⁶ The current key state-actor behind foreign interferences in the EU is the Russian Federation, with China following at some distance. Other countries may more occasionally be involved.¹⁷

Figure 3: EU Citizens’ position on foreign interferences



Source: Eurobarometer 528, Q10 (2023). Bars indicate the % of EU citizens (dis)agreeing with the statements. The category “agree” includes both “agree” and “tend to agree”; the category “disagree” includes both “disagree” and “tend to disagree”.

The EP has been extremely active dealing with the issue of foreign interferences, establishing two Special Committees (INGE and ING2, the latter continuing the work of the former) tasked with the specific mandate to assess the threats and provide recommendations to address them. The evidence provided by a Special Eurobarometer clearly confirms that “foreign interference in our democratic systems is a serious problem that should be addressed”, as indicated by 81 percent of respondents across the EU-27 (cf. Figure 3). A large majority of respondents also acknowledged that foreign interferences could alter voting behaviour and expressed positive views on any registration obligation for entities representing foreign governments in EU countries. On the other hand, an absolute majority of EU citizens disagrees with the statement that foreign countries trying to influence election outcomes are “justified”.¹⁸

Not only do citizens seem to be concerned about the impact of foreign interferences, so do political elites. From a question included in the latest round of the Chapel Hill Expert Survey,¹⁹ it is possible to assess the extent to which party elites regard Russian interference in domestic affairs as a salient issue. Figure 4 presents the responses, disaggregating them by geographical area (Western and Eastern EU Member Countries). With the caveat that the question captures the relevance of the issue in 2020 – long before the start of Russia’s war in Ukraine – and it is therefore likely to underestimate the even stronger prominence of the issue at present (particularly in Western Europe), it can be clearly seen that

¹⁶ Karaskova, I., Běrzina-Čerenkova, U. A., and Němečková, K., *Foreign Electoral Interference Affecting EU Democratic Processes*, Authority for European Political Parties and Political Foundations, Brussels, November 2023.

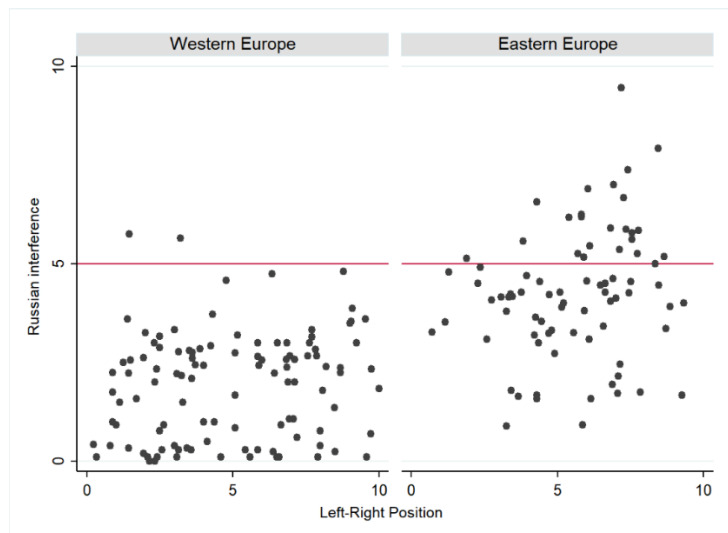
¹⁷ European External Action Service, *2nd EEAS Report on Foreign Information Manipulation and Interference Threats. A framework for networked defence*, January 2024.

¹⁸ European Commission, *Special Eurobarometer 528*, cit.

¹⁹ Jolly, S., Bakker, R., Hooghe, L., Marks, G., Polk, J., Rovny, J., Steenbergen, M. and Vachudova, M.A., “Chapel Hill Expert Survey Trend File, 1999-2019”, *Electoral Studies*, Vol. 75, 2022.

several parties in Eastern Europe are very wary of Russian activism in their own country or beyond. Also, the salience of the issue does not appear to be correlated with the left-right position of political parties.

Figure 4: Political parties' position on Russian interference in home affairs



Source: Chapel Hill Expert Survey (CHES), 2020. Question RUSSIAN_INTERFERENCE capturing salience of Russian interference in domestic affairs for the party leadership (0=No importance; 10=Great importance).

Among the many types of foreign interference, disinformation campaigns are perhaps the most widely used. In its strategic documents (most importantly the Strategic Compass) the EU talks about FIMI – Foreign Information Manipulation and Interference – that is, in the words of the High Representative (HR) Josep Borrell, the “intentional, strategic and coordinated attempts to manipulate facts, to confuse, sow divisions, fear and hatred”.²⁰ Disinformation campaigns are particularly effective in the run-up to elections – to swing votes in favour of particular candidates or parties or to depress turnout – and in their aftermath – to cast doubts on their validity and fairness. The 2nd EEAS Report, investigating 750 cases of FIMI, concludes that FIMI is pervasive and, although many individual FIMI incidents have a limited impact, their cumulative impact can have a long-term disruptive effect on trust in democracy, the fabric of society and the international order. Similarly, based on the analysis of 900 fact-checking articles, the European Digital Media Observatory concluded that disinformation narratives detected during the national elections that took place in 2023 in several EU Member States and in member countries of the Council of Europe were pervasive and centred on many different topics, ranging from the unfairness of the electoral process to foreign interferences (such as EU leaders campaigning for their favourite candidate).²¹

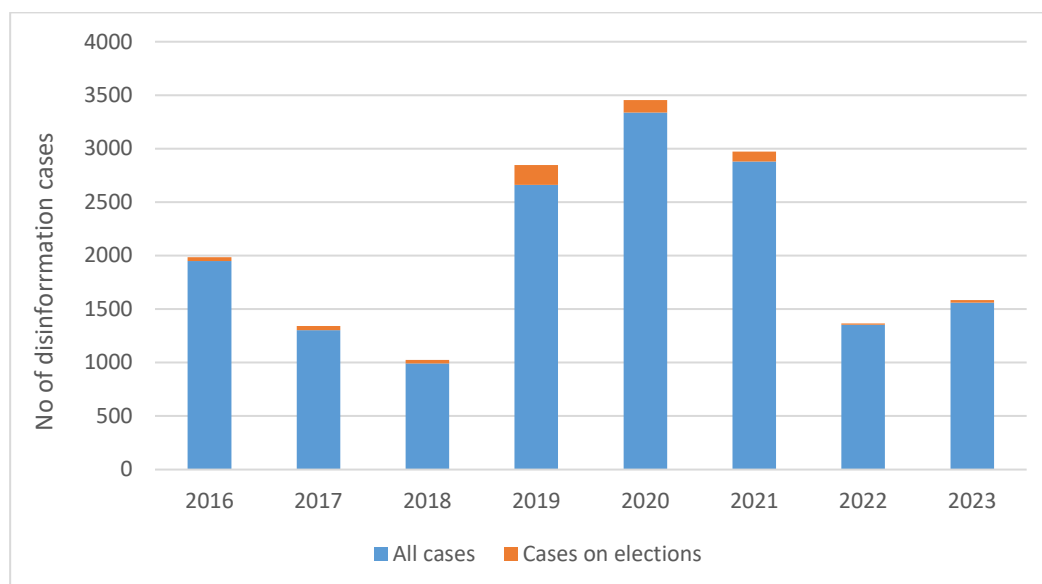
Further evidence on the widespread use of disinformation can be garnered from the cases collected in the dataset of EUvsDisinfo, the flagship project of the East Stratcom Task Force of the EEAS. EUvsDisinfo identifies disinformation cases originating in pro-Russian media and spread across the EU and its neighbours.²² Figure 5 shows a peak of disinformation cases in 2020, 2021 and 2019. Unsurprisingly, the largest number of disinformation cases focusing on elections was retrieved for 2019, when EP elections were held.

²⁰ European External Action Service, *2nd EEAS Report on Foreign Information Manipulation and Interference Threats*, cit., Foreword by the High Representative/Vice President Josep Borrell.

²¹ EDMO, *Disinformation Narratives during the 2023 elections in Europe. Report*. November 2023.

²² The database of disinformation cases is available at: <https://euvsdisinfo.eu/disinformation-cases/>.

Figure 5: Cases of pro-Russian disinformation (EUvsDISINFO)



Source: EUvsDISINFO dataset (last access on 25/01/2024). Cases of disinformation on elections were retrieved searching for the key words “elections” and “European Parliament”.

Another strategy to meddle in the domestic affairs of a foreign country or the EU is through the funding of civil society organisations (CSOs), non-governmental organisations (NGOs) and other interest representation entities. While such funding may not be unlawful, problems of transparency and accountability arise when it is undeclared. When the representative activities of these entities are effectively made on behalf of a third country, EU citizens are strongly in favour of their registration.²³ In the US, for instance, interest representatives acting on behalf of foreign countries are required to fill in reports with the Department of Justice under the Foreign Agents Registration Act (FARA). According to the figures provided by the Foreign Lobby Watch of Open Secrets, since 2016 foreign countries have invested almost \$5 billion, with the Chinese government alone spending more than \$25 million in 2023.²⁴

To provide some quantification of this phenomenon at the EU level, the EU Transparency register – jointly managed by the EP, the Council and the Commission – can be consulted.²⁵ Although registration is not mandatory, any entity that aims, for instance, to access the EP premises or join Commission expert groups should be in it. In early 2024, there were almost 12500 entities registered and, among them, about 3500 NGOs, 3100 companies and groups and 2600 trade and business associations. Among the information provided to the registry, interest representatives are asked to indicate where the head office of their organisation is located. Although this is admittedly a raw indicator – the Head Office can be based in a different country for administrative or financial reasons – Figure 6 shows that there are about 1000 registered organisations with the Head Office in a third country (representing 8 percent of the total),²⁶ and a further 1200 registered entities with their Head Office in an EEA country, Switzerland or the UK.

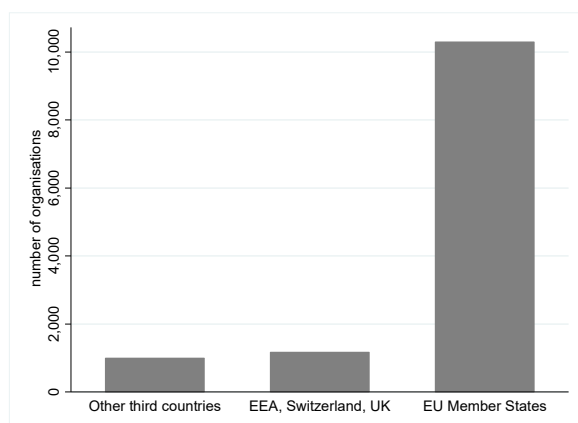
²³ European Commission, *Special Eurobarometer 528*, cit.

²⁴ See OpenSecrets, “Foreign Lobby Watch”.

²⁵ The list of registered interest representatives can be downloaded from: <https://data.europa.eu/data/datasets/transparency-register?locale=en>

²⁶ The lion’s share of the organisations is based in the USA (over half of those included in the register). See Table A in the Annex for a list of the top-ten countries.

Figure 6: Registered organisations based in the EU and in third countries



Source: EU Transparency Register (last access on 08/01/2024).

Another type of foreign interference, foreign party funding, emerged as a salient issue ahead of the 2019 EP elections. By supporting political parties abroad, third countries can nurture political allies, using them as proxies to defend their interests, particularly when important political decisions may concern them. Several attempts to provide support from abroad to anti-EU parties in Europe were documented ahead of the elections in 2019, with the earlier cases of the 2016 US Presidential election and the Brexit referendum providing stark warnings about the capacity of foreign actors – specifically Russia – to interfere with electoral processes.

In a systematic mapping of the field, Rudolph and Morley (2020) use the definition of "malign finance" for "the funding of foreign political parties, candidates, campaigns, well-connected elites, or politically influential groups, often through non-transparent structures designed to obfuscate ties to a nation state or its proxies".²⁷ They show that Russia and China are again, and by far, the most active players.

In its resolution on foreign electoral interference and disinformation, the EP noted that, notwithstanding the existing regulatory frameworks in Member States, "foreign actors have found ways to circumvent them".²⁸ There is significant variation in the way foreign party funding is regulated in Member States.²⁹ And, even when foreign funding is prohibited or tightly regulated, countries have been exploiting regulatory loopholes. In the 'catalogue' presented by Rudolph and Morley,³⁰ there are several ways to 'bypass' the prohibition on directly funding political parties from abroad: loans and in-kind donations; the use of straw donors and agents, shell companies, no-profit organisations, foundations, and think-tanks; sponsoring online advertising or other favourable media coverage; transferring money via cryptocurrency or cashless payments.

In addition, while most attention has focused on the national level, the sub-national (i.e., regional or local) levels should also be considered. For instance, there is evidence that China is targeting precisely the local level, where it can take advantage of its ethnic diaspora.³¹ Resources secretly channelled by

²⁷ Rudolph, J. and Morley, T., *Covert Foreign Money*, The Alliance for Securing Democracy, Washington DC, 2020, p. 1.

²⁸ European Parliament, *Resolution on foreign electoral interference and disinformation in national and European democratic processes*, P9_TA(2019)0031, 10 October 2019, para 7.

²⁹ Cf. Bressanelli, E., *Investing in destabilisation: How foreign money is used to undermine democracy in the EU*, PE 653.631, European Parliament, April 2021.

³⁰ Rudolph, J. and Morley, T. *Covert Foreign Money*, cit., p. 10.

³¹ Karaskova et al., *Foreign Electoral Interference Affecting EU Democratic Processes*, cit., p. 18.

Russia towards political parties, government officials, and politicians across over twenty countries since 2014 has been estimated at about \$300 million.³²

Both the spread of disinformation and the malign finance of political parties or other organisations have been facilitated by technological change and digitalisation. Electoral processes are increasingly reliant on digital systems and internet connectivity, presenting new vulnerabilities and risks. The timing of elections is also known well in advance (except for the case of snap elections) allowing ill-intentioned subjects to carefully plan their actions. In this new digital context, cyber-security has become an essential element to protect democratic processes. As the 2023 Threat Landscape Report of ENISA – the EU agency dedicated to achieving a high common level of cybersecurity through Europe – observed, “throughout the latter part of 2022 and the initial half of 2023, there was a notable escalation in cybersecurity attacks”.³³

In the context of elections, cyber-attacks take various forms: hacking into voter registration databases; tampering with vote tabulation systems; spreading malware to disrupt voting machines; launching distributed denial-of-service (DDoS) attacks to overwhelm election websites. Russia or its proxies are once again the main actors behind cyberattacks. As is well known, countries like Estonia, Georgia and Ukraine have been targeted since the mid-2000s. In 2016, in the run-up to the US presidential elections, the Russian hacking into the mailing system of the Democratic National Committee significantly raised awareness of cyber-threats. However, as the ENISA 2022 Threat Landscape Report acknowledged, it is Russia’s war in Ukraine that has opened a “new era for cyberwarfare”.³⁴

Elections are still a major target of disinformation attacks and a critical concern. Among the cases analysed by ENISA, there is the attack on the website of Germany’s Federal Returning Officer at the end of August 2021, linked to the forthcoming elections of the Bundestag, which probably originated in Russia with the goal of gaining access to the private e-mail accounts of federal and regional MPs. Around the same period, the French elections and all candidates have also been the target of mass disinformation and misinformation attacks. Information manipulation remains a “prime threat”³⁵ and, with developments in Machine Learning, Artificial Intelligence (AI), deep fakes, and voice biometrics, there is an even higher risk that such misleading content “could be used to sway elections or political outcomes”.³⁶ With cyber-attacks – as is often the case with foreign interferences more generally – there is a challenge of attribution: the perpetrators can effectively hide themselves and, on top of that, false flag operations have also been successfully attempted.

1.2.2. Internal challenges

Challenges to democracy and elections in Europe do not only come from outside, but also from within the Union. As the President of the European Commission put it, there is a risk of complacency and taking democracy “for granted”.³⁷ While democracy in the EU remains solid (cf. Section 1.1 above), setbacks in some of its Member States (particularly in the Eastern region) do not allow for any complacency.

³² Wong, E., Russia Secretly Gave \$300 Million to Political Parties and Officials Worldwide, U.S. Says, *The New York Times*, 13 September 2022.

³³ ENISA, *ENISA Threat Landscape 2023*, October 2023, p. 6.

³⁴ ENISA, *ENISA Threat Landscape 2022*, October 2022, p. 7.

³⁵ ENISA, *ENISA Threat Landscape 2023*, cit., p. 7.

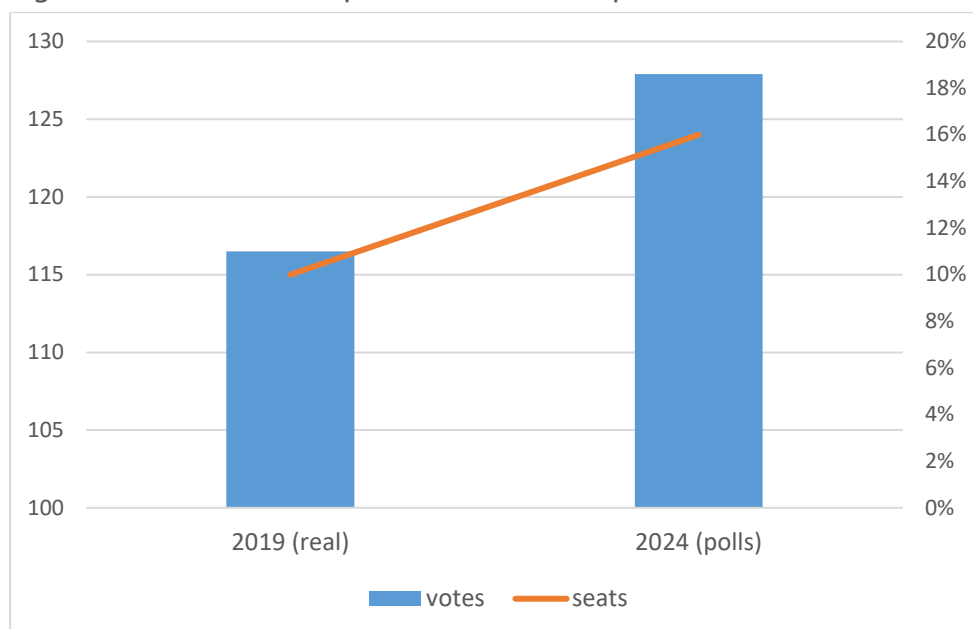
³⁶ World Economic Forum, *The Global Risks Report 2022. 17th Edition. Insight Report*. Cologny/Geneva, January 2022, p. 49.

³⁷ European Commission, *2022 State of the Union Address*, cit., p. 17.

Pollsters and analysts are predicting a “sharp right turn” for the 2024 EP elections.³⁸ For our purposes, it is worth asking if – among those parties expected to gain votes and seats in the EP – there are parties considered as endorsing illiberal positions and thus, potentially, representing a risk for democracy. Methodologically, this is not an easy question to address, as traditional categorisations – i.e., ‘far-right’, ‘extreme-right’, ‘radical-right’ – conceal a significant variation between parties, and are sometimes used in a normative way, weakening the validity of such categories for empirical, cross-national analyses. In addition, not only ‘far-right’, but also ‘far-left’ parties may embrace positions at odds with liberal democratic values.

To overcome these methodological issues, we follow an empirical approach. The V-Dem project, as part of its V-Party dataset, has computed an index of “anti-pluralism”, which is the combination of four different variables: low commitment to democratic processes; demonisation of political opponents; toleration if not endorsement of the use of political violence and disrespect for the fundamental rights of minorities.³⁹ Rather than labelling *a priori* any party as anti-pluralist or ‘illiberal’ – for instance, after categorising it as ‘extreme right’ – we have selected 10 per cent of parties that contested national elections in the EU with the highest scores on the index. Finally, we compared their seats and votes in the 2019 EP elections, based on the real share of votes and number of seats, and those predicted for such parties in the 2024 EP elections (as in mid-January 2024). Figure 7 shows that an increase in support for parties with illiberal positions is likely in the next EP election round. In terms of votes, the polls predict an increase of about 6 percentage points which, in terms of seats, translates to a gain of about 10 seats. While parties considered as endorsing illiberal positions remain a clear minority in the EP, their consolidation rings an alarm bell that should not go unnoticed.

Figure 7: Performance of parties with illiberal positions in EP elections



Sources: V-Party Dataset (V-Dem): Anti-pluralism Index. Euractiv/Europe Elects for polling data (15 Jan 2024).

The increasing polarisation and radicalisation of European politics have been discussed by the EP several times. In its recommendation of 9 November 2023, the EP acknowledged that “long-established

³⁸ Cunningham, K. and Hix, S. with Dennison, S., and Learmonth, I., “A Sharp Right Turn: A Forecast for the 2024 European Parliament Elections”, Policy Brief, European Council on Foreign Relations, January 2024.

³⁹ Medzihorsky, J., & Lindberg, S. I., “Walking the Talk: How to Identify Anti-Pluralist Parties”, *Party Politics*, 2023.

liberal democracies [...] are witnessing worrisome trends of deterioration of their democratic structures, leading to democratic backsliding and autocratisation”.⁴⁰ MEPs held a debate on the “normalisation of extreme discourse against backdrop of election campaign” on 12 September 2023 and on the “fight against the resurgence of neo-fascism in Europe, also based on the parade that took place in Rome on 7 January” on 16 January 2024. In the latter circumstance, the Home Affairs Commissioner Ylva Johansson acknowledged that, while “Europe is still the beacon on democratic standards globally”, there are also “actors in the member states who are attracted to the idea of a strong man approach to power, rejecting...also the domestic rule of law, rejecting the principles of liberal democracy. These actors are thankfully still the exception”.⁴¹

In addition to the above picture, left-wing and right-wing terrorism remains sporadic. The TE-SAT 2023 report⁴² presenting major developments and trends in the terrorist landscape shows that, in 2022, 16 terrorist attacks were carried out in the EU, of which 13 could be attributed to left-wing and anarchist terrorism, one to right-wing terrorism and two to jihadist terrorism. In that report of June 2023, there seems to be evidence that affiliation to groups such as IS and al-Qaeda is becoming less prominent among radicalised individuals, and perpetrators are often lone actors.

Finally, when presenting the challenges to the EP elections, voter participation cannot be forgotten. Of course, the issue of voter turnout – particularly with regard to certain demographic groups, such as young people, or people with disabilities⁴³ – is a problem affecting most advanced democracies around the world, not just the EU. However, the issue of citizens’ participation in the EP elections is also affected by the peculiar *transnational* nature of this large-scale democratic exercise. About 13.3 million EU citizens live in an EU Member State that is not their country of origin and, of these, over 11 million are of voting age. The voting participation of ‘mobile voters’ – that is, EU citizens who are residents in an EU Member State that is not their country of origin – presents a specific challenge for the EU (this refers to the right of mobile EU citizens to vote and stand in European elections in the EU country in which they reside).

Figure 8 displays the low turnout of mobile voters. In the five largest EU Member Countries, the turnout of mobile voters – computed adding both the votes of mobile voters in the country where they reside and the votes in their country of origin – is the highest for French voters (slightly more than a quarter of them cast their vote in the 2019 EP elections) and the lowest for Polish expats (about 2.5 percent of the almost 2.5 million Polish citizens resident abroad voted). In all cases, the voting participation of mobile voters is much lower than the average participation – which is, already, comparatively low – for EP elections.

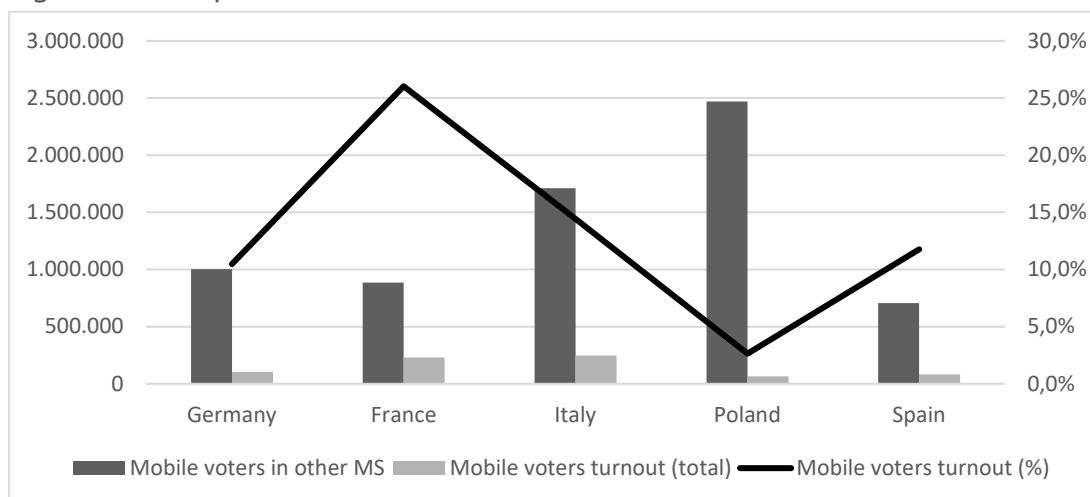
⁴⁰ European Parliament, *Recommendation on strengthening the right to participate: legitimacy and resilience of electoral processes in illiberal political systems and authoritarian regimes*, P9_TA(2023)0396, 9 November 2023, Recital E.

⁴¹ European Parliament, *Fight against the resurgence of neo-fascism in Europe, also based on the parade that took place in Rome on 7 January (debate)*, 16 January 2024.

⁴² Europol, *TE-SAT. European Union Terrorism Situation and Trend Report*. Publications Office of the European Union, Luxembourg, June 2023.

⁴³ Cf. European Economic and Social Committee, *Real rights of persons with disabilities to vote in European Parliament elections. Information Report*. SOC/554, March 2019.

Figure 8: Participation of mobile voters in EP elections (2019)



Sources: official sources (various)⁴⁴

1.3. Conclusions

Democracy is being challenged on multiple fronts. It is under attack both from the outside, with autocracies exploiting the openness of democracy to covertly interfere with its decision-making processes and elections, and from the inside, with the growing electoral success of political parties endorsing illiberal positions and declining levels of turnout, particularly among certain groups. Evidence from multiple sources converge at showing that democracy is not in its golden age. The identification of the challenges is a preliminary and necessary step to develop appropriate policy responses. The specific focus of this chapter has been on *new* challenges, including long-lasting challenges which have recently become salient. Their coverage largely mirrors the “global risks” captured by the Global Risk Report 2024, which identifies “societal and/or political polarisation”, “cyberattacks” and “misinformation and disinformation” as the most serious risks in an “unstable global order”.⁴⁵ They are perceived as particularly alarming in the ‘super-election’ year, on the one hand undermining trust in the institutions and procedures of democracy and, on the other, setting in motion a spiral of measures that increase surveillance by governments and weaken civil liberties. In such a challenging context, the EU can count on a set of measures already put in place before the 2019 EP election round and as part of the political agenda proposed by the von der Leyen’s Commission (in particular, as part of her sixth priority “a new push for European democracy”). The next chapter maps the field and reviews the key legislation and actions that the EU has implemented to ‘protect democracy’ both from external and internal challenges. Chapter 3 zooms in on the agenda ahead of the 2024 EP elections.

⁴⁴ For an analysis of the Italian case, see De Guttry, A., “Le Elezioni del Parlamento Europeo del 2024 e la Sfida della Partecipazione al Voto degli Elettori Italiani all’Estero e dei Cittadini dei Paesi UE Residenti in Italia”, *Ordine Internazionale e Diritti Umani*, 2023, pp. 1085-1096.

⁴⁵ World Economic Forum, *The Global Risks Report 2024. 19th Edition. Insight Report*. Cologne/Geneva, January 2024.

2. RESPONSES

KEY FINDINGS

- The European Union has launched a wide range of initiatives to support its democratic resilience. This encompasses instruments of both a voluntary and binding nature. Overall, the EU has taken up the challenge represented by foreign interferences, even though there is room for further improvement.
- Regulating the online environment represents a key area on which the EU's efforts have been focused. The Digital Services Act, the Strengthened Code of Practice on Disinformation and the regulation on the transparency and targeting of political advertising and the AI act are prominent examples in this regard.
- The EU has also paid increasing attention to hybrid, cyber and FIMI threats, notably in connection with electoral cycles. This includes enhanced situational awareness, common methodologies for identification and instruments for addressing emerging challenges.
- Fostering institutional integrity, promoting media freedom and media pluralism, inclusiveness in elections, addressing foreign funding of political parties and combating hatred feature among the other key domains in which the EU has taken a proactive stance for the protection of its democracy.
- It is possible to observe an increasing 'external dimension' of the EU's policy to counter FIMI and support its democratic resilience, including through cooperation with international partners.

2.1. Introduction

"Democracy cannot be taken for granted – it needs to be actively nurtured and defended".⁴⁶ The wide-ranging spectrum of challenges outlined in Chapter 1 has made this growing awareness a compelling imperative. As the OECD acknowledges, "[i]n recent years, democracies have faced a series of shocks, and challenges to economic and democratic resilience".⁴⁷ Electoral cycles bring further risks, notably in terms of foreign interference. The achievement of a high degree of "electoral integrity"⁴⁸ has thus become an urgent matter, especially in the aftermath of the 'Brexit' referendum and the 2016 US presidential elections, which pushed the issue of electoral interference high on the international agenda.⁴⁹ The 2021 Attack on the United States Capitol further highlighted the importance of protecting democracies.⁵⁰

⁴⁶ European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European Democracy Action Plan*, COM(2020) 790 final, Brussels, 3 December 2020, p. 1.

⁴⁷ OECD, *Government at a Glance 2023*, OECD Publishing, Paris, 2023, p. 14.

⁴⁸ See, in this respect, Alihodžić, S., *Protecting elections. Risk Management, Resilience-Building and Crisis Management in Elections*, International IDEA, Stockholm, 2023, pp. 5-6.

⁴⁹ Bressanelli et al., *Institutions and foreign interferences*, cit., p. 31.

⁵⁰ Sanchez, L., *Bolstering the Democratic Resilience of the Alliance Against Disinformation and Propaganda. Special Report*, 013 CDS 21 E rev. 2 fin, NATO Parliamentary Assembly, 10 October 2021, para. 1.

Against this backdrop, several international actors have launched initiatives to enhance their democratic resilience *vis-à-vis* internal and external challenges. This includes the EU, which has experienced a “growing incidence and increasingly sophisticated nature of foreign interference and information manipulation attempts”,⁵¹ as highlighted in Chapter 1. The 2020 European Democracy Action Plan (EDAP) and the recently issued Defence of Democracy (DoD) package – along with the establishment of the INGE and ING2 Special Committees – represent key points of reference for the EU’s action in this domain. Within this framework, the EU has put forward a comprehensive panoply of instruments, notably in the run-up to the 2019 and 2024 EP elections. This chapter provides an overview of the main adopted measures, which are analysed based on the thematic categories outlined in Table 1, leaving the discussion of the DoD package for Chapter 3. Whenever relevant, the discussion will also refer to the experience gathered in the context of the 2019 EP elections.

Table 1: Relevant dimension of EU action on protecting democracy

Section	Topic
2.2	Countering FIMI and disinformation
2.3	Online platforms regulation
2.4	Ensuring Institutional Integrity
2.5	Mechanisms for inter-institutional and EU-MS cooperation
2.6	Cybersecurity and resilience of critical infrastructures and entities
2.7	Foreign funding
2.8	Media freedom and media pluralism
2.9	Actions against hatred and inclusiveness in elections
2.10	External action and engagement

⁵¹ European Parliament, *Resolution on foreign interference in all democratic processes in the European Union, including disinformation*, P9 TA(2022)0064, 9 March 2022 para. 1 (INGE Resolution).

2.2. Countering disinformation and FIMI

The elaboration of the EU's policy on countering disinformation can be traced back to 2014, when the EU and its Member States were confronted with hybrid campaigns following the so called "Maidan protests" and the illegal annexation of Crimea.⁵² On the basis of a mandate from the European Council, in 2015 the EEAS issued an *Action Plan on Strategic Communication* providing for the creation of an East Strategic Communication Task Force (ESTF). The ESTF was tasked with (i) effective communication and promotion of Union policies towards the Eastern area, (ii) strengthening the media environment in the Eastern area and in Member States, as well as (iii) developing the capacity to forecast, address and respond to disinformation activities by the Russian Federation.⁵³ Three other Task Forces have subsequently complemented this structure, focusing on the Western Balkans (*Task Force Western Balkans* – TFWB), on the MENA and the Gulf region (*Task Force South* – TFS) and on Sub-Saharan Africa (*Task Force Africa*).⁵⁴ Even though the European Court of Auditors identified some shortcomings in the ESTF's original design and set-up,⁵⁵ these appear to have been subsequently addressed, notably in relation to the accountability and transparency of work carried out.⁵⁶ Overall, evidence suggests that the ESTF effectively contributed to the integrity of the 2019 EP elections.⁵⁷ The flagship project of the ESTF – *EuvsDisinfo* – has been particularly important in identifying and debunking Russian disinformation narratives affecting the EU and its Member States.⁵⁸

Relevant research has confirmed that the year 2016 can be considered as the "watershed moment" for the EU's disinformation policy given that the EU started considering disinformation as "a systemic (and domestic) problem".⁵⁹ The *Joint Communication on Countering Hybrid Threats* exemplifies this point, providing for the creation of a Hybrid Fusion Cell (HFC) within the EU INTCEN structure⁶⁰ – devoted to the analysis of classified and open source intelligence on hybrid threats – and the establishment of a Centre of Excellence for Countering Hybrid Threats, in cooperation with NATO.⁶¹ This document was then followed by a *Joint Communication on increasing resilience and bolstering capabilities to address*

⁵² Bressanelli *et al.*, *Institutions and foreign interferences*, cit., p. 23; Datzer, V., Lonardo, L., "Genesis and evolution of EU anti disinformation policy: entrepreneurship and political opportunism in the regulation of digital technology", *Journal of European Integration*, 2023, Vol. 45, No. 5, p. 757.

⁵³ European External Action Service, *Action Plan on strategic communication*, Ares(2015)2608242, 22 June 2015.

⁵⁴ European Commission, *European democracy action plan*, cit., p. 5. The Task Forces fit within the EEAS Strategic Communication and Foresight Division, which the EP has asked to equip with a strengthened mandate and necessary resources. See European Parliament, *Resolution on foreign interference in all democratic processes in the European Union, including disinformation*, P9_TA(2023)0219, 1 June 2023, para. 23 (ING2 Resolution); European External Action Service, *Report of the High Representative of the Union for Foreign Affairs and Security Policy of 15/06/2023. CFSP Report – Our Priorities in 2023*, HR(2023) 153, 15 June 2023, p. 31; European Commission, *Follow-up to the European Parliament non-legislative resolution on foreign interference in all democratic processes in the European Union, including disinformation*, 2023, p. 12.

⁵⁵ European Court of Auditors, *Disinformation affecting the EU: tackled but not tamed*, Special Report 09/2021, pp. 18 ff.

⁵⁶ European External Action Service, *2021 StratCom Activity Report*, 24 March 2022.

⁵⁷ European Commission, *Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee. Report on the 2019 elections to the European Parliament*, COM(2020) 252 final, Brussels, 19 June 2020, p. 2.

⁵⁸ European External Action Service, *2021 StratCom Activity Report*, cit., p. 11.

⁵⁹ Datzer and Lonardo, cit., p. 758.

⁶⁰ As Gruszczak acknowledges, the main task of the HFC has become to support "strategic and, to some extent, political decision making in relation to long-term and rapidly emerging hybrid threats and non-conventional activities". See Gruszczak, A., "Intelligence fusion for the European Union's Common Security and Defence Policy", *Politeja* 79, No. 4 (2022), p. 143.

⁶¹ European Commission and High Representative, *Joint Communication to the European Parliament and the Council. Joint Framework on countering hybrid threats a European Union response*, JOIN(2016) 18 final, Brussels, 6 April 2018, pp. 4-5.

hybrid threats, which included specific actions aimed at improving strategic communication.⁶² This topic was also addressed by the EP in its *Resolution on strategic communication to counteract propaganda against it by third parties*, which delved into Russian and ISIL/Daesh's activities,⁶³ and in the follow-up report issued in 2018, which highlighted areas for further improvement on the matter.⁶⁴

Several initiatives then followed, with a clear focus on the upcoming 2019 EP elections. In 2017, the Commission established a *High Level Expert Group on fake news and online disinformation*, whose final report – “A multi-dimensional approach to disinformation” paved the way for the 2018 *Communication on Tackling online disinformation: a European Approach*.⁶⁵ The 2018 Communication shed light on the interrelated causes of disinformation and, accordingly, promoted a “comprehensive” approach to the matter.⁶⁶ This included engaging with online platforms, notably through the elaboration of a voluntary Code of Practice on disinformation. The 2018 electoral package on “Securing free and fair European elections” complemented these actions, promoting *inter alia* the establishment of election cooperation networks at the national and EU level.⁶⁷ Finally, a *Joint Action Plan against disinformation* was issued in December 2018 and centred around four pillars, namely (i) improving the EU's capabilities to detect, analyse and expose disinformation, (ii) fostering coordinated and joint responses, (iii) mobilising the private sector and (iv) raising awareness and improving societal resilience. The report on the implementation of the plan clarified that “[i]n the run-up to the [2019] European elections, the coordinated EU approach helped to ensure stronger preparedness and coordination in the fight against disinformation”, while “[i]solated cyberattacks, data protection and other elections-related complaints were reported, though a covert, coordinated large-scale effort to interfere in the elections has not been identified”.⁶⁸

In 2020, following the outbreak of the COVID-19 pandemic, specific attention was explicitly devoted to the (dis)information environment that consequently arose.⁶⁹ The 2020 EDAP explicitly devoted a chapter to the challenge of disinformation for EU democracy, focusing on situational awareness, cooperation, online platforms and citizens' empowerment.⁷⁰ In this regard, the role of digital literacy and independent fact-checkers has always been considered fundamental in fostering societal resilience *vis-à-vis* hybrid threats. Accordingly, several initiatives have been supported to this end,

⁶² European Commission and High Representative, *Joint Communication to the European Parliament, the European Council and the Council. Increasing resilience and bolstering capabilities to address hybrid threats*, JOIN(2018) 16 final, Brussels, 13 June 2018.

⁶³ European Parliament, *Resolution on EU strategic communication to counteract propaganda against it by third parties*, P8_TA(2016)0441, 23 November 2016.

⁶⁴ European Parliament, *Follow up taken by the EEAS two years after the EP report on EU strategic communication to counteract propaganda against it by third parties*, P8_TA(2019)0187, 13 March 2019.

⁶⁵ Bressanelli et al., *Institutions and foreign interferences*, cit., p. 23.

⁶⁶ European Commission, *Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions. Tackling online disinformation: a European Approach*, COM(2018) 236 final, Brussels, 26 April 2018, p. 6.

⁶⁷ European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Securing free and fair European elections. A contribution from the European Commission to the Leaders' meeting in Salzburg on 19-20 September 2018*, COM(2018), 12 September 2018, pp. 6 ff. On this point, see Section 2.5. Another area addressed by the package was notably the application of Union law regarding data protection, including GDPR.

⁶⁸ European Commission and High Representative, *Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions. Report on the implementation of the Action Plan Against Disinformation*, JOIN(2019) 12 final, Brussels, 14 June 2019, p. 9.

⁶⁹ European Commission and High Representative, *Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions. Tackling COVID-19 disinformation - Getting the facts rights*, JOIN(2020) 8 final, 10 June 2020.

⁷⁰ European Commission, *European democracy action plan*, cit., pp. 19 ff.

including the European Media Digital Observatory (EDMO)⁷¹ and various research projects.⁷² With a view to the 2024 EP elections, EDMO has established a dedicated special European elections task force, building upon the experience gathered in relation to the war in Ukraine.⁷³ These actions have been complemented by the development of a *European Code of Standards for Independent Fact-Checking Organisations*, laying down strict requirements in terms of methodology, transparency and ethics.⁷⁴

In recent years, it is possible to observe a shift from tackling disinformation to addressing *Foreign Information Manipulation and Interference* (FIMI), always as part of a broader category of hybrid threats. The development of an EU FIMI toolbox – alongside an EU hybrid toolbox – represents an excellent example in this regard.⁷⁵ In line with the 2020 EDAP, the EEAS has also developed a working definition⁷⁶ and methodological approach to analyse FIMI episodes, both in general terms⁷⁷ and during election periods.⁷⁸

2.3. Online platforms regulation

The EU's engagement with online platforms stems from the growing awareness of their relevance in the fight against disinformation.⁷⁹ Indeed, several techniques can be used to influence the online social environment, with possible impacts on the democratic functioning of society. This includes (deliberately) disseminating false or misleading content, personalising political ads, employing bots or inauthentic accounts, as well as amplifying content diffusion through algorithms.⁸⁰ The EU has consequently promoted several instruments of both a voluntary and binding nature to cope with them. This sub-section focuses on the (i) Code of Practice on Disinformation and its strengthened version, (ii) the Digital Services Act (with particular reference to obligations applying to online platforms for content moderation) and (iii) the targeting of political advertising.

2.3.1. Code of Practice on disinformation and its strengthened version

Building upon the principles set out in the report elaborated by the High level Expert Group on fake news and online disinformation,⁸¹ the Code of Practice on Disinformation was developed by representatives of online platforms and the advertising industry meeting with academics, media and

⁷¹ See Section 2.8.

⁷² Horizon Europe has supported research on foreign interference and related topics with over EUR 100 M in the period 2021-2024. Cf. European Commission, *Communication on Defence of Democracy*, cit., p. 19.

⁷³ EDMO, "EDMO establishes Task Force on 2024 European Parliament Elections", 24 May 2023.

⁷⁴ Cf. EFCSN, "Code of standards".

⁷⁵ Council of the European Union, *Council Conclusions on Foreign Information Manipulation and Interference*, 11429/22, Brussels, 18 July 2022; Council of the European Union, *A Strategic Compass for Security and Defence - For a European Union that protects its citizens, values and interests and contributes to international peace and security*, 7371/22, Brussels, 21 March 2022, p. 22.

⁷⁶ European External Action Service, *2021 StratCom Activity Report*, 24 March 2022, p. 2: "FIMI is a pattern of behaviour that threatens or has the potential to negatively impact values, procedures and political processes. Such activity is manipulative in character, conducted in an intentional and coordinated manner. Actors of such activity can be state or non-state actors, including their proxies inside and outside of their own territory". See also Hénin, N., "FIMI: 'Towards a European Redefinition of Foreign Interference'", *EU DisinfoLab*, April 2023.

⁷⁷ European External Action Service, *1st EEAS Report on Foreign Information Manipulation and Interference Threats. Towards a framework for networked defence*, February 2023, pp. 27 ff.

⁷⁸ European External Action Service, *A framework for networked defence*, cit., pp. 23 ff.

⁷⁹ European Commission, *Tackling online disinformation: A European Approach*, cit., p. 7.

⁸⁰ Bressanelli et al., *Institutions and foreign interferences*, cit., p. 33.

⁸¹ European Commission, *A multi-dimensional approach to disinformation. Report of the independent High level Group on fake news and online disinformation*, Directorate-General for Communication Networks, Content and Technology, Brussels, 2018.

civil society organisations in the context of the Multistakeholder Forum on Disinformation.⁸² Published in 2018, the Code of Practice represented the first attempt to self-regulate the activity of online platforms and the advertising industry in five domains – scrutiny of ad placements, political advertising and issue-based advertising, integrity of services, empowering consumers, and empowering the research community.⁸³

A revised version of the document – the Strengthened Code of Practice on Disinformation⁸⁴ - was published in June 2022. Even though the Code “has provided an opportunity for enhanced transparency into the platforms’ policies on disinformation,”⁸⁵ during the 2019 EP elections several shortcomings were identified. The Strengthened Code has thus been based on the assessment of the Code’s initial implementation and effectiveness⁸⁶ and on the guidance⁸⁷ issued by the European Commission in 2020 and 2021, respectively. Table B (Annex) outlines the breakdown of the signatories for the 2018 and 2022 Codes. In comparison to its previous version, the Strengthened Code is more articulated, featuring 44 commitments and 128 measures in several areas, including scrutiny of ad placements and political advertising, the integrity of services, as well as empowering users and the research and fact-checking communities. The signatories committed to establishing a permanent *Task-force*, entrusted *inter alia* with adapting the Code in light of future needs and threats,⁸⁸ and a *Transparency Centre* website for the publication of all the relevant information relating to the 2022 Code’s implementation.⁸⁹ The monitoring framework has also been strengthened, with clear deliverables and deadlines. Following specific indicators, signatories are asked to report every year, except for Very Large Online Platforms (VLOPs) which report on a six-month basis.⁹⁰ For VLOPs, the 2022 Strengthened Code could be recognised as a mitigation measure and a Code of Conduct in the wording of the Digital Services Act (DSA).⁹¹

⁸² The *Vademecum* relating to the organisation of the Forum identified two sub-groups. The *Working Group* - composed of Google, Facebook, Twitter, Mozilla, Wikimedia, EDIMA, EASA, WFA, AIM IAB Europe and EACA - was mandated with the drafting of the Code, whereas the *Sounding Board* performed an advisory function. See European Commission, *2018 Vademecum of the Multistakeholder Forum on Disinformation*, 29 May 2018.

⁸³ European Commission, *EU Code of Practice on Disinformation*, 26 September 2018.

⁸⁴ European Commission, *Strengthened Code of Practice on Disinformation 2022*, 16 June 2022.

⁸⁵ European Commission, *Report on the 2019 elections to the European Parliament*, cit., p. 23.

⁸⁶ European Commission, *Commission Staff Working Document. Assessment of the Code of Practice on Disinformation - Achievements and areas for further improvement*, SWD(2020) 180 final, Brussels, 10 September 2020.

⁸⁷ European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. European Commission Guidance on Strengthening the Code of Practice on Disinformation*, COM(2021) 262 final, Brussels, 26 May 2021.

⁸⁸ Generative AI is considered as a “key priority” in this respect. Cf. European Commission, *Follow-up to the European Parliament*, cit., p. 3.

⁸⁹ European Commission, *Strengthened Code of Practice on Disinformation 2022*, cit., Commitments 34-37.

⁹⁰ Reports are available on the Transparency Centre website.

⁹¹ European Commission, “The 2022 Code of Practice on Disinformation”.

2.3.2. Digital Services Act

Complementing the Digital Markets Act (DMA),⁹² the DSA⁹³ introduces common rules for the provision of intermediary services in the internal market for “a safe and trusted online environment” (art. 1). The DSA identifies “asymmetric obligations”⁹⁴ applying to different categories of providers as identified in the Regulation.⁹⁵ In relation to all providers of intermediary services, the DSA requires the inclusion, in their terms and conditions, of all the information relating to “any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making and human review, as well as the rules of procedure of their internal complaint handling system” (art. 14.1). Moreover, the Regulation sets out *transparency obligations* for the enacted content moderation activities, to be published in a specific report at least once a year (art. 15). Providers of hosting services (including online platforms) are also asked to set up mechanisms allowing any individual or entity to submit a notice on the presence of (alleged) illegal content on the service electronically (art. 16.1). If restrictions are imposed, the provider must clarify the adopted measures to the concerned recipient of the service in light of the purported illegality of the content or of its incompatibility with the terms and conditions (art. 17.1). The DSA then identifies additional obligations applicable to providers of online platforms. These include giving priority to notices on illegal content issued by trusted flaggers (art. 22.1) or setting up effective *internal compliant-handling systems* allowing recipients of the service to challenge online platforms’ decisions regarding the moderation of illegal content (art. 20.1). Moreover, providers of online platforms are asked to suspend – under certain conditions – users that “frequently provide manifestly illegal content” (art. 23.1), to disclose – in their terms and conditions – the main parameters used for recommender systems (art. 27.1), as well as to elaborate interface design and organisation in a way that does not deceive, manipulate, distort or impair “the ability of the recipients of their service to make free and informed decisions” (art. 25.1).

In addition to the measures presented above, the DSA puts forward specific measures for providers of VLOPs and Very Large Online Search Engines (VLOSEs),⁹⁶ listed in Table 2. They are asked to assess – at least on a yearly basis – “systems risks” originating from the provision of their services. These encompass illegal content being disseminated through their services as well as “any actual or foreseeable negative effects on civic discourse and electoral process, and public security” (art. 34.1ac). Based on the risk assessment, VLOPs and VLOSEs must adopt mitigation measures, which entail *inter alia* adapting their content moderation practices (art. 35.1c). They are also subject to stricter requirements regarding independent audit and transparency reporting.⁹⁷ Specific provisions are also envisaged in relation to platforms’ cooperation in the crisis response mechanism, to be enacted when “extraordinary circumstances lead to a serious threat to public security or public health in the Union or significant parts of it” (art. 36.2). Finally, the DSA strongly encourages the elaboration of specific codes

⁹² Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), *OJ L 265*, 12 October 2022, pp. 1-66.

⁹³ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), *OJ L 277*, 27 October 2022, pp. 1-102.

⁹⁴ Madiega, T., *Digital Services Act*, Briefing, PE 689.357, EPRS, Brussels, November 2022, p. 4.

⁹⁵ The analysis will revolve around the provisions relating to the moderation of illegal content in online environments.

⁹⁶ According to Art. 33(1) of the DSA, VLOPs and VLOSEs have “a number of average monthly active recipients of the service in the Union equal to or higher than 45 million”.

⁹⁷ Digital Services Act, Art. 37 and 42, respectively.

of conduct – addressing illegal content and systemic risks, online advertising, and accessibility – as well as protocols for crisis situations (art. 45-48).

Based on the provisions set out above, which have been applied starting in August 2023, the European Commission has sent several requests for information, outlined in Table 2, and has started formal proceedings against X, Tik Tok and AliExpress.⁹⁸ In general terms, the obligations under the DSA have started to apply to all intermediaries in the EU on 17 February 2024 and will be further complemented – for the relevant actors – by the provisions of the Artificial Intelligence Act (AI Act), which the EP has adopted on 14 March 2023.⁹⁹

As regards electoral matters, on 26 March 2024 the European Commission has published Guidelines on recommended measures to mitigate systemic risk online with specific guidance in view of the 2024 EP elections.¹⁰⁰ These Guidelines apply to VLOPs and VLOSEs, advising them, *inter alia*, to implement specific measures for risk mitigation, taking into account each electoral period and local context, and adopt specific measures for generative AI, such as deepfakes, to be clearly labelled as such. While acknowledging such positive developments, some observers have identified some “overlooked risks” like micro- and nano-targeting practices and the related lack of legal obligations.¹⁰¹

⁹⁸ European Commission, *Commission decision initiating proceedings pursuant to Article 66(1) of Regulation (EU) 2022/2065, C(2023)9137 final*, 18 December 2023; European Commission, “Commission opens formal proceedings against TikTok under the Digital Services Act”, Press Release, 19 February 2024; ; European Commission, “Commission opens formal proceedings against AliExpress under the Digital Services Act”, Press Release, 14 March 2024.

⁹⁹ European Parliament, *Legislative resolution on the proposal for a regulation of the European Parliament and of the Council on laying down harmonised rules on Artificial Intelligence (Artificial Intelligence Act) and amending certain Union Legislative Acts, P9_TA(2024)0138*, 13 March 2024.

¹⁰⁰ European Commission, “Commission publishes guidelines under the DSA for the mitigation of systemic risks online for elections”, Press Release, 26 March 2024.

¹⁰¹ Reich, O. and Calabrese, S., “The present and the future dystopia of political micro-targeting ads”, *EUobserver*, 18 March 2024.

Table 2: Digital Services Act: VLOPs and VLOSEs

Very Large Online Platforms (VLOPs)			Very Large Online Search Engines (VLOSEs)		
Designated service	Average monthly active users in millions	Number of RFI	Name	Average monthly active users in millions	Number of RFI
AliExpress	104,3	2	Bing	119	2
Amazon Store	181,3	2	Google Search	364	2
App Store	123	2			
Booking.com	Above 45	1			
Facebook	259	6			
Google Play	284,6	2			
Google Maps	275,6	1			
Google Shopping	70,8	1			
Instagram	259	6			
LinkedIn	Logged-in site visits: 45,2 Logged-out site visits: 132,5	2			
Pinterest	124	1			
Pornhub	Above 45				
Snapchat	102	4			
Stripchat	Above 45				
TikTok	135,9	3			
Wikipedia	151,1				
X	115,1	2			
XVideos	160				
Youtube	416,6	3			
Zalando	In retail: 74,5 For third-party content: 26,8	1			

Source: European Commission (as of 14 April 2023).¹⁰²

¹⁰² European Commission, "Supervision of the designated very large online platforms and search engines under DSA", 18 January 2024.

2.3.3. Political advertising

The third component of the EU action that needs consideration is the ongoing work relating to political advertising. The *Regulation on transparency and targeting of political advertising*, announced in the 2020 EDAP, represents the flagship initiative in this regard. On the basis of the political agreement reached by the EP and the Council of the EU, the co-legislators have adopted the act.¹⁰³ Political advertising is defined as the dissemination of “a message, normally provided for remuneration or through in-house activities or as part of a political advertising campaign” by or for a political actor – or on his/her behalf – with the aim of influencing “the outcome of an election or referendum, a voting behaviour or a legislative or regulatory process, at Union, national, regional or local level” (Art. 3). The proposed regulation lays down common rules for the provision of political advertising and related services – including the use of targeting and ad-delivery techniques – in the internal market in compliance with fundamental rights and ensuring the protection of personal data (Art. 1).

Among the measures introduced, the provisions enshrined in Article 5(2) – introduced by the EP when revising the legislative proposal – are relevant in relation to EU democratic resilience. During the three months preceding an election or referendum, political advertising services pertaining to that election (or referendum) shall only be provided to certain categories, which ultimately revolve around (i) Union citizens, (ii) third country nationals permanently residing in the Union and having the right to vote in that election or referendum and (iii) a legal person established in the Union that is not ultimately owned or controlled by a third country national or legal person. The Regulation complements the existing rules on political advertising included in the 2022 Code¹⁰⁴ and in the DSA, which introduces transparency rules for online platforms (art. 26) and additional transparency requirements for VLOPs and VLOSEs (art. 39), while advocating for the elaboration of a code of conduct for online advertising (art. 46).

The regulation will be applied 18 months after its entry into force – therefore, not in time for the 2024 EP elections – with the exception of the measures relating to the definitions and the non-discriminatory provision of cross-border political advertising (including for European political parties and political groups in the EP), which come into force twenty days after the publication of the act in the Official Journal. The EP regretted that these rules will not be implemented before the elections,¹⁰⁵ but the deadlines were considered too tight by the Council. Mindful of the issue, the rapporteur – Sandro Gozi (Renew Europe) – has urged “all major online platforms to start applying the new rules as soon as possible and ensure the digital space remains a safe place to exchange political ideas and opinions”.¹⁰⁶

2.4. Ensuring institutional integrity

Several initiatives have been launched to foster transparency, ethics and integrity within EU institutions as a way to protect EU's democracy. Notably, an EU Transparency Register has been established to promote “transparent and ethical interest representation”.¹⁰⁷ Building upon the 2011 and 2014

¹⁰³ European Parliament, *Legislative resolution on the proposal for a regulation of the European Parliament and of the Council on the transparency and targeting of political advertising*, P9_TA(2024)0090, 27 February 2024; Council of the European Union, “EU introduces new rules on transparency and targeting of political advertising”, Press release, 11 March 2024.

¹⁰⁴ European Commission, *2022 Strengthened Code*, cit., paras. II and III.

¹⁰⁵ Agence Europe, *Europe Daily Bulletin No. 13359*, 28 February 2024.

¹⁰⁶ As quoted in European Parliament, “Parliament adopts new transparency rules for political advertising”, Press release, 27 February 2024.

¹⁰⁷ *Interinstitutional Agreement of 20 May 2021 between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register*, OJ L 207, 11 June 2021, art. 1.

versions,¹⁰⁸ the Transparency Register covers – with some exceptions¹⁰⁹ – activities carried out by interest representatives¹¹⁰ to influence the decision-making processes of EU institutions, or the formulation or implementation of EU policy or legislation (art. 3(1)). It includes a Code of Conduct outlining ethical and procedural requirements (Annex I) to be respected by registered interest representatives in any dealings with EU institutions. While representing an essential tool to promote transparency in lobbying activities, some shortcomings have nevertheless been identified. These include the narrow scope of the conditionality mechanisms, the *de facto* non-mandatory nature of the Register, the non-involvement of EU agencies, the underrepresentation of law firms among registered actors, the lack of sufficient staff and resources for the Secretariat, combined with a general problem of fragmentation of EU lobbying data.¹¹¹ In its Resolution on recommendations for reform of European Parliament’s rules on transparency, integrity, accountability and anti-corruption, the EP has advocated *inter alia* for strict implementation, enforcement and supervision of the Interinstitutional Agreement (para. 40), for the elaboration of specific provisions for activities not covered by the Agreement (para. 45) and for a future revision of the Interinstitutional Agreement (para. 44).¹¹² Against this backdrop, it must be recalled that the Code of Conduct for MEPs regarding integrity and transparency – revised in 2023 as part of the 14-point Reform plan “Strengthening Integrity, Independence and Accountability”¹¹³ – mandates that MEPs publish online meetings relating to parliamentary business “with representatives of public authorities of third countries, including their diplomatic missions and embassies”.¹¹⁴

In addition to transparency, ensuring high ethical standards is “of utmost importance in ensuring the credibility of the European institutions”.¹¹⁵ Drawing upon existing EU rules and issued audits,¹¹⁶ the Commission has proposed the establishment of an Interinstitutional Ethics Body in June 2023.¹¹⁷ A provisional agreement on the new EU Ethics Body was reached by seven EU institutions and bodies on 12 March 2024, but uncertainties remain in relation to the participation of the Council to the future body.¹¹⁸ The Rapporteur presented his draft report in the Committee on Constitutional Affairs (AFCO)

¹⁰⁸ *Agreement between the European Parliament and the European Commission on the establishment of a transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation*, OJ L 191, 22 July 2011; *Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation*, OJ L 277, 19 September 2014.

¹⁰⁹ These are laid down in art. 4, whereby *inter alia* activities carried out by public authorities of third countries are substantially not included in the scope of the Transparency register.

¹¹⁰ Art. 2(a) defines “interest representative” as “any natural or legal person, or formal or informal group, association or network, that engages in covered activities”.

¹¹¹ European Parliament, Committee on Constitutional Affairs, “The review of the EU Transparency Register: shortcomings and ways to improve”, Public Hearing, 28 November 2023, Presentations of Professor Emilia Korkea-aho and Ms Shari Hinds. For a comparative overview on transparency registers see Katsaitis, A., *Mapping and analysing lobbying registers*, Discussion Paper 1/2024, International Idea, February 2024.

¹¹² European Parliament, *Resolution on recommendations for reform of European Parliament’s rules on transparency, integrity, accountability and anti-corruption*, P9_TA(2023)0292, 13 July 2023.

¹¹³ European Parliament, *Implementation of the 14 points Reform plan “Strengthen Integrity, Independence and Accountability”*, 6 June 2023.

¹¹⁴ Rules of Procedure of the European Parliament, Annex I, article 7(2)(b).

¹¹⁵ European Commission, *Follow-up to the European Parliament*, cit., p. 9.

¹¹⁶ European Court of Auditors, *The ethical frameworks of the audited EU institutions: scope for improvement*, Special report 13/2019, July 2019.

¹¹⁷ European Commission, *Communication from the Commission to the European Parliament, the European Council, the Council, the European Court of Justice, the European Central Bank, the European Court of Auditors, the European Economic and Social Committee and the Committee of the Regions. Proposal for an interinstitutional ethics body*, COM(2023)311 final, 8 June 2023.

¹¹⁸ Agence Europe, *Europe Daily Bulletin No. 13370*, 14 March 2024.

on 3 April 2024, in view of its adoption at the last plenary session (22-25 April 2024) of the European Parliament of the 2019-2024 legislature.

Finally, the third area where the EU has focused its action concerns the fight against corruption, also following calls from the EP. A Joint Communication on the fight against corruption was issued in May 2023, along with two proposed acts. These include a Directive on combating corruption¹¹⁹ and harmonising corruption offences and sanctions and a horizontal regime for restrictive measure to fight corruption.¹²⁰ Negotiations on both files are ongoing.

2.5. Mechanisms for inter-institutional and EU-Member State cooperation

Ensuring the resilience of EU democracy requires deep cooperation between all key stakeholders and, to this end, several structures have been set up in recent years. Among the existing networks,¹²¹ the Network against Disinformation (NaD) is relevant from an inter-institutional perspective. It was created in 2018 to step up coordination on disinformation within the European Commission, with the EEAS and the EP as observers.¹²² In terms of EU-Member State cooperation, as envisaged by the Action Plan against Disinformation, a Rapid Alert System (RAS) was established in March 2019, as part of a network involving the EU Hybrid Fusion Cell, INTCEN and the Emergency Response Coordination Centre. Composed of a dedicated digital platform and a network of 27 contact points, the EEAS-established RAS is aimed at allowing EU Member States, EU institutions and international partners to share “alerts on disinformation campaigns in real-time”,¹²³ fostering “common situational awareness, coordinated attribution and response and ensur[ing] time and resource efficiency”.¹²⁴ As regards its effectiveness, the European Court of Auditors found that, while “facilitat[ing] information sharing”, the RAS “had not issued alerts at the time of audit and has not coordinated common attribution and response as initially envisaged”.¹²⁵ However, several steps have been taken in this respect. The 2022 EEAS Report on EEAS activities to counter FIMI revealed that the RAS acted as a venue to discuss and share FIMI activity associated with Russia’s war of aggression in Ukraine, and to analyse the progress achieved in the EU’s action against FIMI.¹²⁶ Operationally, it is worth mentioning that the EP has asked to set up “a central depository and incident tracking tool” and to elaborate a “shared toolbox” to be used in case of an alert

¹¹⁹ European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council*, COM(2023) 234 final, 3 May 2023.

¹²⁰ High Representative, *Proposal of the High Representative of the Union for Foreign Affairs and Security Policy to the Council for a Council Decision concerning restrictive measures against serious acts of corruption*, HR(2023)108, 3 May 2023; European Commission and High Representative, *Joint Proposal for a Council Regulation on restrictive measures against serious acts of corruption*, JOIN(2023)13, 3 May 2023.

¹²¹ In addition to those analysed here, it is possible to mention the following structures: NIS Cooperation Group, EU CSIRTs (Computer Security Incident Response Team) Network, EU Cyber Crisis Liaison Organisation Network (EU-CyCLONE), DSA Digital Services Coordinators, CyberCOM Informal Network, the European Expert Group on Electoral Matters and other relevant for data protection. Cf. NIS Cooperation Group, *Compendium on Elections Cybersecurity and Resilience*, March 2024, p. 15.

¹²² European Commission, *Annex to the Communication on Defence of Democracy*, COM(2023) 630 final, Strasbourg, 12 December 2023, p. 18.

¹²³ European Commission and High Representative, *Action Plan against Disinformation*, cit., p. 8.

¹²⁴ Ibid.

¹²⁵ European Court of Auditors, *Disinformation affecting the EU. Tackled but not tamed*, Special Report 09/2021, p. 26. The audit covered the period December 2018 – September 2020.

¹²⁶ European External Action Service, *2022 Report on EEAS Activities to Counter FIMI*, p. 9.

issued by the RAS,¹²⁷ as well as the establishment of a RAS for MEPs and Members of National Parliaments with the aim of countering disinformation.¹²⁸

Another structure that should be mentioned in this regard is the European Cooperation Network on Elections (ECNE), established in 2019. With sixteen meetings held so far after the 2019 EP elections, the ECNE has become an active forum for fostering discussion on electoral matters among Member States, EU institutions and relevant stakeholders. The breakdown of the discussions that occurred within this framework is outlined in Table D (Annex). Under the ECNE umbrella, other specialised sub-groups were established to deal with specific electoral matters. This was the case of the Sub-group on the preparation of a compendium of e-voting practices, which was established in January 2022 with the aim of supporting the Commission in elaborating e-voting practices based on the Council of Europe's guidance,¹²⁹ holding two meetings to this end.¹³⁰ The *Compendium of e-voting and other ICT practices* was eventually published by the European Commission on 6 December 2023 as part of the 2023 EU Citizenship Package.¹³¹ In addition, a Sub-group on the preparation of a guide of good electoral practice addressing participation of citizens with disabilities in the electoral process was created in September 2021 to support the Commission in the elaboration of the relevant Guide, as envisaged in the 2021 *Strategy for the Rights of the Persons with Disabilities*.¹³² The Sub-group held one meeting on 14 September 2022,¹³³ and the document was eventually published on 6 December 2023 as part of the 2023 EU Citizenship Package.¹³⁴

Finally, still within the ECNE framework, a Joint Mechanism for electoral resilience was set up in 2022, the aim being to "support deployment of joint expert teams and expert exchanges" between Member States,¹³⁵ in close cooperation with the Network and Information Systems (NIS) Cooperation Group¹³⁶ and the abovementioned EU's RAS. The focus areas of the Joint Mechanism include online forensics,

¹²⁷ European Parliament, INGE Resolution, cit., point 114.

¹²⁸ European Parliament, ING2 Resolution, cit., point 20.

¹²⁹ See European Commission, *Minutes. Twelfth Meeting of the European Cooperation Network on Elections*, 24 January 2022, p. 5.

¹³⁰ The meetings were held online on 8 April 2022 and 7 June 2022. See European Commission, *Meeting of the subgroup / joint expert team on the preparation of a compendium of e-voting practices*, 7 June 2022; European Commission, *Informal subgroup / joint expert team on the preparation of a compendium of e-voting practices. Minutes*, 7 June 2022; European Commission, *Meeting of the subgroup / joint expert team on the preparation of a compendium of e-voting practices*, 8 April 2022; European Commission, *Informal subgroup / joint expert team on the preparation of a compendium of e-voting practices. Minutes*, 8 April 2022.

¹³¹ European Commission, *Compendium of e-voting and other ICT practices. Non-Paper from the Commission services*, Publications Office of the European Union, Luxembourg, 2023. The *Compendium* includes a non-exhaustive list of case studies relating to the use of electronic means in some EU Member States in the context of electoral processes – Belgium, Portugal, France, Estonia, Ireland, Lithuania, Romania and Czechia.

¹³² European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030*, COM(2021) 101 final, Brussels, 3 March 2021, p. 7.

¹³³ European Commission, *Meeting of the Subgroup on the preparation of a guide of good electoral practice addressing participation of citizens with disabilities in the electoral process*, 14 September 2022; European Commission, *Minutes. First meeting of the Subgroup on the preparation of a guide of good electoral practice addressing participation of citizens with disabilities in the electoral process*, 14 September 2022.

¹³⁴ European Commission, *Commission Staff Working Document. Guide of good electoral practices in Member States addressing the participation of citizens with disabilities in the electoral process*, SWD(2023) 408 final, 6 December 2023. The *Guide* acknowledges that, in the context of the ECNE, 22 EU Member States sent contributions for the elaboration of the document (p. 7).

¹³⁵ European Commission, *European democracy action plan*, cit., p. 9. The Communication identifies "common training sessions" and "common development of IT systems" as other venues for improved cooperation.

¹³⁶ The Cooperation Group is foreseen in Article 14 of the NIS2 Directive as a forum for the exchange of best practices and discussion on the matters covered by the Directive.

disinformation, and cybersecurity of elections. The Joint Mechanism has held four meetings so far in Romania, Lithuania and Sweden (see Annex, Table C).

Overall, it can be inferred that the ECNE effectively “plays a crucial role in ensuring the integrity of elections within the European Union”, as explicitly acknowledged by the ING2 Resolution.¹³⁷ The EP itself has been more involved in the activities of the network – notably in relation to the preparation of the 2024 elections¹³⁸ – in line with what was set out in the ING2 Resolution,¹³⁹ as has also been acknowledged by the Commission follow-up report to the ING2 resolution.¹⁴⁰

2.6. Cybersecurity and resilience of critical infrastructures and entities

Achieving a high level of cybersecurity and resilience in the Union and, especially, in relation to election technology is instrumental for ensuring democratic and electoral integrity. To this end, a *Compendium on Cyber Security of Election Technology* was elaborated in 2018 by the NIS Cooperation Group, presenting concrete measures to be adopted during elections.¹⁴¹ An updated version of the compendium has been published in March 2024.¹⁴² Moreover, the ECNE and the Joint Mechanism for electoral resilience proved to be significant fora for the discussion of cybersecurity-related issues, as highlighted in Tables C and D (Annex). In particular, within the ECNE framework, the European Commission organised a table-top exercise (EU ELEX23) for the upcoming EP elections in cooperation with ENISA and the EP on 21 November 2023.¹⁴³ This enabled testing crisis management plans, identifying potential mitigation measures in light of the detected gaps and promoting cooperation among the key authorities involved in the EP elections, among others.¹⁴⁴ EU ELEX23 followed a similar exercise that was held in the run-up to the 2019 EP elections.¹⁴⁵ Finally, from a policy perspective, cybersecurity-related measures for electoral periods have been included in several recommendations, notably in the 2018 Electoral Package and the DoD Package.¹⁴⁶ These measures build upon the EU's growing *acquis* in these domains. This include the NIS2 Directive, the Directive on Critical Entities Resilience, the Cybersecurity Act, the Cybersecurity Regulation for EUIBAs, the Cyber Resilience Act¹⁴⁷ and the Cyber Solidarity Act.¹⁴⁸

Finally, it is important to stress that, as part of the EU's broader economic security agenda, the Foreign Direct Investment (FDI) Regulation currently identifies electoral infrastructure among the critical

¹³⁷ European Parliament, INGE Resolution, cit., para. BC.

¹³⁸ For instance, representatives of the EP took part in several ECNE meetings, including on 12 June 2023 and 27 September 2023.

¹³⁹ European Parliament, ING2 Resolution, cit., para. 70.

¹⁴⁰ European Commission, *Follow-up to the European Parliament*, cit., p. 13.

¹⁴¹ NIS Cooperation Group, *Compendium on Cyber Security of Election Technology*, July 2018.

¹⁴² NIS Cooperation Group, *Compendium on Elections Cybersecurity and Resilience*, cit.

¹⁴³ ENISA, “EU cybersecurity exercise: foster cooperation, secure free and fair EU elections”, 21 November 2023.

¹⁴⁴ Ibid.

¹⁴⁵ European Parliament, “EU Member States test their cybersecurity preparedness for free and fair EU elections”, 5 February 2019.

¹⁴⁶ On the DoD package, see Chapter 3.

¹⁴⁷ On 12 March 2024, the EP adopted the final compromise text resulting from trilogue negotiations. See European Parliament, *Legislative resolution on the proposal for a regulation of the European Parliament and of the Council on horizontal cybersecurity requirements for products with digital elements and amending Regulation (EU) 2019/1020*, P9_TA(2024)0130, 12 March 2024.

¹⁴⁸ In March 2024, the EP and the Council reached a provisional agreement on the proposed act and on limited amendments to the Cybersecurity Act. See Council of the European Union, “Cyber solidarity package: Council and Parliament strike deals to strengthen cyber security capacities in the EU”, Press release, 6 March 2024.

infrastructures to be considered when assessing whether an FDI is likely to affect security or public order.¹⁴⁹

2.7. Foreign funding

In recent years, the issue of foreign funding of political parties has gained renewed attention considering its potential destabilising impact on democracies.¹⁵⁰ Accordingly, the EU has promoted a series of initiatives to address specific shortcomings as regards transparency and accountability of European Political Parties and Foundations (EUPPs/EUPFs) in this regard. Several rounds of EU legislation in the field have increasingly limited the possibility for EUPPs/EUPFs to rely on foreign funding to cover the quota of own resources, which is set at 10% of the total funding for EUPPs and at 5% for EUPFs.¹⁵¹ In relation to foreign funding, Regulation (EU) 1141/2014 forbids EUPPs/EUPFs to accept donations from (i) public authorities from a third country, (ii) any undertaking over which a public authority may exercise a dominant influence, (iii) private entities based in a third country or (iv) third country nationals who are not entitled to vote in the EP elections.¹⁵² Moreover, non-EU political parties cannot make contributions to their affiliated EUPPs, and some EUPPs have voiced their discontent *vis-à-vis* these provisions.¹⁵³

As a deliverable enshrined in the EDAP, the European Commission presented a proposal for a revision of Regulation (EU) 1141/2014 addressing several aspects of the existing legislation, including political advertising and transparency requirements.¹⁵⁴ The proposed act aims to reduce the rate of own resources for EUPPs and EUPFs to 5%, while providing for a 0% co-financing rate – i.e., total EU funding – in election years. Moreover, contributions from non-EU parties will be capped at 10% of total contributions, stronger provisions regarding indirect funding will also be introduced,¹⁵⁵ and the power of the APPF reinforced. Not only the Europarties, but also their national member parties are asked to observe the fundamental values of the EU (as in art. 2 TEU).¹⁵⁶ The EP introduced several amendments to the Commission proposal and referred it back to the AFCO committee in view of (ongoing) inter-institutional negotiations.¹⁵⁷

At the national level, by contrast, the regulatory approaches adopted by Member States *vis-à-vis* foreign funding differ greatly.¹⁵⁸ This could represent an opportunity to “circumvent” the rules and interfere with the democratic processes within the EU. Therefore, some regulatory convergence seems

¹⁴⁹ Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union, OJ L 79I, 21 March 2019, pp. 1-14, Article 4(1)(a).

¹⁵⁰ See, for instance, Bressanelli, E., *Investing in destabilisation*, cit., pp. 11 ff.

¹⁵¹ Bressanelli, E., *Towards a revision of the Regulation on the statute and funding of European political parties and foundations*, cit., pp. 43 ff.

¹⁵² Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations, OJ L 317, 4 November 2014, Article 20(5)(c) and (d).

¹⁵³ Election-Watch.EU, *Elections to the European Parliament 23-26 May 2019. Election Assessment Mission Final Report*, Brussels, 16 September 2019, p. 19.

¹⁵⁴ European Commission, *Proposal for a Regulation of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations (recast)*, COM(2021) 734 final, Brussels, 25 November 2021.

¹⁵⁵ On this point, the EP asked for clearer provisions on indirect funding in its *resolution on the application of Regulation (EU, Euratom) No 1141/2014 on the statute and funding of European political parties and European political foundations*, P9_TA(2021)0454, 11 November 2021, para. 16.

¹⁵⁶ See Bressanelli, E., *Towards a revision of the Regulation on the statute and funding of European political parties and foundations*, cit., pp. 45-46.

¹⁵⁷ European Parliament, *Amendments adopted on the proposal for a regulation on the statute and funding of European political parties and European political foundations (recast)*, P9_TA(2022)0328, 15 September 2022.

¹⁵⁸ Election-Watch.EU, *Elections to the European Parliament 23-26 May 2019*, cit., p. 20.

necessary. On this point and to this end, the ECNE has engaged in an effort to map the existing national regulatory frameworks (see Annex, Table D).

At the same time, also because of well-known episodes, there has been growing awareness that foreign and electoral interference can take the form of foreign financing of political activities *lato sensu* – i.e. not limited to EUPPs/EUPFs, but including lobbying activities and CSOs, to name a few. In its INGE and ING2 Resolutions, the European Parliament has *inter alia* asked to make it “illegal in all Member States to engage in any covert activity financed by foreign actors that aims to influence the process of European or national politics” as well as to map “foreign funding for EU-related lobbying”.¹⁵⁹ One of the acts included in the DoD package aims to introduce specific provisions in this field, which will be analysed in Chapter 3. This is complementary to existing legislation on anti-money laundering.¹⁶⁰

2.8. Media freedom and media pluralism

It has nowadays become a truism to maintain that a free and plural media ecosystem is instrumental for ensuring open democratic processes. Accordingly, media freedom and media pluralism have been under the spotlight within the EU in recent years, also in relation to some shortcomings identified in the yearly Rule of Law Report issued by the European Commission.¹⁶¹ Indeed, the EDAP and DoD packages feature chapters on this matter, while the EP has referred to the matter on several occasions in its resolutions.¹⁶² Against this backdrop, EU measures on this point can be grouped into different strands.

First, EU action has focused on the regulation of media services within the EU. The landmark piece of legislation in this respect is European Media Freedom Act (EMFA), which was adopted by the European Parliament on 13 March 2024 and by the Council on 26 March 2024. According to the final text,¹⁶³ the act aims to introduce “common rules for the proper functioning of the internal market for media services” (Art. 1). The concerned policy areas encompass editorial freedom, transparency of ownership, cooperation frameworks for national regulatory authorities, surveillance, the use of media content online and state advertising.¹⁶⁴ The act also establishes a European Board for Media Services, in substitution of the previous structure laid down in the Audiovisual Media Services Directive (AVMSD) directive and introduces specific measures dealing with intrusive surveillance software (art. 4). The EMFA is set to complement existing EU legislation in the field, which includes the Copyright directive¹⁶⁵ and the revised AVMSD directive.¹⁶⁶

¹⁵⁹ European Parliament, INGE Resolution, cit., para. 87; European Parliament, ING2 Resolution, cit., para. 118.

¹⁶⁰ Such as Directive 2018/ of 30 May 2018 amending Directive 2015/849 of 20 May 2015.

¹⁶¹ For instance, European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 2023 Rule of Law Report*, COM(2023) 800 final, Brussels, 5 July 2023, para. 2.3.

¹⁶² *Ex multis*, European Parliament, *Resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs and civil society*, P9_TA(2021)0451, 11 November 2021; European Parliament, INGE Resolution, cit., para. 32.

¹⁶³ European Parliament, *Legislative resolution on the proposal for a regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European media Freedom Act) and amending Directive 2010/13/EU*, P9_TA(2024)0137, 13 March 2024.

¹⁶⁴ Laaninen, T., “European media freedom act”, PE 739.202, European Parliamentary Research Service, February 2024, pp. 5-6.

¹⁶⁵ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, *OJL 130*, 17 May 2019, pp. 92–125.

¹⁶⁶ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member

Other non-binding instruments add to this framework. In 2022, a *Recommendation on internal safeguards for editorial independence and ownership transparency in the media sector* was published with the aim of introducing national and corporate measures to ensure transparency and independence in the media sector.¹⁶⁷ Furthermore, the European Commission has launched the Media Ownership Monitor to promote transparency as regards media ownership in Member States.¹⁶⁸ In addition, specific attention was devoted to media pluralism during election periods in the context of the ECNE, which addressed the issue in March and April 2023 (Table D, Annex).

Another area has focused on the protection, safety and security of journalists and other relevant actors, including CSOs. In 2021 the European Commission issued a *Recommendation on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union*, asking Member States *inter alia* to protect journalists during demonstrations, to ensure online safety and digital empowerment as well as to protect and empower specific categories of journalists.¹⁶⁹ A study focusing on the implementation of the recommendation by Member States is due to be published shortly. More concretely, funding was made available for the “Media Freedom Rapid Response” pilot project, which aimed to address violations of press and media freedom experienced by journalists in Member States and candidate countries.¹⁷⁰

In addition to these aspects, strategic lawsuits against public participation (SLAPPs) have been identified as significant challenges that needed to be tackled. As a result, a specific Expert Group against SLAPPs was established in 2022¹⁷¹ and, also following calls by the EP, a proposal for a *Directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings* was put forward in April 2022 covering SLAPPs “of a civil or commercial nature with cross-border implications” (Art. 2).¹⁷² By March 2024, the co-legislators have adopted their positions and given their green light to the directive. A *Recommendation on protecting journalists and human rights defenders against SLAPPs* consolidates the EU legal framework in this regard, asking Member States to adopt actions regarding their applicable legal frameworks, training, awareness raising and data collection.¹⁷³

States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, *OJ L 303*, 28 November 2018, pp. 69–92.

¹⁶⁷ Commission Recommendation (EU) 2022/1634 of 16 September 2022 on internal safeguards for editorial independence and ownership transparency in the media sector, *OJ L 245*, 22 September 2022, pp. 56-65.

¹⁶⁸ European Commission, *European democracy action plan*, *cit.*, p. 16.

¹⁶⁹ Commission Recommendation (EU) 2021/1534 of 16 September 2021 on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union, *OJ L 331*, 20 September 2021, pp. 8-20. On this point, following European Parliament’s inquiry on mass surveillance systems, the European Commission is also preparing a “non-legislative initiative clarifying the boundaries and the interplay between EU law, in particular the data protection and privacy acquis, and national security”. Cf European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region on Defence of Democracy*, COM(2023) 630 final, Brussels, 12 December 2023, p. 65.

¹⁷⁰ European Commission, *Annex to the Communication on Defence of Democracy*, *cit.*, p. 11.

¹⁷¹ European Commission, *Informal Commission Expert Group against SLAPP. Terms of reference*, 3 November 2022.

¹⁷² European Commission, *Proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”)*, COM(2022) 177 final, Brussels, 27 April 2022.

¹⁷³ Commission Recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (‘Strategic lawsuits against public participation’, *OJ L 138*, 17 May 2022, pp. 30-44.

2.9. Inclusiveness in elections and actions against hatred

Several measures were put forward to protect the public sphere and promote citizens' active engagement in democratic processes, starting with addressing hate speech especially in online environments. In 2016, a dedicated *Code of conduct on countering illegal hate speech online* was agreed by the European Commission with IT companies to prevent the dissemination of hate speech in online platforms.¹⁷⁴ After carrying out seven monitoring rounds,¹⁷⁵ the Commission is currently elaborating, together with the concerned actors, a new Code of Conduct, which will become a new code of conduct based on the DSA provisions.¹⁷⁶ A High Level group on combating hate speech and hate crime was also created in 2016.¹⁷⁷ In relation to legislation, in 2021 a proposal for a Council Decision including hate speech and hate crime as an EU crime under Article 83(1) TFEU was published.¹⁷⁸ Once the act is adopted by the Council, the European Commission may propose – as a second step – secondary legislation to define criminal offences and related sanctions.¹⁷⁹ In January 2024, the EP urged the Council to adopt the decision, “strongly regret[ting]” the delay in the negotiations, and advocated for the activation of the “passerelle clause” to overcome the unanimity requirement.¹⁸⁰ The proposed act aims to complement the provisions enshrined in Council Framework Decision 2008/913/JHA,¹⁸¹ whereby EU Member States are asked to criminalise offences concerning racism and xenophobia, including hate speech based on “race, colour, religion, descent or national or ethnic origin” (Article 1(1)(a)). The proposal put forward by the Commission aims to encompass other dimensions, in particular “sex, sexual orientation, age and disability”,¹⁸² in line with relevant EU strategies.

More generally, the EU's action has been directed at combating discrimination within the EU. The Communication on combating hatred only represents the most recent document in this respect, calling for the respect of EU funding values throughout the EU.¹⁸³ Several policy documents have been issued over the last years addressing the needs of specific categories. These include the EU Strategy on Combating Antisemitism and Fostering Jewish Life (2021-2030), the EU Roma Strategic Framework, the European Union Youth Strategy, as well as the Strategy for the Rights of Persons with disabilities,¹⁸⁴ which also aims to improve the electoral rights of specific groups of people. This has included the so-

¹⁷⁴ Cf. European Commission, *Code of conduct on countering illegal hate speech online*, 2016.

¹⁷⁵ European Commission, “The EU Code of conduct on countering illegal hate speech online”.

¹⁷⁶ European Commission, *Communication on Defence of Democracy*, cit., p. 16.

¹⁷⁷ European Commission, Informal Commission Expert Group “High Level Group on Combating Hate Speech and Hate Crime”. Terms of reference, Brussels, 22 September 2022.

¹⁷⁸ European Commission, *Annex to the Communication from the Commission to the European Parliament and the Council. A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime*, COM(2021) 777 final ANNEX, Brussels, 9 December 2021.

¹⁷⁹ European Commission, *Communication from the Commission to the European Parliament and the Council. A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime*, COM(2021) 777 final, Brussels, 9 December 2021, p. 3.

¹⁸⁰ European Parliament, *Resolution on extending the list of EU crimes to hate speech and hate crimes*, P9_TA(2024)0044, 18 January 2024, paras. 1, 3 and 7.

¹⁸¹ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328/55, 6 December 2008.

¹⁸² European Commission, *A more inclusive and protective Europe*, cit., p. 5.

¹⁸³ European Commission and High Representative, *Joint Communication to the European Parliament and the Council. No place for hate: a Europe united against hatred*, JOIN(2023) 51 final, 6 December 2023.

¹⁸⁴ European Commission, *Communication. Union of Equality: Strategy for the Rights of Persons with disabilities 2021-2030*, COM(2021) 101 final, Brussels, 3 March 2021.

called “mobile voters”, which have been targeted by several documents and proposed legislation.¹⁸⁵ More in general, along with the promotion of rights, the EU’s approach towards democratic resilience has also rested on civic engagement, notably through digital and media literacy.¹⁸⁶ A Competence Centre on Participatory and Deliberative Democracy has been established within the Joint Research Centre (JRC) to support EU policy-making in adopting participatory and deliberative practices.

2.10. External action

Tackling disinformation and, more broadly, FIMI incidents in the EU requires the timely deployment of all the EU’s instruments, including those falling into the realm of external action. Several tools have been used by the EU to this end.¹⁸⁷ As part of its support to Ukraine, the EU imposed restrictive measures introducing a temporary limitation to the broadcasting within the EU of specific media channels considered to be under the direct or indirect control of the Russian leadership. This was done with the aim of “protecting the EU’s public order and security” in light of a “systematic, international campaign of media manipulation and distortion of facts” targeting “European political parties, especially during election periods [...] and the functioning of democratic institutions in the Union and its Member States”.¹⁸⁸ Moreover, on 28 July 2023, the EU imposed restrictive measures on seven individuals and five entities that were deemed responsible for the conduct of Recent Reliable News (RRN), a digital information manipulation campaign aimed at supporting Russia’s war in Ukraine through the use of fake accounts on social media as well as fake web pages imitating government websites and national media outlets.¹⁸⁹

In addition, since FIMI threats prominently feature a transnational dimension, international cooperation with key partners is paramount to addressing these challenges. While the EU-NATO cooperation on hybrid threats dates back 2016 and has been strengthened over time,¹⁹⁰ other initiatives have also been launched. These include structured cooperation in the context of the G7 Rapid Response Mechanism (RRM), established in 2018, and the creation of an International Cooperation Space within the Rapid Alert System to foster cooperation with the G7 and NATO. Moreover, in the context of bilateral relations, the EU and the US have committed to expanding collaboration and this involves the EU-US Trade and Technology Council (TTC), whereby the parties have *inter alia* agreed upon a common framework for the exchange of threat information on FIMI.¹⁹¹

¹⁸⁵ Including in European Commission, *Proposal for a Council Directive laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for Union citizens residing in a Member State of which they are not nationals (recast)*, COM(2021) 732 final, 25 November 2021.

¹⁸⁶ European Commission, *Communication on Defence of Democracy*, cit., pp. 21 ff.

¹⁸⁷ This paragraph focuses on the instruments that are aimed at *directly* protecting EU’s democracy. Tools and initiatives towards third countries fall outside the scope of this Study.

¹⁸⁸ Council Regulation (EU) 2022/350 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine, OJ L 65, 2 March 2022, paras. 8 and 6; Council Decision (CFSP) 2022/351 of 1 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine, OJ L 65, 2 March 2022, paras. 6-8.

¹⁸⁹ Council Implementing Regulation (EU) 2023/1563 of 28 July 2023 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, OJ L 190I, 28 July 2023;; Council Decision (CFSP) 2023/1566 of 28 July 2023 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, OJ L 190I, 28 July 2023, pp. 21–27.

¹⁹⁰ For instance, in 2023 NATO and the EU committed to strengthen their cooperation on FIMI. See NATO and EU, *Joint Declaration on EU-NATO cooperation*, 10 January 2023, para. 12.

¹⁹¹ European External Action Service, *TTC Ministerial. Foreign Information manipulation and interference in third countries*, 31 May 2023.

3. THE EU AGENDA AHEAD OF THE 2024 EP ELECTIONS

KEY FINDINGS

- The legislative agenda on the protection of democracy ahead of the 2024 EP elections is steep: while important legislation is being finalised, other directives and regulations will not be concluded in this legislative cycle.
- In the case of the proposal for a directive on interest representation on behalf of third countries – the central piece of the DoD package – this is good news. Stakeholders have highlighted several controversial points, which should be carefully addressed by the co-legislators through detailed scrutiny.
- The two recommendations of the DoD package – on inclusive and resilient elections and the effective participation of citizens – address the key challenges to democracy in the Union. Given their breadth and non-binding nature, the extent to which Member States, political parties and civil society organisations will follow them remains to be seen.

3.1. The Defence of Democracy package and other measures

In the 'shadow' of the 2024 EP elections, work to finalise the measures presented by the Commission in 2020 in the EDAP – cf. Chapter 2 – has been given a boost. On 12 December 2023, with its Communication on DoD, the Commission detailed how it envisaged protecting EU democracy.¹⁹² The Communication was accompanied by a proposal for a directive on the regulation of the representation of interests on behalf of third countries¹⁹³ and two recommendations on, respectively, an inclusive and resilient electoral process¹⁹⁴ and the engagement and effective participation of EU citizens.¹⁹⁵

Albeit important, the DoD is by no means the only action that the EU has proposed, or which it expects to finalise, before the 2024 EP elections. Protecting democracy is a complex matter and, consequently, significant actions are being pursued in several policy domains. In their Joint Declaration, the Commission, the Council and the EP committed to “work[ing] swiftly to conclude work on the transparency and targeting of political advertising [...] the statute and funding of European political parties and political foundations [...] and the electoral rights of mobile Europeans”.¹⁹⁶ They further promised to promote “initiatives to bolster democratic resilience from within, and defend our democratic system from external interests, disinformation and foreign interference [and] strengthen[ing] our anticorruption legislative framework”.¹⁹⁷ The Work Programmes of the European

¹⁹² European Commission, *Communication on Defence of Democracy*, cit.

¹⁹³ European Commission, *Proposal for a Directive of the European Parliament and of the Council establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937*, COM(2023)637 final, 12 December 2023.

¹⁹⁴ Commission Recommendation (EU) 2023/2829 on inclusive and resilient electoral processes in the Union and enhancing the European nature and efficient conduct of the elections to the European Parliament, C/2023/8626, 12 December 2023.

¹⁹⁵ Commission Recommendation on promoting the engagement and effective participation of citizens and civil society organisations in public policy-making processes, C/2023/8627 final, 12 December 2023.

¹⁹⁶ European Parliament, *Council of the European Union and European Commission. EU Legislative Priorities for 2023 and 2024. Joint Declaration*, 15 December 2022.

¹⁹⁷ European Parliament, Council of the European Union and European Commission, *EU Legislative Priorities for 2023 and 2024*, cit., p. 4.

Commission for 2023 and 2024 reflect the importance of this objective, including several legislative and non-legislative actions under their priority initiatives (Table 3).¹⁹⁸

In a rapidly deteriorating international context, with the ongoing Russian war in Ukraine and the conflict between Israel and Hamas on the Gaza strip, the European Council also underlined the importance of actively countering foreign interferences. Thus, over the course of 2023, in the Conclusions of its summits it repeatedly stressed the need to fight dissemination of disinformation, illegal content and counter false narratives, also cooperating with EU partners.¹⁹⁹ Belgium – holding the rotating presidency of the Council in the run-up to the EP elections – committed to prioritising the defence of the principles of democracy and “continu[ing] to deliver on the various initiatives of the European Democracy Action Plan...to enhance the EU’s democratic resilience”.²⁰⁰ In the months ahead of the elections, the Presidency also envisaged using the instruments already developed under the Strategic Compass, like the FIMI toolbox.

¹⁹⁸ European Commission, *Commission Work Programme 2023*, cit., and European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Commission Work Programme 2024. Delivering today and preparing for tomorrow*, COM(2023) 638 final, Strasbourg 17 October 2023.

¹⁹⁹ European Council, *Conclusions*, Brussels, 23 March 2023, 27 October 2023 and 15 December 2023.

²⁰⁰ Belgian Presidency of the Council of the EU, *Programme*, cit., p. 9.

Table 3: Key actions envisaged in the Commission WPs for 2023-2024

Status*	Reference	Legal Act	Commission WP
Adopted	COM(2022)457 final 2022/0277 (COD)	European Media Freedom Act	Priority, WP 2024
Adopted	COM(2021)731 final 2021/0381 (COD)	Regulation on the transparency and targeting of political advertising	Priority, WP 2024
Tabled	COM(2021)733 final 2021/0373 (CNS) COM(2021)732 final 2021/0372 (CNS)	Council directive laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals	Priority, WP 2024
Tabled	COM(2021)734 final 2021/0375 (COD)	Regulation on the statute and funding of the European political parties and European political foundations	Priority, WP 2024
Announced	COM(2021)777 final	Proposals to extend the list of EU crimes to all forms of hate crime and hate speech	Priority, WP 2024
Tabled	COM(2023)234 final	Directive on combating corruption	Priority, WP 2024
Tabled	COM(2023) 637 final 2023/0463 (COD)	Directive establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries (Defence of Democracy Package)	New initiative, WP 2023

*European Parliament, Legislative Train Schedule.

On the EP side, the plenary debate on Russiagate, triggered by the accusations regarding a Latvian MEP – Tatjana Ždanoka – allegedly on the payroll of Russian security services,²⁰¹ provided an overview of EU actions to prevent foreign interferences ahead of the 2024 elections. Intervening in the plenary on 6 February 2024, the Belgian Minister of Foreign Affairs reiterated that “democratic resilience” was a priority of the Belgian Presidency and conclusions of the Council on “democratic resilience” would be “adopted in the next weeks”. She further indicated how the hybrid toolbox of the Strategic Compass had been used to put in place restrictive measures against 7 Russian individuals and 5 entities responsible for online manipulation (cf. Chapter 2) and acknowledged the recent political agreement regarding the regulation on the transparency and targeting of political advertising. Commissioner Margaritis Schinas, intervening after the Council Presidency, offered a bleak picture of fake news and manipulation, but also added that the EU has put in place “six concrete initiatives”. First, the

²⁰¹ Cf. Ngendakumana P. E. and Wax, E., “Probe opened into Latvian MEP accused of spying for Russia”, *Politico*, 29 January 2024.

presentation of the DoD package, particularly the proposal for a directive on interest representation on behalf of third countries. Second, the EMFA providing regulatory coordination to protect the internal media market and the regulation on the transparency of political advertising. Third, the establishment of a mandatory transparency register. Fourth, measures on ethics and accountability. Five, the legislative proposal to address the criminal proceedings of corruption. Finally, as the “ultimate weapon”, the regulatory framework within the DSA.²⁰²

The ensuing resolution – a joint text by the EPP, S&D, Renew Europe, Greens-EFA and ECR groups, and supported by a large majority of MEPs (433 in favour, 56 against and 18 abstaining) – “reiterates its previous position that the exceptional character of Russian foreign interference requires special efforts by national and EU institutions, including the European Parliament, to identify, address and overcome this specific threat” (para 15).²⁰³

The issue of foreign interferences from Russia was again at the core of the Question Time with Commission VP Jourová on 12 March 2024, where MEPs asked about the preparedness of EU governments to combat foreign interferences.²⁰⁴ The VP acknowledged that the EU “needs to defend itself better”, but also illustrated the different actions taken by the EU to address the “three main risks: cyberattacks, foreign interferences [...] and digital manipulation or hidden manipulation, including disinformation”. She also stressed that the organisation of elections remains a competence of the Member states, but the EU tries “to be very supportive”. She underscored the challenge posed by individuals or parties, which are also part of parliament and, in some cases, government, spreading pro-Kremlin narratives within the Member countries. Overall, Jourová defended the record of the EU in the protection of democracy and elections, not the least given the “very big resources, which are increasing over time”, invested to oppose “the increased pressure from Russia, which we see every year”.

²⁰² European Parliament, *Russiagate: allegations of Russian interference in the democratic processes of the Union (debate)*, Strasbourg, 6 February 2024.

²⁰³ European Parliament, *Resolution on Russiagate: allegations of Russian interference in the democratic processes of the Union*, 2024/2548(RSP), Strasbourg, 8 February 2024.

²⁰⁴ European Parliament, *Question Time with Commissioners – Preparedness of EU governments to combat foreign interference, including from Russia*, Strasbourg, 12 March 2024.

3.2. In-depth: The Directive on Interest Representation on behalf of Third Countries

The key element of the DoD package – a priority initiative presented by the Commission in its 2023 Work Programme and announced in von der Leyen's State of the Union speech of September 2022²⁰⁵ – is the proposal for a Directive on Interest Representation on behalf of Third Countries.

The call for increased transparency of foreign funding with regard to lobbying activities has been repeatedly made by the EP in its resolutions. Thus, the final resolution on foreign interferences prepared by the INGE Special Committee demanded a reform of the EU Transparency Register, by including "more stringent transparency rules, mapping foreign funding for EU-related lobbying, and ensuring an entry which allows for the identification of funding from foreign governments".²⁰⁶ In more general terms, a similar plea was made in the resolution prepared by the ING2 Special Committee, asking for enhanced registration and disclosure requirements for civil society organisations and other entities receiving foreign funding.

The Commission issued a call for evidence between 16 February and 14 April 2023, which received more than 1,200 contributions. In addition, Member States' positions were also mapped through focus groups. In the late spring of 2023, the Commission was then expected to adopt the DoD package and, more crucially, present the draft directive on interest representation on behalf of third countries. Ultimately, however, the proposal was delayed as the Commission received strong criticisms from several civil society organisations on, among other things, the absence of an impact assessment leading to the proposal for a directive and the lack of a clear understanding of what constitutes 'foreign interference'.²⁰⁷ Among the critics, a particularly vehement request not to further pursue legislation was made by more than 230 European and national civil society organisations expressing "concern and opposition" and calling for a "Fundamental Rights Impact Assessment" of the proposal.²⁰⁸

Preliminary work to prepare the draft directive continued over the following months. The Commission prepared its impact assessment – also based on the evidence provided by an external study²⁰⁹ – and was able to rely on new data from the Eurobarometer survey on Citizenship and Democracy, according to which more than 8 EU citizens out of ten agreed that entities representing foreign government should be registered.²¹⁰ The Directive – together with the other elements of the DoD package – was finally presented on 12 December 2023.

The main goal of the directive is to provide harmonised rules, and common transparency and accountability standards in the internal market for the conduct of interest representation activities carried out on behalf of third countries. As the Vice-President of the Commission put it: "The European public has the right to know where the funding is coming from".²¹¹ Such activities have the objective of influencing the development, formulation or implementation of policy, legislation, or public

²⁰⁵ "[the DoD package] will bring covert foreign influence and shady funding to light. We will not allow any autocracy's Trojan horses to attack our democracies from within", European Commission, *2022 State of the Union Address*, cit.

²⁰⁶ European Parliament, INGE Resolution, cit., para. CA.

²⁰⁷ Wheaton, S. and Goujard, C. "Under Pressure, Commission delays foreign funding disclosure plan", *Politico*, 1 June 2023.

²⁰⁸ Civil Society Europe et al., *EU Foreign Interference law: Is Civil Society at Risk? Why we are against an EU FARA Law*, 3 May 2023, pp. 1-3.

²⁰⁹ European Commission, *Study to support the preparation of an EU instrument to help improve the resilience of our democracies and address activities that may impact public opinion or the democratic sphere funded by third countries*. Final report, November 2023.

²¹⁰ European Commission, *Flash Eurobarometer 528*, cit., p. 26.

²¹¹ Jourová, V., "Opening remarks at the High-level event on elections", Speech, 23 October 2023.

decision-making processes, including by impacting public opinion, both in the Union and its Member States, at all levels of government. The directive regulates interest representation services provided for *remuneration* and, therefore, it does not impose requirements on entities merely because they receive funding from abroad – for instance, it does not apply to contributions to the core funding of an organisation, for instance through a third country donor scheme – nor to diplomatic or consular activities of third countries.

The directive tackles the high degree of fragmentation of interest representation in the internal market, which is regulated in very different ways in Member States. Thus, only 15 Member States have a transparency register on interest representation activity (albeit some exclusively at the sub-national level) in place, and they further differ in the granularity of the information provided and particularly on record-keeping and registration requirements.²¹² This highly fragmented regulatory framework across the Union is problematic on several grounds. By creating an uneven playing field, it increases compliance costs for entities operating across borders; in turn, such divergence in regulatory standards can be exploited to evade regulation in certain jurisdictions.

This goes far beyond an internal market issue, however. Some MEPs stressed this point during the question time “Preparedness of EU governments to combat foreign interference, including from Russia” held in the context of the EP plenary session on 12 March 2024.²¹³ Undeclared interest representation activities, which are increasingly used by foreign governments in parallel to formal diplomatic channels,²¹⁴ could be used as vehicles to interfere with democratic processes. As strongly put by the OECD: “influence and lobbying by foreign interests can have a transformative impact on the political life of a country”.²¹⁵ The directive aims, therefore, to harmonise the market on interest representation by setting out common rules that Member States are asked to implement. A core element is the establishment of national registers for entities carrying out representation activities on behalf of third countries. Member States – or rather, their designated authorities or bodies – would be responsible for setting up, managing and updating the registers. They should also ensure compliance with the obligations laid down in the directive and sanction non-complying entities.

At the same time, the directive should not go too far and unduly restrict the civil space where interest representation takes place. In this respect, Member States are prohibited from introducing more extensive requirements than those indicated in the directive. For instance, sanctions for non-complying entities are limited to administrative fines (art. 22), and Member States cannot make them tougher. While a well-designed regulatory framework enhances transparency and raises citizens’ awareness about the magnitude of third country support to interest representatives – which is, at present, hard to quantify and assess –, the drawbacks of an excessive regulatory burden are significant. On the one hand, red-tape and bureaucratic requirements can disproportionately affect small and medium-sized civil society organisations, for which the costs of compliance can be significantly higher and difficult to absorb. On the other, registration should be very carefully managed, and registers should present information in a “neutral, factual and objective” way (art. 3). In the explanatory memorandum accompanying the proposal, the Commission strongly emphasised this point and was

²¹² For details, European Commission, *Proposal for a Directive of the European Parliament and of the Council establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries*, cit. Explanatory Memorandum.

²¹³ European Parliament, *Question Time with Commissioners – Preparedness of EU governments to combat foreign interference, including from Russia*, cit.

²¹⁴ European Commission, *Proposal for a Directive of the European Parliament and of the Council establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries*, cit., pp. 6, 33.

²¹⁵ OECD, *Lobbying in the 21st Century: Transparency, Integrity and Access*, OECD Publishing, Paris, 2021, p. 44.

at pains to underscore the 'radical difference' between the directive and 'foreign agents' laws, as the directive neither bans nor restricts any kind of activity conducted on behalf of third countries and is not associated with any stigmatisation of the entities to be registered.²¹⁶

Observing the proposed directive in a comparative perspective, it can be seen as part of broader trend of regulating lobbying activities.²¹⁷ With specific reference to regulating lobbying on behalf of foreign countries, new legislation has been introduced by several democratic countries, such as Australia in 2018 (with the Foreign Influence Transparency Scheme Act) and the United Kingdom in 2023 (with the Foreign Interference Registration Scheme), while the creation of a register is also in the legislative pipeline in Canada (the Foreign Influence Registry and Accountability Act). Among democratic countries, the USA has been the forerunner already since 1938, with the Foreign Agents Registration Act (FARA) imposing registration and public disclosure obligations on agents representing foreign principals. On the other hand, 'foreign agents' legislation has also been implemented by non-democratic countries like Russia (in 2012) and introduced by EU candidate countries like Bosnia-Herzegovina (in Republika Srpska) and Georgia (later withdrawn), to which the Union has reacted very critically. The proposal for a directive on interest representation on behalf of third countries is, therefore, a controversial piece of legislation, which has triggered a mixed reception in civil society.

3.2.1. Stakeholders' reactions

The *European Partnership for Democracy (EPD)* – a network of organisations active in democracy support – has raised a series of objections to the current proposal. Overall, the EPD remains sceptical about the general purpose of the directive – the harmonisation of the internal market – considering the exclusive focus of the instrument on non-EU entities.²¹⁸ In this regard, the EPD is concerned *inter alia* by the "indirect involvement" of third states, which could set up entities in the EU without any apparent connection to them, thereby continuing to interfere within the EU.²¹⁹ Against this backdrop, the EPD proposes elaborating a general transparency act to address both internal and external threats.²²⁰ The network also criticises the lack of a definition regarding "foreign interference" as well as the selected legal instrument.²²¹ On the latter point, it argues that the choice of a regulation would have prevented Member States from both inadequately transposing the EU provisions and continuing to employ "problematic registers" until the transposition deadline.²²² As regards the effectiveness of the directive, the EPD is also concerned about possible loopholes in the proposed measures, including the non-applicability of the directive to the so-called "operating grants", which the provisions on non-circumvention (Art. 20) would not effectively address.²²³ Other problems are identified in the proposed Article 5 (identification of the recipient of the service) and 6 (subcontracting) that, according to the network, would ultimately rely on an "unrealistic [...] chain of integrity" and communication between the actors involved.²²⁴ Furthermore, the EPD warns against the risk of certain Member States exploiting the provisions and the collected information to their advantage – with consequent stigmatisation of

²¹⁶ European Commission, *Proposal for a Directive of the European Parliament and of the Council establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries*, cit., p. 4.

²¹⁷ Korkea-aho, E., "This is not a Foreign Agents Law", *Verfassungsblog*, 19 December 2023.

²¹⁸ European Partnership for Democracy, *A closer look at the Defence of Democracy Directive and the controversy surrounding it*, Brussels, January 2024, p. 7.

²¹⁹ *Ibid.*, p. 10.

²²⁰ *Ibid.*, p. 12.

²²¹ *Ibid.*, pp. 8, 11.

²²² *Ibid.*, p. 8.

²²³ *Ibid.*, pp. 7-8.

²²⁴ *Ibid.*, p. 10.

CSOs – and recalls the importance of ensuring the independence of national supervisory authorities, especially in light of relevant developments regarding the rule of law within the Union.²²⁵ The EPD has also pointed out that the directive could result in an increased administrative burden for targeted organisations, with specific reference to proposed disclosure requirements.²²⁶ Finally, the network warns about the negative impact on the EU’s legitimacy in addressing “foreign agent” laws at the global level.²²⁷

These findings echo the shortcomings that *Civil Society Europe*, the *European Partnership for Democracy (EPD)*, *The Good Lobby*²²⁸ and *Transparency International* identified in November 2023. The coalition criticised the choice of the legal instrument (a directive) as well as the impact assessment carried out by the Commission, which would not “adequately justify [the] emphasis on foreign funding”.²²⁹ Moreover, they warned against possible breaches of EU primary law in relation to fundamental rights (assembly, expression, personal data protection and privacy) and economic freedoms (free movement of capital and freedom of establishment).²³⁰ In this context, they envisioned a possible violation of Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union in light of recent EU case law.²³¹ In their opinion, the Commission’s proposal is also flawed because of the lack of provisions addressing threats from within the Union.²³² Other criticised points include the vague definitions, the potential (mis)use of the directive to censor civil society and the negative impact on the EU’s external efforts to curb foreign agent laws.²³³ Also in this case, the coalition proposed an “Interest Representatives Act” – to replace the directive – that would address both external and internal funding for interest representation services in the EU.²³⁴

Civil Society Europe and the *European University Association (EUA)* have recently raised similar concerns, advocating for the blocking of the proposal.²³⁵ Their joint letter to EU co-legislators takes up many of the points raised above, including the risk of stigmatisation of CSOs,²³⁶ the legality of the act in light of Article 114 TFEU and established EU case law as well as the consequences for the EU’s foreign policy.²³⁷ However, it also makes an argument about the possible impact of the envisaged legislation on universities, which can enjoy non-EU/EEA support and funding and, therefore, could be “suspected of representing foreign interests”.²³⁸ In this regard, *Civil Society Europe* and *EUA* consider that some provisions – in particular, the transparency requirements – could potentially have consequences on the

²²⁵ *Ibid.*, pp. 9-11.

²²⁶ *Ibid.*, p. 9.

²²⁷ *Ibid.*, p. 8.

²²⁸ The Good Lobby has also announced its intention to evaluate the Commission’s proposal in light of the benchmarks identified in a previous study. See The Good Lobby, “Navigating the EU’s Defence of Democracy Package: Insights from The Good Lobby Study”, 2023.

²²⁹ *Civil Society Europe et al.*, *Key recommendations. Press conference on the EU’s ‘Defence of Democracy Package’*, Brussels, 27 November 2023, p. 1.

²³⁰ *Ibid.*, p. 1.

²³¹ The reference is to *Commission v. Hungary (C-78/18)* and *Luxembourg Business Registers (Joined Cases C-37/20 and C-601/20)*. *Civil Society Europe et al.*, *cit.*, p. 1.

²³² *Civil Society Europe et al.*, *cit.*, p. 1.

²³³ *Ibid.*, p. 2.

²³⁴ *Civil Society Europe et al.*, *cit.*, p. 2.

²³⁵ *Civil Society Europe and European University Association, Open letter: EU co-legislators must block the covert foreign interference law*, Brussels, 25 January 2024, p. 3.

²³⁶ This concern has also been expressed in Brooks, E., “Defending democracy requires a free civil society”, *Politico*, 2 May 2023.

²³⁷ *Civil Society Europe and European University Association, cit.*, pp. 1-2.

²³⁸ *Ibid.*, p. 1.

“freedom of the arts and science”, including in relation to Article 13 of the Charter.²³⁹ More concretely, observers have warned about the potential impact of the envisaged legislation on projects funded by third countries, including in relation to the lack of clarity concerning the interpretation and application of the provisions at the national level.²⁴⁰ In a previous contribution, EUA had already recalled that policy tools used to limit academic freedom are often presented as instruments to protect democracy from foreign interference.²⁴¹ Against this backdrop, the association advocated for the adoption of a risk-based approach, identifying “concrete and identifiable” risks to the EU’s values and interests, to be complemented with policy instruments strengthening the role of higher education and research in civil society and democracy.²⁴²

Furthermore, *Partin* – an umbrella organisation representing 450 Dutch CSOs – wrote a letter to the Dutch Commissioner Hoekstra in December 2023, asking for the repeal of the proposed directive and calling instead for a fully-fledged EU Interest Representatives Act.²⁴³ The arguments put forward by *Partin* include potential breaches of EU primary law, unexpected consequences for CSOs and repercussions on the EU’s global efforts against foreign agent laws.

In its analysis of the directive, the *European Civic Forum* – a network of 100 CSOs – underlines the still largely unknown nature of the problem the act aims to address, which makes it difficult to assess the necessity and the proportionality of the directive.²⁴⁴ Moreover, it calls for clearer language - with particular emphasis on the meaning of “influencing” policy developments or legislation, the “clear and substantial link” between the activity and the influence, the extent to which an entity acts “on behalf of” a third country or can ultimately be attributed to a third country, as well as the actual information to be shared with public authorities under transparency requirements.²⁴⁵ This applies also to the exceptions envisaged in the legislation, which the network considers “vaguely-worded”.²⁴⁶ In this respect, it calls for a distinction between for-profit lobbying and non-profit activities promoting fundamental rights, to be complemented with minimum thresholds for the application of the directive.²⁴⁷ In line with other findings, the *European Civic Forum* warns against possible breaches of EU primary law – including the free movement of capitals (63 TFEU), civic participation (Article 11 of the Charter) and the right of association (Art. 12 of the Charter), which could be impacted by a “disproportionate administrative burden, stigmatisation and harassment”.²⁴⁸ The analysis also makes the case for clear sanctions to be applied to public officials in case of stigmatisation of CSOs and for establishing checks and balances in relation to national authorities in charge of transparency registers.²⁴⁹ Finally, the *European Civic Forum* asks for reporting obligations to be extended to policymakers engaging with third parties.²⁵⁰

²³⁹ *Ibid.*, pp. 1-2.

²⁴⁰ Matthews, D. and Brent, T., “Academic research could be dragged into new EU foreign influence rules”, *ScienceBusiness*, 23 January 2024.

²⁴¹ European University Association, “The Defence of Democracy Package – the university perspective”, 13 April 2023, p. 1.

²⁴² *Ibid.*, p. 2.

²⁴³ *Partin*, *Remove the foreign funding directive from the Defence of Democracy package*, The Hague, 7 December 2023.

²⁴⁴ *European Civic Forum*, *Defence of Democracy Package. An analysis of the foreign funding directive*, 26 January 2024, p. 3.

²⁴⁵ *Ibid.*, pp. 3-4.

²⁴⁶ *Ibid.*, pp. 7-8.

²⁴⁷ *Ibid.*, p. 8.

²⁴⁸ *Ibid.*, pp. 4-7.

²⁴⁹ *Ibid.*, p. 8.

²⁵⁰ *Ibid.*, p. 8.

JEF Europe has expressed similar concerns, including the need to clarify the terms employed in the directive for further legal certainty, the impact on the EU's credibility as regards its external engagement in criticising restrictive FARAs and the importance of ensuring a thorough application of the provisions.²⁵¹ Moreover, it advocated for the inclusion of project-based financing – *per se* a core funding of an organisation and, therefore, excluded by the proposed measures – in the scope of the directive.

Finally, from an academic perspective, Feisel (2023) has criticised the provisions enshrined in the directive, pointing *inter alia* to its broad application, the risk of anti-CSO campaigns, and insufficient internal safeguards against internal threats to democracy.²⁵² Whilst welcoming the recommendation on civil society participation (“A Step Forward”), the author considers the directive – with its shortcomings (“Two Steps Back”) – an example of a larger dilemma, which consists of protecting the EU's democracy while avoiding the instrumentalisation of the necessary policy tools by “the enemies of democracy that are already [...] on its inside”.²⁵³

3.2.2. Next steps

In its Communication, the Commission expressed optimism *vis-à-vis* the possibility to “make decisive progress on all legislative proposals in the democracy area before the European parliamentary elections”.²⁵⁴ The DoD package was debated in the EP plenary on the same day as its presentation (i.e., 12 December) and the directive was allocated to the Internal Market (IMCO) Committee, with six other committees asked to deliver their opinion, on 25 January 2024.²⁵⁵ The draft directive was presented before the IMCO Committee by the Commission on 20 March 2024.²⁵⁶ The Rapporteur presented his working document in the IMCO Committee on 3 April 2024, while encouraging “the next Parliament to prioritise this proposal”.

In January 2024, preliminary work on the directive also started within the Council. The package was discussed by the Permanent Representatives on 24 January and by the General Affairs Council – guided by a ‘non paper’ drafted by the Belgian Presidency – on 29 January 2024.²⁵⁷ The latter aimed to have “an initial ministerial discussion” and agree guidelines for the “intensive” work ahead.²⁵⁸ The ministers expressed several concerns about the directive.²⁵⁹

Some of them raised doubts on the practical effectiveness of the directive, which would fail to cast light on more covert – and dangerous – funding from foreign states. Others placed their attention on the need to avoid placing a disproportionate burden on citizens and civil society actors. Still others spoke about the need to strike a difficult balance between preserving fundamental rights such as freedom of association and combating foreign interferences. Other ministers – distinctively, the Finnish minister –

²⁵¹ JEF Europe, “JEF Europe position on the Defence of Democracy package”.

²⁵² Feisel, F. M., “One Step Forward, Two Steps Back: The EU's ‘Defence of Democracy’ Package”, *Verfassungsblog*, 19 December 2023.

²⁵³ *Ibid.*

²⁵⁴ European Commission, *Communication on Defence of Democracy*, cit., p. 26.

²⁵⁵ On 27 February 2024, the Conference of Committee Chairs agreed that the IMCO Committee remained the committee responsible and the AFCO Committee, which had requested to be associated under Rule 57 in the legislative procedure, would provide an opinion under Rule 56, with additional elements of association spelt out in a letter co-signed by the IMCO and AFCO Committee chairs.

²⁵⁶ See the draft agenda of the IMCO Committee meeting of 20 March 2024.

²⁵⁷ See, for the main results of the General Affairs Council meeting, Council of the European Union, “General Affairs Council, January 2024”.

²⁵⁸ Agence Europe, Europe Daily Bulletin No. 13337, 27 January 2024.

²⁵⁹ Agence Europe, Europe Daily Bulletin No. 13338, 30 January 2024.

stressed the importance of not “weakening” national legislation. The discussion was closed by Commission Vice-President Vera Jourová who, reacting to the concerns expressed by the ministers, recognised the need to “work further” on the proposal and seek to strike a balance between “harmonisation” and “national peculiarities”.

In the light of the wide-ranging concerns raised by both stakeholders and ministers, the time for agreeing on such an important directive ahead of the 2024 EP elections already appears too short. Thus, in the absence of this pressing deadline, the Commission and the co-legislators should carefully concentrate on the key controversial points and ensure careful legislative scrutiny. Otherwise, the unforeseen consequences of an imperfectly designed legislation may be severe and undermine the EU’s credibility and future stance on the fight to protect democracy.

3.3. The Recommendation on inclusive and resilient electoral processes

This recommendation aims to promote high democratic standards in electoral processes, and the 2024 EP elections in particular. It is addressed to Member States, European and national political parties, foundations and campaign organisations in the context of the preparation of elections. As organising elections is a Member State competence, albeit within the framework of EU law, the (non-binding) recommendation seeks to enhance the European nature of the EP elections, voter turnout and inclusive participation. For instance, it advises Member States not to amend their electoral law in the final year before elections take place and encourages the presentation of candidates to occur at least six weeks ahead of the election date, placing significant attention on targeted communication to specific groups, such as young voters. In what follows, the focus is specifically placed on the measures addressing the challenges identified in Chapter 1.

Several recommendations are about protecting the information environment and *fight disinformation*. In line with the comprehensive approach embraced by the EU in this field, Member States are invited to support media organisations, projects from civil society, universities, and research institutes, and make use of funding opportunities (e.g., through the Erasmus+ Programme) to develop critical thinking and increase awareness on disinformation during the election campaign. Member States are also asked to use the available tools, such as the FIMI toolbox and the RAS, to discuss responses and quickly exchange information. Political parties are explicitly encouraged to adopt campaign pledges and codes of conduct on election integrity and fair campaigning (para 10). Specifically, they should not produce, use or disseminate false, fabricated, doxed or stolen data or material (including deep fakes generated through AI), misleading or hateful content and should avoid using manipulative tactics and techniques to disseminate political content.

As far as *foreign funding* is concerned, Member States should identify loopholes in their legislation and other regulatory instruments. When such gaps are present – and, as it is well known, there are several²⁶⁰ – Member States are asked to address them, by promoting transparency of donations, limiting donations up to a certain threshold or prohibiting donations from abroad to political parties and candidates. Increased cooperation among Member States in the framework of the ECNE is also welcomed on awareness raising activities and strategies. Political parties should themselves assess the risks arising from donations from abroad (particularly on donations potentially linked to criminal activity) and should commit to refusing to represent undeclared interests and ensuring transparency of financial contributions, including benefits in kind and loans.

²⁶⁰ See Bressanelli, E. *Investing in destabilisation*, cit, pp. 15-25.

To promote a safe *cyber-environment*, Member States are asked to ensure the adequate protection of election-related infrastructure, including by promoting awareness and planning for all contingencies, and should ensure that the technology increasingly used in elections is designed, developed, and produced to ensure a high level of cybersecurity. In this regard, Member States are invited to share their experiences in the context of the ECNE and the NIS Cooperation Group and to consult the compendium on e-voting and other ICT practices prepared within the framework of the ECNE. Member States shall also verify that whenever e-voting is used, it is subject to the necessary safeguards and citizens are correctly informed about its availability. Online registration – to facilitate voters and candidates’ registration – should be made easily accessible. Not only government, but also political parties and campaign organisations are required to be ‘cyber-aware’. They should commit to taking active steps for good cyber hygiene, such as regular cybersecurity checks, to recognize, deter and prevent attacks. In such a rapidly developing field, it is important to ensure appropriate training for election officials.

Associated both to cybersecurity and foreign funding, *transparency of political advertising* is required for both European and national political parties. They are asked to provide information on their websites on the amounts spent and the sources of funding. It should be possible to always clearly identify political advertising, with information about the political party sponsoring it, the targeting of the advertising and the use of AI systems in its preparation or dissemination. This is an issue on which political parties are expected to adopt a campaign pledge and/or commit to in a code of conduct on election integrity and fair campaigning.

Several recommendations target *mobile voters*. Member States are required to take measures to increase their awareness of their electoral rights and obligations. In this regard, the provision of information is crucial, and there should be a sufficiently wide language selection to illustrate the electoral procedures. Information should also be provided on the sanctions for breaking the law (e.g., multiple voting). It is also important for Member States to support local authorities with administrative guidance when the latter are responsible for entering mobile voters on the electoral rolls.

Experts have highlighted the potential of this recommendation to inspire national legislation on the matter, despite considering some provisions as “low-hanging fruit”, notably in relation to the elaboration of codes of conduct for fostering fair and transparent political campaigning. Observers have highlighted that this recommendation points to three developments, consisting of (i) the willingness of the Commission to work on electoral matters, previously relegated to the national level, (ii) the increasing role of the EU as an “electoral standard setter” and (iii) election integrity being considered as an essential instrument to counter “democratic backsliding” within the EU.²⁶¹

3.4. The Recommendation on promoting the engagement and effective participation of citizens

This recommendation targets Member States (although (potential) candidate countries as well as Union neighbourhood policy countries are also encouraged to follow it), asking them “to create and maintain a safe and enabling environment for civil society organisations, allowing them to effectively engage in public policy-making processes” (para 2). It develops a ‘framework for participation’ strengthening the link between citizens and the democratic institutions that serve and represent them

²⁶¹ van der Staak, S., “Defence of Democracy Package: the recommendation on electoral resilience unpacked”, *International IDEA*, 15 December 2023.

("the bedrock for democratic resilience", according to the Communication of the European Commission on the DoD).²⁶²

The recommendation aims to promote an inclusive and effective engagement of public authorities with citizens and civil society organisations, and presents a list of measures that Member States should take to protect and support civil society organisations and human rights defenders to safeguard a thriving civic space. While the recommendation as a whole should be seen as an attempt to strengthen deliberative and participatory democratic practices – building on the example of the Conference on the Future of Europe –, we focus here specifically on those challenges identified in Chapter 1.

Effective participation in policy-making is facilitated by media literacy and digital skills. The recommendation acknowledges that the capacity to select and understand relevant information, meaningfully engage with public authorities and develop resilience towards *disinformation* are very important skills for EU citizens. Embracing the whole-of-society approach characterising the Union, Member States are encouraged to foster such skills – particularly, critical thinking – through education and training, and through formal and informal learning and youth work.

The use of new technologies in policy-making processes, such as online platforms and e-governance tools, could also significantly strengthen the interaction between citizens and their governments. For instance, innovative forms of participation and engagement such as citizens' panels, juries or assemblies can be organised either online or offline. The Commission has also strengthened its interaction with citizens with a renovated "Have your say" website.²⁶³ Given the potential of new technologies, the recommendation points out that it is crucial that they respect the checks and balances of a democratic society and Member States should ensure appropriate levels of *cyber-security*, protecting citizens from cyber-attacks and online surveillance.

The recommendation places strong emphasis on the inclusion of underrepresented groups, encouraging Member States to prevent and remove obstacles to the participation of persons with disabilities, young and older people, citizens with migrant backgrounds and *mobile EU citizens* (para 7.b). Member States should make use of the EU funding opportunities available to boost citizens participation and engagement, such as the Citizens, Equality, Rights and Values programme, Creative Europe and Erasmus+. Technical assistance for administrative reform and the promotion of participatory practices is also provided to Member States under the Technical Support Instrument.

The core element of the recommendation is the promotion of a safe and enabling environment for civil society organisations, which are regarded as a foundational element of a thriving democratic society. In this respect, the recommendation observes that "while most Member States do ensure a safe space for civil society organisations, a growing number of physical, verbal and digital attacks against them, hatred, harassment, intimidation, smear campaigns, including the criminalisation of humanitarian fundamental rights work, administrative and legal restrictions, unlawful surveillance, and the use of strategic lawsuits against public participation has been observed in some Member States over the past years" (para (21)). In this context, it further notes that the most negatively affected civil society organisations are those working on minorities' rights, migrants and asylum seekers' rights, anti-corruption and environmental protection. Thus, the recommendation directly challenges *illiberal tendencies in EU member states*, including the stigmatisation and limitations placed upon civil society actors.

²⁶² European Commission, *Communication on Defence of Democracy*, cit., p. 20.

²⁶³ The website can be accessed at: https://have-your-say.ec.europa.eu/index_en.

While the recommendation has been generally welcomed, especially for its comprehensiveness in relation to participatory and deliberative democracy,²⁶⁴ International IDEA has suggested including inter-agency collaboration and civil society actors in the implementation phase.²⁶⁵ While commending the Commission, Election-Watch.EU has acknowledged the importance of ensuring that transparency requirements do not lead to the reduction of space for CSOs and recognised the need to oversee political campaigns as well as state spending.²⁶⁶ JEF Europe regrets the non-inclusion of references to the transnational lists or the *Spitzenkandidaten* system in the recommendations, the exclusive emphasis on voting for youth participation and the lack of concrete proposals for the participation of disadvantaged groups in elections.²⁶⁷ In addition, JEF Europe would have liked to see measures following-up on the Conference on the Future of Europe as well as improvements for the European Citizens' Initiative.²⁶⁸

²⁶⁴ Neven, M., "International IDEA and partners influence and scrutinize the EU's defence of Democracy Package: enhancing transparency and strengthening electoral processes in Europe, cit.

²⁶⁵ *Ibid.*

²⁶⁶ Election-Watch.EU, "EESC Hearing on EC Defence of Democracy Package", 5 February 2024.

²⁶⁷ JEF Europe, "JEF Europe position on the Defence of Democracy package", cit.

²⁶⁸ *Ibid.*

4. POLICY RECOMMENDATIONS

This Study has identified new challenges to democracy (Chapter 1) and has systematically mapped the institutional and policy responses of the EU (Chapter 2), focusing in-depth on the agenda ahead of the 2024 EP elections and the Defence of Democracy Package (Chapter 3). Overall, the EU has developed a broad approach to developing democratic resilience, which cuts across several policy areas, envisages a plurality of instruments, legislative and non-legislative, and seeks to actively involve citizens and civil society organisations. Based on the evidence collected in this Study, five concrete policy recommendations to further enhance the EU's actions in this field are suggested below.

4.1. Planning ahead

Since the start of the 2019-2024 legislative cycle, the protection of democracy has been a top priority of von der Leyen's commission. Building on the actions developed in the previous term (cf. Chapter 2), the Commission published the European Democracy Action Plan in 2020 and presented several legislative initiatives. The EP set up a dedicated special committee – the INGE committee – whose mandate was initially extended, and which was then replaced by another special committee – the ING2 committee – to assess the threat of foreign interferences. It is therefore fair to assert that EU institutions have assigned a strong role to initiatives to bolster democratic resilience in their agendas. On the other hand, it should also be observed that some of the flagship measures proposed by the Commission will not be concluded on time for the 2024 EP elections or, when their conclusion is too close to the 'deadline', they will most likely not be implemented. Thus, for instance, the regulation on the statute and funding of European political parties and political foundations is still at the stage of inter-institutional negotiations, the directive on interest representation on behalf of third countries has just started its legislative journey, and the regulation on the transparency and targeting of political advertising, albeit concluded, will only be partly in force before the 2024 EP elections. There are different factors explaining such 'delays': in some cases, there are tough inter-institutional negotiations; in others, the Commission has delayed the presentation of its legislative proposal; in still others, it is a mix of the above. Whatever the explanation, however, the EU's legal framework has only partly changed in time for such an important election, taking place in a turbulent international context and facing high risks of foreign interference, particularly from Russia. Given the average time needed to adopt EU legislation (i.e., about two years), key measures to protect democracy and elections should be proposed at the start of a new legislative term, giving sufficient time to stakeholders to provide their contribution, and to the co-legislators to overcome divergencies over their content.

4.2. Make sure citizens know

As this Study has reported (cf. Chapters 2 and 3), there has been extensive activism in the field of democratic protection over the last years. Both the EU and the Member States have issued legislation, set up institutional mechanisms for cross-national coordination, created task forces and funded programmes and initiatives to enhance democratic resilience. Many of these actions are a direct response to what EU citizens themselves have demanded (cf. Chapter 1). Both the Commission and the EP should continue their efforts to engage with citizens, explaining to them what actions are implemented to address the challenges to democracy and, as indicated by the Recommendation on promoting citizens' participation and engagement, actively involve them in policy making. In the run-up to elections, it is particularly important to make public opinion aware of disinformation narratives and counter-narratives through strategic communication. Initiatives such as Commission VP Jourová's "Democracy Tour" in the EU Member States to discuss strategies to combat foreign interferences with

policymakers, stakeholders and citizens should be welcomed²⁶⁹. To prevent excessive fragmentation and enhance internal coherence and public visibility in this policy field, it is important that the next Commission attributes a specific portfolio on 'democracy' to one of its Vice-Presidents, as in 2019, when the mission of the VP for Values and Transparency entailed leading the Commission's work on democracy and steering "efforts to protect our democratic system from external interference".²⁷⁰ On the EP side, it would be important to continue the work of the INGE and ING2 committees, creating a dedicated parliamentary body to assess and fight foreign interferences.²⁷¹

4.3. Carefully consider the consequences

Well-intentioned proposals may reveal problematic aspects, which citizens and civil society actors can discover. The proposal for a directive on interest representation on behalf of third countries illustrates this point well. There is clear evidence that foreign interference activities also take the form of covert funding of CSOs and other types of interest representatives. In this sense, enhancing transparency rules on the sources of foreign funding should be welcome. Yet, stakeholders (cf. Chapter 3) have raised several concerns, particularly over the transposition and implementation of the directive in national legal systems. While the legislative proposal has been carefully written using neutral language, there may be political circumstances under which a national government may decide to 'stigmatise' and 'label' specific groups – and, paradoxically, those groups identified as 'most at risk' by the Recommendation on promoting the engagement and effective participation of citizens – as 'foreign agents'.²⁷² In such cases, the Commission has limited control to address *ex post* the damage done to CSOs in terms of reputation and possibly functioning (i.e., donors, fearing reprisal by the government, may withdraw their support). As the potential risk of abuse appears to be concrete, the directive – which was only presented in December 2023 – should not be rushed but carefully scrutinised by the co-legislators. For instance, specific thresholds could be considered to limit registration to only certain entities. More generally, it is crucial that this measure includes, like any other instrument tackling foreign interferences, "strong and resolute safeguards to fundamental rights".²⁷³

4.4. Be serious about the protection of EU values

Parties with illiberal tendencies are on the rise (cf. Chapter 1). Of course, the Union cannot regulate national parties, but can at most issue recommendations – as in the Recommendation on inclusive and resilient electoral processes – for them to adopt on campaign pledges and codes of conduct on election integrity and fair campaigning. However, the EU does regulate European political parties (and their associated foundations). According to the current regulation on their statutes and funding, Europarties "must observe [...] the values on which the Union is founded, as expressed in Article 2 TEU, namely respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities".²⁷⁴ The revised regulation – as amended by the EP at first reading – extends the respect of EU values to their "member parties which have their seat within the European Union", while member parties based in a country that belongs to the Council of

²⁶⁹ Europe, *Europe Daily Bulletin No. 13360*, 29 February 2024.

²⁷⁰ von der Leyen, U., *Mission Letter to Věra Jourová*, Brussels, 1 December 2019, pp. 4-6.

²⁷¹ See European Parliament, *Resolution on Russiagate*, cit. para 17; European Parliament, *European Parliament, ING2 Resolution*, cit., para 16.

²⁷² Cf. Korkea-aho, E., "This is not a Foreign Agents Law", cit.

²⁷³ European Parliament, *ING2 Resolution*, cit., para 5.

²⁷⁴ Regulation (EU, Euratom) No 1141/2014 on the statute and funding of European political parties and European political foundations, cit., art.3.1(c).

Europe “should observe equivalent values”.²⁷⁵ If a member party of a Europarty does not respect EU values, its Europarty can be sanctioned and face de-registration. It is important that the respect of EU values is not regarded as a mere formality – as the Europarties self-declare compliance, albeit in writing – but is assessed on substantive grounds by the Authority for European Political Parties.²⁷⁶ In other words, Europarties should not take membership lightly and parties not abiding by EU values should, at the very least, not be funded by the Union. The political groups in the EP should also bear responsibility for monitoring the behaviour of their members and act swiftly if any MEP has committed any criminal or unethical deed.²⁷⁷

4.5. Engage with external partners

The EU's external engagement regarding FIMI, which has already been stepped up in the past few years (cf. Chapter 2), should be continued resolutely and further enhanced in the foreseeable future. This is justified by the intrinsic transnational nature of the FIMI threats facing the EU and its Member States. Building upon initiatives launched, among others, in the TTC and G7 fora, other possible venues for increased bilateral and multilateral cooperation could be identified, whenever possible, with willing partners in Africa, the Indo-Pacific, as well as in Caribbean and Latin American countries. Focus areas could include the development of shared international standards for the analysis of FIMI incidents and the exchange of information regarding FIMI episodes. These initiatives would allow the EU and its Member States to identify possible FIMI incidents that could have consequences on the effective conduct of democratic processes, including within the EU.

²⁷⁵ European Parliament, *Amendments adopted by the European Parliament on the proposal for a regulation of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations (recast)*, P9_TA(2022)0328, 15 September 2022, art. 3.1(e).

²⁷⁶ See Bressanelli, E., *Towards a revision of the Regulation on the statute and funding of European political parties and foundations*, *cit.*, pp. 45-46.

²⁷⁷ European Parliament, ING2 Resolution, *cit.*, para 24.

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ANNEX

Table A: Ranking of organisations with head office in a third country

Ranking	Third country	Number of organisations	Share (% organisations in other third countries)
1	USA	568	57
2	Canada	46	4.6
3	Ukraine	29	2.9
4	Japan	26	2.6
5	Brasil	23	2.3
6	Australia	20	2
7	Turkey	20	2
8	Serbia	19	1.9
9	Israel	18	1.8
10	Albania	11	1.1

Source: EU Transparency Register (last access on 08/01/2024).
The list does not include EEA countries, Switzerland and the UK.

Table B: Signatories of the 2018 Code of Practice against Disinformation and current signatories of the 2022 Strengthened Code of Practice

2018 Code	2022 Strengthened Code
AKA	ActiveFence
Association des agences conseils en communication (AACC)	Adobe
EDiMA	AI Forensics
European Association of Communications Agencies (EACA)	Alliance4Europe
Facebook	Avaaz
Goldbach Audience	Clubhouse
Google	Crisp
Interactive Advertising Bureau Europe	Debunk EU
Kreativitet & Kommunikation	Demagog
Microsoft	Democracy Reporting International
Mozilla	DoubleVerify
SAR Marketing Communication Association	DOT Europe
Tik Tok	Ebiquity
Twitter	European Factchecking Standards Network
Union of Belgian Advertisers (UBA)	European Association of Communication Agencies (EACA)
World Federation of Advertisers (WFA)	Faktograf
	FIDU (Italian Federation for Human Rights)
	Globsec
	Google
	IAB Europe (Interactive Advertising Bureau Europe)
	Kreativitet & Kommunikation
	Les Surligneurs
	Logically
	Maldita.es
	Meta
	Microsoft
	Newsback
	Newtral
	NewsGuard
	PagellaPoltica
	Reporters without Borders (RSF)
	ScienceFeedback
	Seznam
	The Bright App
	The Daily Ledger
	The GARM Initiative
	The Global Disinformation Index
	TikTok
	Twitch
	Vimeo
	VOST Europe
	WhoTargetsMe
	World Federation of Advertisers (WFA)

Source: own elaboration based on European Commission data (as of February 2024).²⁷⁸

²⁷⁸ European Commission, "Roadmaps to implement the Code of Practice on disinformation", 16 October 2018; European Commission, "Signatories of the 2022 Strengthened Code of Practice on Disinformation", 16 June 2022.

Table C: Meetings of the Joint Mechanism for Electoral Resilience

Location	Date	Member States involved	Topics addressed
Bucharest, Romania	16-20 March 2022	Romania, Lithuania, Latvia and Estonia	<ul style="list-style-type: none"> - Technologies and cybersecurity in elections - Protection of electoral infrastructure - Electoral threats (including foreign interference) - Postal voting, e-voting and advance voting - Oversight of online political advertising (including anti-corruption and integrity measures)
Vilnius, Lithuania	6-7 October 2022	Lithuania and Croatia	<ul style="list-style-type: none"> - Voting technologies - Political finance - Electoral communication - Training
Stockholm, Sweden	12-13 January 2023	Romania and Sweden	<ul style="list-style-type: none"> - Election security and protection of electoral infrastructure - Cybersecurity and IT systems - Disinformation - National election cooperation network - Postal voting from abroad

Source: own elaboration based on meeting agendas and minutes.²⁷⁹

Table D: Meetings of the Electoral Cooperation Network on Elections (ECNE): Main topics

Topics ²⁸⁰	21/01/2019	27/02/2019	4/04/2019	7/06/2019	27/11/2019	24/06/2020	25/09/2020	28-29/01/2021	25/03/2021	10/06/2021	22/10/2021	24/01/2022	4/05/2022	21/09/2022	28/11/2022	16/01/2023	29/03/2023	12/06/2023	27/09/2023	6/12/2023
Countering FIMI and disinformation	x			x	x	x								x		x		x	x	
Online platforms regulation	x	x	x	x					x			x	x	x	x		x	x	x	x
Mechanisms for cooperation	x	x	x	x					x		x		x	x	x		x			
Cybersecurity and resilience	x	x	x	x	x									x		x	x	x		x
Media freedom and media pluralism													x							

²⁷⁹ For the first meeting, European Commission, *Meeting of the joint expert team of the election resilience mechanism*, and European Commission, Bucharest, 16-20 May 2022 and European Commission, *Minutes. First visit of a joint expert team under the mechanism on election resilience*, Bucharest, 16-20 May 2022; for the second meeting, European Commission, *Agenda. Meeting of the Joint electoral resilience mechanism under the European cooperation network on elections - Expert exchange of the electoral management bodies from Croatia and Lithuania to strengthen cooperation in elections*, Vilnius, 6-7 October 2022 and European Commission, *Minutes. Second visit under the mechanism on election resilience - Meeting report of the Joint electoral resilience mechanism under the European cooperation network on elections*, Vilnius, 6-7 October 2022; for the third visit, European Commission, *Agenda. Meeting of the joint expert team of the election resilience mechanism*, Stockholm, 12-13 January 2023 and European Commission, *Minutes. Third visit of a joint expert team under the mechanism on election resilience*, Stockholm, 12-13 January 2023. A fourth meeting has been held on 11-12 December, but the agenda and the minutes cannot be accessed (on 26 March 2024).

²⁸⁰ European Commission, "European Cooperation Network on Elections". The agenda and minutes of the meeting held on 21 February 2024 cannot be accessed (as of 26 March 2024). The Table provides an overview of the main topics discussed during ECNE meetings. For details, see the relevant meeting agendas and minutes.

Actions against hatred		x																			
Inclusiveness in elections		x	x	x	x	x	x	x		x	x	x	x	x	x	x	x	x	x	x	x
External action and engagement																				x	

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, identifies new challenges to democratic resilience and electoral processes, systematically mapping the EU responses to counter them. The study focuses both on external and internal challenges and assesses the responses of the Union particularly in the run-up to the 2024 European Parliament elections. It also provides specific policy recommendations to further enhance the protection of democracy in the Union.

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