



REGULATING ONLINE CAMPAIGN FINANCE

Case Study on Latvia

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EXECUTIVE SUMMARY

Although evidence of online foreign interference in electoral campaigns in presidential elections in the United States in 2016 and France in 2017 raised concerns about similar influence during the most recent parliamentary elections in Latvia in 2018, the latter was relatively well prepared due to several factors:

- Continuously evolving campaign finance regulation over the last two decades has diligently conceptualized and addressed all major problems and loopholes in the campaign finance system.
- A strong independent monitoring culture heralded and initiated by civil society organizations and later pursued by the oversight agency has ensured that a substantial share of all campaign expenditure is ascertained and verified independently and consistently.
- There is a high degree of transparency of campaign income and expenditure.

Reporting, monitoring, and transparency requirements have addressed Internet campaigning since the 2006 elections. These rules initially applied to news portals and Internet sites, and were later, though not explicitly prescribed, extended to social media as platforms for distributing campaign materials.

In 2016, the Pre-election Campaign Law was amended to include a chapter addressing online advertising: it requires online media advertisers to publish price lists and discount policies or else refrain from participating in paid electoral advertising, and to keep all records of campaign advertisement

purchases. The amendment also obligates political parties to submit to the regulator information about all agreements they have signed with online media platforms to place advertisements. Parties must place all online and off-line advertisements themselves; no other legal person or individual (such as a public relation (PR) firm or media agency) can do so on their behalf.

The legal framework also includes a detailed concept of in-kind donations; reporting them has been required for almost 20 years. The law bans corporate donations and provides for detailed and tested regulation of third-party campaign spending. Although it may be difficult to apply these norms to social media posts originating outside the country, Latvia has a strong, systemic monitoring tradition and user-friendly anonymous avenues for reporting by public and political competitors. Therefore, the system is comparatively well placed to withstand the pressures associated with the online campaign environment. In general, as the law has addressed the most important campaign finance concepts, and legal and regulatory loopholes have constantly been closed, the early detection of ‘unusual’ campaign activity is possible within the regulatory framework and continuously strengthened oversight instruments.

Despite its well-honed system of general and online campaign finance regulation and rigorous checks, as a former communist country directly bordering Russia with a substantial Russian-speaking minority, Latvia is vulnerable to online disinformation and micro-targeting in social networks and other platforms (YouTube, online games and similar) that are presented as organic user-generated content or are direct products of official Russian propaganda. These online disinformation messages, however, cannot be uncontrollably used during election campaigns and amplified by paid online campaign ads to destabilize the political situation by promoting or slandering candidates and parties, as happened in the 2016 US presidential elections (Priestap 2017).

Latvia has benefited enormously from the continuous efforts to update its campaign finance system and test the new additions to the law in practice.

In sum, although online campaigning due to its fragmentation and the ability to obscure the origin of the content at first appears to be too decentralized and transient to be pinned down by legal norms, it in fact mirrors and augments the issues associated with more advanced campaigns. Latvia has benefited enormously from the continuous efforts to update its campaign finance system and test the new additions to the law in practice. It is therefore able to conduct meaningful online campaign finance oversight.

1. OVERALL REGULATORY FRAMEWORK

Latvia is a parliamentary republic with legislative powers rested in the 100-seat parliament (Saeima) and executive powers—in the Cabinet of Ministers. It indirectly elects the president of the republic who mainly has ceremonial powers. The Constitution of Latvia was adopted in 1922 after Latvia declared its independence in 1918. Latvia was occupied by Nazi Germany and the Soviet

Union during the World War II and remained under Soviet occupation until 1990/1991 when it declared its full independence and the legal force of the 1922 Constitution was restored.

In accordance with the Constitution, Latvia is divided into five electoral districts and has a proportional electoral system. The system allows voters to express their preference not only regarding the political party list, but also regarding individual candidates. In line with this system, each voter can express their candidate preference on a party list they have selected by crossing out the name of a candidate and thus giving the candidate one point less or putting a plus next to a candidate's name and thus moving the candidate up the list. Only political parties can present their candidate lists; no individual candidates can stand. In such a system, intensive, personalized negative publicity can play a crucial role in a candidate's election prospects and fosters intensive interparty as well as intraparty competition. The online environment provides for an especially fertile ground for that.

1.1. Evolution of campaign finance regulation

Latvia's campaign finance system is an ever-evolving regulatory regime that responds to emerging issues and constantly identifies and resolves problems that hamper meaningful oversight.

In the early 2000s, before Latvia joined the North Atlantic Treaty Organization (NATO) and the European Union, the international community identified high-level political corruption as a core problem, which it referred to as 'state capture' (Hellman et al. 2000). Latvia's civil society organizations (CSOs) began seeking ways to address the problem through systematic campaign finance data gathering, analyses and advocacy (see Open Society Justice Initiative 2005).

These efforts coincided with international pressure to create an independent anti-corruption agency, which resulted in the establishment of the Corruption Prevention and Combating Bureau (KNAB). In 2002, parliament asked CSO activists whether they would prefer the Central Election Commission or KNAB to conduct campaign finance oversight, and they advocated the latter. Box 1

Latvia's campaign finance system is an ever-evolving regulatory regime that responds to emerging issues.

Box 1. Summary of factors leading to a strong campaign finance regulatory system in Latvia

From a 'wild jungle' in 2001 to a well-regulated system in 2021:

- Strong civil society involvement—first monitoring project in 2001, subsequent in 2002, 2005 and 2006.
- Strong media interest and several serious political finance scandals.
- Fighting corruption was a precondition for EU and NATO accession.
- Creation of an anti-corruption agency (KNAB), which was tasked with control and enforcement (rather than the Central Election Commission).
- Several politicians have championed a campaign finance system overhaul, seeing the broader context and implications for democracy's ability to protect itself through a well-regulated campaign finance system.
- Skilful usage of political 'windows of opportunity': post-scandal, pre-election context, media investigation.

provides a summary of the factors that have led to a strong campaign finance regulatory system in Latvia.

CSOs in Latvia conducted systemic campaign finance monitoring projects in 2001, 2002, 2005 and 2006. In the election years of 2010, 2011 and 2014, the regulatory regime was assessed by the civil society and electoral stakeholders as sufficiently developed and the oversight agency's capacities sufficiently strengthened; so no systemic CSO monitoring was deemed necessary. Laws on campaign conduct were consolidated during this period, which facilitated the inter alia definition of third-party campaigning and introduction of bans on administrative resource abuse, hidden advertisement, and paid TV advertising 30 days before elections. Figure 1 depicts the general evolution of the country's campaign finance regulatory system.

Figure 1. Evolution of campaign finance regulation in Latvia



Source: Compiled by the author.

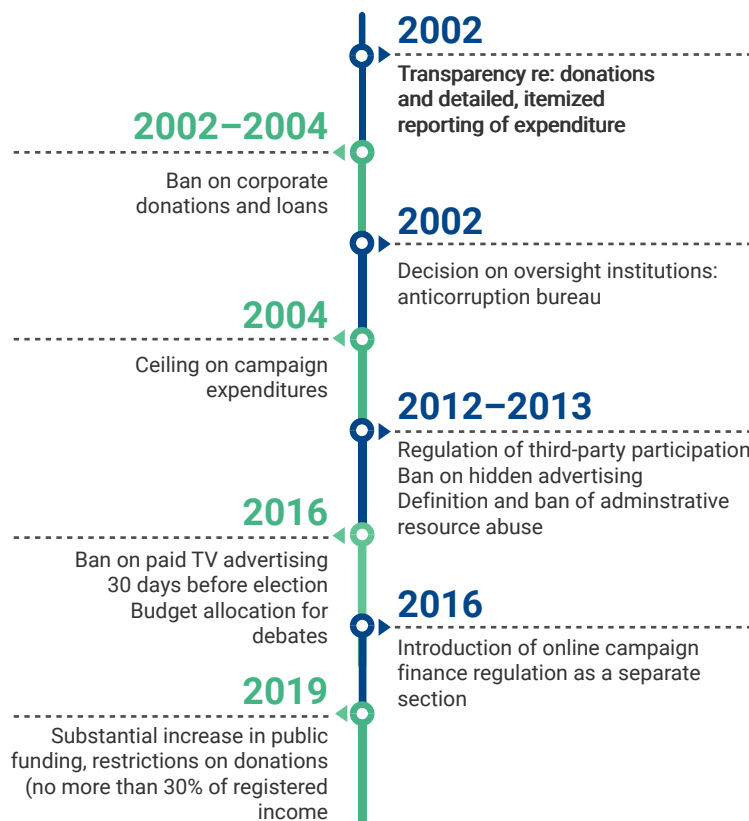
Latvia's detailed campaign finance regulation is stipulated in two main laws—the Law on Financing of Political Organizations (Parties)¹ and the Pre-election Campaign Law.² Figure 2 summarizes the key benchmarks of the development of the campaign finance system.

In many countries, civil society and the public are astonished by the many challenges that online political campaigns present. Such campaign practices are difficult to conceptualize in laws because of overlaps with the principles of freedom of speech in user-generated content, complications in monitoring of

¹ Available at <<https://likumi.lv/ta/en/en/id/36189>>.

² Available at <<https://likumi.lv/ta/en/en/id/253543>>.

Figure 2. Primary benchmarks in campaign finance regulation in Latvia, 2002–2019



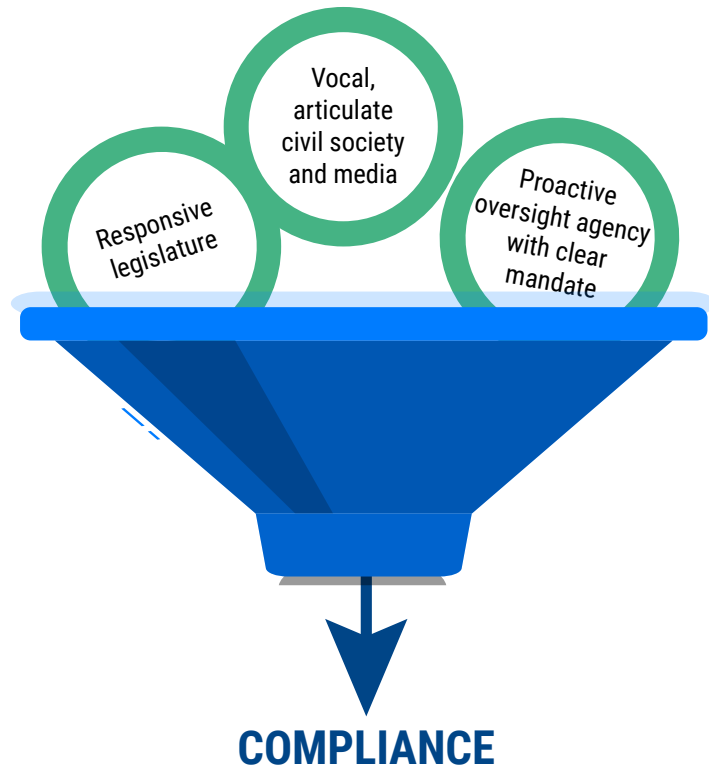
Source: Compiled by the author.

the frequency and content of online campaign ads, and challenges in ensuring the transparency of the origin of the ad and achieving meaningful reporting of online activities by political parties, candidates and third parties. Therefore, election watchers are sometimes discouraged from talking about or pursuing the regulation of online campaign finance because of the sheer number of unknowns tied to it (e.g. OSCE–ODIHR 2022). Latvia, however, over time has passed laws that define and address the most complicated campaign issues and campaign finance is now under comparatively strict and transparent oversight. This situation has been achieved through the constant interaction between the vocal, active and articulate civil society, supportive media, responsive lawmakers and proactive oversight agency. This combination has allowed online campaigning to be regulated at a comparatively early stage and has facilitated the creation of specific rules for online campaign finance regulation.

This process, however, has been characterized by peaks and troughs of activity and capacity on all sides (Box 2). Opportunistic individuals and organizations have challenged the newly agreed principles of campaign finance regulations; therefore, advances in regulation and response have been followed by setbacks.

Without consistent efforts over the past decade, Latvia's political system would have come under serious pressure from foreign financing and influence.

Figure 3. Main elements of compliance














Source: Compiled by the author.

Without these consistent efforts over the past decade, Latvia's political system would have come under serious pressure from foreign financing and influence through both traditional and online campaign means.

The law has required political parties to report all online campaign spending since 2006. Initially this referred to more traditional forms, such as advertising on Internet news portals, and later campaigns' presence on social media. Online campaigning is now mainstreamed in the itemized and detailed political party finance reports, which provide a clear picture of the importance and growth of online campaign expenditures. Deeper analyses of these party expenditures illustrate that political parties have been experimenting with this form of campaigning; the investment in online campaigning varies over time. For instance, Vienotība (Unity), one of the main political parties, spent almost EUR 40,000 on Internet advertising in 2011, only EUR 9,000 in 2014, and almost EUR 40,000 in 2018. Another large party, Harmony, spent approximately EUR 30,000 in 2010 and EUR 10,000 in 2014, but jumped to EUR 99,000 in 2018.

There was a considerable increase in online expenditures during the most recent parliamentary elections in 2018 (see Figure 4), but online advertising still constituted only 12 per cent of total campaign spending. In accordance with the assessment of the KNAB, expenditure on online campaign advertising

Box 2. Examples of 'ups and downs' in the campaign finance system evolution in Latvia

- 2002 Introduction of more transparency: disclosure and declaration 
- 2004 Introduction of campaign expenditure limits 
- 2006 Crude violation of expenditure limits by two party campaign managers posing as third parties 
- 2010 Personalized negative 'newspapers' that constitute negative campaigning against candidates abusing vulnerabilities of the electoral system, third-party negative participation 
- 2011 Serious fines imposed by KNAB, two parties bankrupt 
- 2012 Clear, consolidated definition of third-party status and limits on their expenditures 
- 2013 Additional amendments to the law (hidden advertising, administrative resource, ban on TV ads 30 days prior to election) 
- 2014 More negative attack 'newspapers' as campaign strategy, third-party negative campaigning 
- 2018 Circulation of a negative newspaper that has been 'taken over' for campaign purposes 
- 2018 KNAB stopped the circulation of the newspaper on the grounds that it violated third-party campaign regulations 
- 2018 Anti-corruption agency agrees with social media networks on information sharing, removal of illegal campaign material 

 = advances  = setbacks

Source: Compiled by the author.

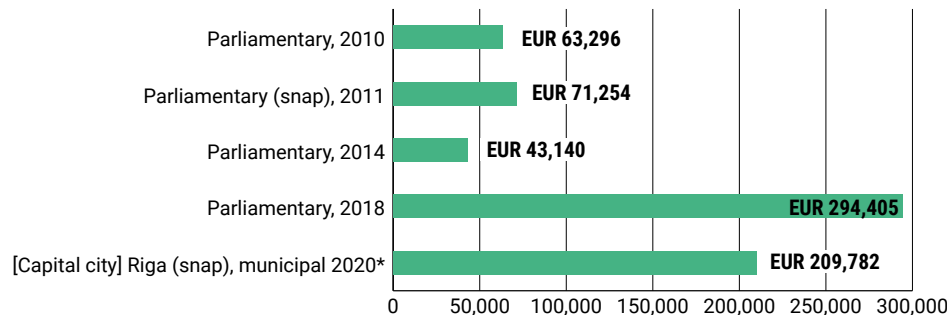
by political actors is proportionally smaller. Moreover, political parties are disincentivized to manipulate the playing field in this way (e.g., by hiding the identity of the source, or attempting to exceed the limit), and would not encourage the participation of third parties and in-kind donors through online activity.

Table 1 provides a detailed overview of campaign finance regulation in Latvia and its relevance to the online campaign finance regulation. The broader purpose of this table is to prove the point that if the legal framework sufficiently addresses the campaign finance in general, it has more ability to also guide the regulatory ideas and approaches for the online environment. This table also serves as guidance for ideas of how some of the more complex campaign finance concepts could be tackled.

1.2. Specific online campaign finance regulation

Table 1 illustrates how online campaigning activity regulation is mainstreamed throughout the law on campaigning, which treats online as an equal medium along with the TV, radio, print and outdoor advertising.

Figure 4. Online spending trends, 2010–2020



Source: Korupcijas novēršanas un apkarošanas birojs (KNAB), Political party finance database, <<https://info.knab.gov.lv/lv/db/deklaracijas>>, accessed 3 May 2022.

Note: Figure displays absolute values.

*Riga, the capital, is the largest and most prosperous municipality; it is generally indicative of campaign trends throughout the country. The volume of online advertising, constituting 13.7 per cent of the total expenditure, may have increased in 2020 due to the Covid-19 pandemic.

However, Latvia also has had specific regulations related to online campaign activities since 2016. In the USA, for instance, despite evidence that paid as well as coordinated unauthentic online content activity from abroad influenced the 2016 election results (Priestap 2017), any mention of Internet campaigning dates back to 2006 when the practice was in its infancy (OSCE 2021: 23). Sections 18–19 of the Pre-election Campaign Law contain specific regulations pertaining to online election campaigning.

- A direct contract is required between the campaigner (political party) and their authorized persons and providers of advertising services. This prohibits intermediation, for instance, by an advertising or PR agency.
- All entities that offer advertising services online at least 150 days before election day must notify KNAB of their price lists for placing election campaign materials, including planned discounts and criteria for their application that will be used for the duration of the campaign. This information is immediately published on the KNAB website and made available to the public; prices and policies cannot be amended after this time.
- If an online advertiser does not supply a price list, they cannot place election material during the 120-day campaign period.
- When placing campaign materials online, the campaigner who paid for the ad must be clearly and unambiguously indicated.

Table 2. Approach to online campaign monitoring

	State institutions	NGO/media
Monitoring of advertising on social media	KNAB (permanent)	Re:Baltica
Monitoring of fakes/disinformation on social media	Special task force (ad hoc)	Re:Baltica, Atlantic Council

Source: Stafecka, L., *Protecting Election Integrity in the Age of Social Media: Best Practices* (Riga: Providus, 2019), <https://providus.lv/article_files/3531/original/ElectionIntegrityBestPractices.pdf?1550844509>, accessed 5 April 2022.

Latvia sent Facebook 12 information requests about 11 accounts in the first half of 2017 (Krutaine 2018).

A significant part of the task force's work involved organizing trainings/ seminars for editors representing national and regional media. Media editors are important electoral stakeholders that can block false information from being amplified and disseminated. Their awareness of this gatekeeper role constitutes an important safeguard against amplifying false information. For instance, during Germany's 2021 Bundestag election campaign, mainstream media reported scandals involving Green Party candidate Annalena Baerbock that seriously damaged the party's approval ratings. While the origins of the smear campaign were not fully ascertained, the German affiliate of Russia Today, known to spread official Russian propaganda, was the third-most viewed news channel online at the time (Berzina et al. 2021).

The task force served as the main cooperation body between all involved state institutions; it held strategy, response and coordination meetings and received and shared updates. A clear chain of command was established in case of emergencies. The task force's main conclusion was that it could not prove that a foreign country had tried to interfere in a coordinated manner in the 2018 parliamentary elections.

3.2. The role of KNAB

KNAB bought the licences of election campaign spending monitoring tools on the largest Internet platforms. This monitoring covered paid advertisements by political parties and affiliated persons as well as other political messages (Stafecka 2019).

Cooperation with the social media platforms improved following several public diplomacy activities, including the president of Latvia visiting the Facebook HQ in Silicon Valley as part of his visit to the USA. Facebook provided all the requested information regarding campaign spending on its platform. The advertising expenses declared by the political parties and disclosed by

Facebook were similar (Krutaine 2018). The successful cooperation with Facebook and Google continued in the 2019 European Parliament election (KNAB 2018).

CONCLUSION

Although it is tempting to attribute the success of online oversight in Latvia to KNAB's investigative and operative powers, these parts of its mandate, although helpful, play a lesser role in its relatively successful oversight. A concise and coherent approach to systemic monitoring and constant improvements in regulatory framework have played a larger role.

Although online campaigning is more difficult to capture due to its decentralized, fragmented and individualized nature and the fact that most popular social networks originate abroad, some countries have developed rigorous campaign oversight traditions and regulatory frameworks that facilitate the ability to oversee the process online as well.

CSOs and the media have played a critical role in observing, monitoring and advocating the constant update of campaign finance rules.

CSOs and the media have played a critical role in observing, monitoring and advocating the constant update of campaign finance rules in response to the changing nature of campaign means and approaches since before Latvia joined the EU and NATO. These efforts have been met with comparatively responsive and understanding lawmakers and an oversight agency that generally implements its mandate meaningfully and consistently.

Social networks have now introduced safeguards against foreign electoral influence, and societies and regulators are more aware of the dangers such influence poses to the quality of democracy. Most widely used social networks now take precautions to sell campaign advertising only to users that originate in the country where the elections are held. In addition, there appears to be an early warning system in place to root out unauthentic coordinated behaviour of online trolls and bots. In addition, for instance during the Bundestag elections in Germany in 2021, most political parties deployed disinformation and misinformation detection and combating teams that served as an early warning system for harmful content (OSCE-ODIHR 2022).

KNAB insists that future cooperation with social media should not rely solely on gentlemen's agreements between state institutions and social networks. The agency also seeks more guarantees that it will receive rapid replies from social networks in case of campaign law violations (Stafecka 2019).

Since the unrestrained online foreign interference in campaigns in 2016, many more safeguards have been put in place to vet the origin of user-generated content as well as paid advertising online—especially in social networks. However, in many places it remains the responsibility of social network companies. The US Congress, for instance, despite massive interference in the 2016 elections did not manage to regulate online and social network conduct

before the 2020 presidential elections, leaving it to the discretion of online media outlets; some adhered to stricter internal regulation than others (OSCE-ODIHR 2021). In countries where the domestic legislation is stricter and clearer and oversight is consistent, regulators seem to be better able to obtain access to information on paid advertising (in addition to publicly available information) and remove harmful content. Latvia, as shown above, has been relatively successful at this. However, such ad hoc strategies and bilateral contracts should evolve into more systematic regional and even global responses given that an increasing number of people are using online content and the further fragmentation of the online space with algorithms that permit the highly personalized targeting of small groups of users or individuals is likely.

Table 3. Main success factors for the effective oversight of online campaign finance in Latvia

Required condition	Main actors	Examples
Continuously evolving campaign finance regulation	KNAB CSOs Media Parliament	A series of timely revisions of the legal framework. Consolidation, codification and modernization of campaign conduct legislation.
Strong independent, systemic monitoring culture, initially developed by CSOs, then foreseen in the law and adopted as a regular practice by KNAB	CSOs KNAB Media	Long tradition of active CSO monitoring. Regulator's clear vision of the benefits of independent monitoring. Regular dialogue between political parties and KNAB: in 2018 KNAB responded to 85 queries about the application of campaign finance regulation. Establishment of a special task force for the 2018 elections.
High degree of transparency of campaign income and expenditure	KNAB CSOs Political parties Private sector	Real-time online reporting of all received donations (no later than 15 days after receipt) from 2002. Publication of price lists by social media platforms. Timely online reporting and publication of political finance information.
Sufficient legal bases for meaningful oversight, i.e. tools that allow KNAB to obtain encompassing overview of all campaign activities	KNAB CSOs Media Parliament	Clearly defined and tested third-party campaign regulation. Sufficiently detailed and applied definition of in-kind donations. Bans on corporate and legal entity donations.
Strong, independent and consistent oversight	KNAB	Accountability mechanism—regular reporting and requirements. Political independence and mandate. Devoted unit. Innovative tools such as mobile reporting application.
Nuanced, proportionate (from mild to severe) sanctions tailored to prevent campaign violations	KNAB Parliament	Ability to first warn and then stop campaigns that violate the permissible campaign expenditure limit. Obligation to inform political party when an in-depth investigation of its donations is launched. All donations that violate the campaign finance provisions or campaign expenditure ceiling are turned over to the state.

Source: Compiled by the author.

