

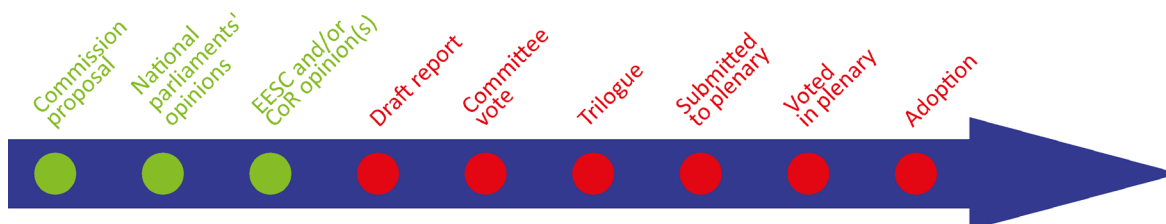
Making representation of third countries' interests more transparent

OVERVIEW

According to the Flash Eurobarometer 528 survey, released in December 2023, 81 % of Europeans believe that foreign interference in our democratic systems is a serious problem that needs to be addressed. The current geopolitical tensions highlight the following dilemma: while international cooperation is required to tackle global challenges such as climate change, including the participation of third countries in the EU debate, such activities also carry the risk of foreign interference in EU policymaking, which can be defined as the harnessing of EU policy proceedings through coercive, covert or deceptive means.

On 12 December 2023, the Commission published the defence of democracy package, which includes a proposal for a directive establishing harmonised requirements on transparency of interest representation carried out on behalf of third countries, as well as two proposals for Council recommendations, one on inclusive and resilient electoral processes in the Union, and one on promoting the engagement of citizens and civil society organisations in public policymaking. The majority of Member States have already adopted legislative or non-legislative measures to regulate interest representation activities in general, with several of them having also established specific registers. This proposal is about ensuring the transparency of interest representation activities geared towards influencing policymaking in the EU as a whole, while also facilitating the exercise of such activities across the single market.

Proposal for a directive 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		
<i>Committee responsible:</i>	Internal Market and Consumer Protection (IMCO)	COM(2023) 637 12.12.2023
<i>Rapporteur:</i>	Pablo Arias Echeverría (EPP, Spain)	2023/0463 (COD)
<i>Shadow rapporteurs :</i>	Sandro Gozi (Renew, France), Alexandra Geese (Greens/EFA, Germany), Virginie Joron (ID, France)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Presentation of the Committee report	



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Introduction

In the EU, policymaking encourages extensive deliberation, among the EU institutions and also between these institutions and Member States, third countries and civil society. Such exchanges allow the Commission or the EU co-legislators to get informed about facts or specific preferences by a wide range of actors, acting in their name or on behalf of a third party, be it a private legal person or a public legal person, including foreign countries.

In its 2021 publication, [Lobbying in the 21st century – transparency, integrity and access](#), the OECD stresses that, while interest representation activities, also known as lobbying, are a feature of democracies, the increasing complexity of policymaking in a context characterised, in particular, by global challenges is blurring the lines between lobbying and diplomacy. The positive contribution of lobbying to the deliberative endeavours of democracies is therefore conditional on an institutional framework able to ensure transparency about the specific interests and messages conveyed by the lobbying organisations.

While a limited number of OECD member states have already adopted specific legislation to handle third countries' interest representation,¹ in the near future the need to further address global challenges through more international cooperation might reinforce the incentives for countries to conduct interest representation activities in foreign countries, also beyond their diplomatic services. In her 2022 State of the Union [address](#), President von der Leyen announced an initiative to defend democracy from covert foreign influence.

With the adoption of the [package](#) on the defence of democracy on 12 December 2023, the Commission aims to tackle the threat of foreign interference with more transparency, and to encourage civic engagement and citizens' participation in our democracies. It comprises the proposed directive and two proposals for Council recommendations which aim to i) promote free, fair and resilient elections and ii) encourage the participation of citizens and civil society organisations in policymaking.

Existing situation

By January 2023, the Commission had assessed that 16 Member States (BE, DE, EL, ES, FR, FI, CY, LT, HU, IE, LU, MT, AT, PL, RO, SI) had already adopted steps (legislative or non-legislative) to regulate interest representation in general, which includes, by default, representation activities carried out on behalf of third countries. By the time the proposal was being prepared, Member States had not yet adopted any specific arrangement regarding third countries' representation activities (Annex 6 of the [impact assessment](#) (IA) accompanying the proposal). Only four Member States (DK, HR, PT, SE) had not yet adopted any step (legislative or non-legislative). The main responses provided to regulate interest representation aim to improve either the transparency of such activities or to strengthen the ethical practices of the interest representatives.

Fifteen Member States (BE, DE, IE, EL, ES, FI, FR, IT, CY, LT, LU, NL, AT, RO, SI) have established transparency registers to monitor representation activities. The geographical scope for such registers does not correspond necessarily to the jurisdiction of each Member State: for instance, in Spain such registers have been established only by several regions, while the Parliament has not yet adopted a proposed law on a national register. Furthermore, not all of these Member States have provided for mandatory registration.

The IA found that there was a general or partial obligation to register in only eight Member States (DE, ES, FR, CY, LU, NL, AT, RO); however, the threshold that triggers the obligation to register differs widely among these countries. The nature of the data to be provided for registration also varies significantly: while almost all Member States with such registers require the interest representatives to be identified, only eight Member States (BE, DE, EL, FR, IT, LU, NL, AT) require the interest representative to provide specific information regarding its clients. The technical solutions and governance arrangements to curate such registers also differ: while one Member State does not use

an IT solution, more broadly the curation of the register is entrusted either to the national/federal parliament, to the government or to an independent authority.

In 11 Member States, codes of conduct have been adopted by public authorities or private entities to provide guidance on support for ethical practices by interest representatives (DE, IE, ES, HR, LV, MT, NL, AT, RO, SI, FI). They can be addressed either to lobbyists, or to public officials, including Members of Parliament.

The differences in the scope, target groups and content of the measures that have been adopted create fragmentation among and across Member States. This is detrimental both to the exercising of interest representation services in the single market, and to its monitoring by public authorities.

Parliament's starting position

On 9 March 2022, the European Parliament adopted a [resolution](#) on foreign interference in all democratic processes in the European Union, including disinformation, based on the report by the Special Committee on foreign interference in all democratic processes in the European Union, including disinformation ([INGE1](#)). It stated its concern regarding integrated lobbying strategies that combine industrial interests and foreign political goals, particularly when they favour the interests of an authoritarian state. While considering the need to assess the responses given by other like-minded democracies across the world, it highlighted Australia's foreign influence transparency scheme as a good practice to follow. It also called on the Member States to consider establishing a foreign influence registration scheme and creating a government-managed register of declared activities undertaken for, or on behalf of, a third country.

In its [resolution](#) of 1 June 2023 on foreign interference in all democratic processes in the European Union, including disinformation, based on the report prepared by the Special Committee on foreign interference in all democratic processes in the European Union, including disinformation ([INGE2](#)), Parliament reiterated its views on third countries' interest representation in the EU. This includes the relevance of mapping foreign funding for EU-related lobbying, and the aim for data on foreign influence through interest representatives at EU level to be widely available and clearly presented.

Preparation of the proposal

The proposal has been informed by several sets of consultations, as well as the preparation of analytical information including an impact assessment.

Consultations conducted by the Commission included Eurobarometer surveys, most notably the Flash Eurobarometer 528 [survey](#), which was conducted during the spring of 2023 and published in December 2023. Asked whether 'entities representing foreign governments on EU territory should be registered to prevent covert interference in our democratic systems', 81 % of respondents across the EU agreed or agreed strongly, while only 14 % disagreed or disagreed strongly; 73 % of respondents thought that foreign interference can affect citizens' voting behaviour, and 42 % thought it was justified for foreign countries to aim to influence the outcome of elections in the EU to defend their interests.

Between February and April 2023, the Commission conducted a public [consultation](#) on the upcoming package on the defence of democracy, in which it outlined the goals of a possible proposal for a directive on common transparency and accountability standards for interest representation services directed or paid for from outside the EU: 1) tackle internal market obstacles related to the negative impact on economic operators; 2) increase legal certainty; 3) reduce fragmentation of the rules on provision of interest representation services paid for or directed from outside the EU; and 4) close regulatory gaps in cross-border situations.

The consultation received 852 submissions in writing, including 12 from outside the EU. Regarding the nature of the activities likely to convey influence from a third country, more than 90 % of respondents considered 'lobbying' or 'public relations, advertising, media campaigns, including

social media' to be likely to influence legislation or other public decision-making, whereas most respondents did not consider 'research' and 'education and training' to be influential. More specifically, more than 85 % of respondents considered that lobbying and public relations activities remunerated by or controlled by third countries carried a high risk of interference. On the need for transparency, more than 95 % of respondents agreed with the need to provide more transparency in the EU regarding lobbying, public relations activities or any other activity conducted on behalf of third countries. More than 90 % of respondents considered that data on the origin and amount of funding, the position of third countries and other entities vis-à-vis financing, and the purpose of financing should be provided by entities conducting such lobbying or public relations activities.

The IA identified three policy options, a non-legislative one and two legislative options that differ as to the scope and magnitude of the legal obligations. The first, non-legislative, option would consist of a recommendation to Member States with a set of measures to allow for the monitoring of interest representation activities carried out on behalf of third countries. The second option would set targets to harmonise transparency requirements for interest representation activities on behalf of governments of third countries and their affiliated entities, on the basis of Article 114 of the Treaty on the Functioning of the European Union (TFEU). They would be accompanied by specific safeguards to address potential risks for actors like civil society organisations; the proposal would contain circumscribed transparency requirements for such entities (record-keeping, registration of information, transparency obligations applicable to interactions with public officials, sanctions). The third option would correspond to the second option, with the addition of a prior authorisation scheme to engage lawfully in interest representation activities on behalf of third countries.

The Commission has chosen the second option. It considered that the first option would not have solved the fragmentation of Member States' regulatory responses, while the third option might have disproportionately limited freedom of association due to its authorisation scheme.

The European data protection supervisor adopted an [opinion](#) on the proposal in February 2024, welcoming the provisions, especially those providing safeguards for the protection of personal data.

The changes the proposal would bring

Scope of the directive, and definitions

The proposal has been adopted on the basis of Article 114 TFEU, which authorises the Union to adopt measures for the approximation of laws among Member States, using the ordinary legislative procedure. Chapter I on general provisions sets the scope and the objective of the proposal, while laying down the definitions of the main terms referred to in the provisions. Article 1 on object and purpose provides for the proposed directive to improve the functioning of the internal market through the adoption of harmonised requirements for interest representation activities conducted on behalf of a third country. Such requirements are expected to enable a common level of transparency across the Union. To ensure consistency of the provisions across the Union, Article 4 provides for full harmonisation, prohibiting Member States from maintaining or introducing any provision on interest representation activities diverging from those included in the proposal.

The scope of the proposal, as laid down in Article 3(1), covers two main sets of use cases: interest representation services, consisting of any activity achieved against payment to influence the design, development or implementation of any public decision-making process (such as the preparation of a proposed law, the examination of amendments to a law, or the adoption of a public investment decision) on behalf of a third country; and 'in house' interest representation activities conducted by a public or private entity whose actions can be attributed to a public authority of a third country, at any level of government, if such activities are linked to or substitute activities of an economic nature.

Article 3(2) expressly excludes from the scope of the proposal activities carried out directly by a third country authority exercising its remit (for instance, the exercising of diplomatic relations), as well legal advice and legal representation conducted on behalf of a third country, when such advice or

representation aims to ensure compliance with the existing legal requirements, or to represent the third country in a legal proceeding.

National registration, transparency and legal safeguards

Chapter II on transparency and registration provides the EU framework to ensure registration of the providers of third countries' representation activities, the transparency of the information disclosed, and the legal safeguards for the natural persons in charge of such activities.

A first set of provisions would ensure systematic registration of interest representation activities. Whereas Article 5 would allow an interest representation provider in charge of a mission to require its client to disclose its affiliation to the third country subject to the proposal, Article 6 would ask such providers to inform their subcontractors that the activity with which they would be involved qualifies as an interest representation activity pursuant to the proposed directive. This would allow such subcontractors not to comply with the requirements for registration and record keeping set out in Chapter II. Parallel to the registration, Article 7 requires the service providers subject to the proposed directive to keep records of four kinds of information for up to four years after the end of the interest representation activity: i) the identity of the third-country entity for whom the activity has been carried out, as well as the name of the third country; ii) a description of the purpose of the activity; iii) the contracts and key exchanges between the service provider and the third-country entity, including the means and extent of the remuneration; iv) information on any key component of the activity.

Article 9, Article 10 and Article 11 set the rules that apply to the registration of providers of interest representation activities. Overall, the proposal would establish a quick registration process, with Article 9 mandating for such registers to be set up and curated by Member States. Article 10 specifies that registration should take place, at the latest, when the representation activities start. Article 11 provides for registration of the service provider within five working days in the relevant national registers. The national authority in charge of the registration should limit itself to checking for manifest errors. In the absence of such errors, the service provider should be notified of their European Interest Representation Number (EIRN). Article 14 mandates the EIRN to be systematically disclosed by service providers and their subcontractors in their contacts with public officials across the Union. Requests to update registered information would be available by electronic means and free of charge pursuant to Article 10.

The situation of service providers established in several Member States would be specifically regulated. Article 10 mentions that an entity established in several Member States should register itself in the Member State of its main establishment. Article 11(4) would require the Member State where the registration takes place to inform the other Member States where the service provider also carries out relevant interest representation activities within five working days of the registration. For service providers not established in the Union, Article 8 obliges them to appoint in writing a legal representative established in the Union, which would be responsible for ensuring their compliance with the proposed directive.

The proposal would ensure that the information registered was made public, and would introduce safeguards to protect personal data. Article 12(1) provides for the public availability of four sets of information, including the name of the registered entity, its main field of activity, the name of the third-country entity to whom it delivers an interest representation service, and the annual payments for all the tasks carried out on behalf of each third-country entity. Such information should be available in an easily accessible, machine-readable format. Article 13 would require Member States to send a report to the Commission each year, including the total number of third-country entities and the aggregated data per third country for the annual amounts spent on interest representation activities. The Commission would then compile the data it receives to publish an annual report. Specific safeguards are provided to balance these publicity requirements with the protection of personal data: Article 12(3) would allow service providers and third-country entities providing an interest representation activity not to publish if it affected their legitimate interests, including

violation of their fundamental rights as protected under the Charter of Fundamental Rights of the European Union.²

Supervision and enforcement

Chapter III would set out the governance to ensure proper enforcement of the proposed directive, including cross-border cooperation among Member States' authorities, and with the Commission.

Article 15 would specify that Member States should appoint one or more authorities responsible for the registration and curation of the national registers, and one or more supervisory authorities in charge of ensuring compliance by service providers and third-country entities active in their jurisdiction. Member States should ensure the functional independence of these supervisory authorities as well as their staff. The authorities should also publicly disseminate information and expertise on the application of the proposed directive.

The supervisory authorities would have the responsibility of assessing compliance by the registered entities with their reporting obligations, especially in the absence of registration (Article 11(8), or in another instance of non-compliance). Article 16(3) gives another legal basis to the supervisory authorities to ask the registered entities for information, either when a registered entity has received more than €1 million from a third-country entity in the last financial year, or whenever a third country has spent – over the last five financial years – €8.5 million on interest representation activities across the EU or €1.5 million on interest representation activities in one Member State. While the supervisory authority should explain which condition in Article 16(3) would apply, as well as the information requested and the judicial review procedures that are applicable, the registered entity should provide the complete information within 10 working days, in an intelligible format.

Failure to comply with requests by the relevant authorities may lead to sanctions, which should be limited to administrative fines according to Article 22. The maximum amount of such a fine should be set at 1 % of the annual worldwide turnover in the preceding financial year for undertakings; 1 % of the annual budget of the entity in accordance with the most recently closed financial year for other legal entities; and €1 000 for natural persons.

Cooperation among supervisory authorities, and between national authorities and the Commission, is encouraged. Article 17 and Article 18 ensure swift cooperation among national supervisory authorities: for instance, each notification from a national supervisory authority to an analogous authority with jurisdiction in another Member State over suspected non-compliance by an entity should be answered within a month following receipt of the notification. Also, Article 19 establishes an advisory group to the Commission, composed of one representative per Member State, which should support the Commission in facilitating the sharing of information across the Union, and also report any divergence in the implementation of the proposed directive. The European Parliament and the EFTA (European Free Trade Association) States may be invited to attend the meetings of the group as observers. The opinions of the advisory group may be harnessed by the Commission to adopt delegated acts.

Final provisions

The proposal would empower the Commission to adopt delegated acts, on the basis of Article 10(9), to adapt the information necessary to register entities in charge of a representation service or activity, but also, on the basis of Article 13(3), to update the information to be provided by Member States in their annual reporting to the Commission, and, on the basis of Article 16(9), to adapt the financial thresholds triggering the information requests sent by the supervisory authorities to the registered entities.

The proposal would also amend [Directive \(EU\) 2019/1937](#) on the protection of persons that report breaches of Union law to extend its scope to internal market rules related to transparency and good governance, and to mention the proposal in the list of Union acts corresponding to the scope of the Directive.

While Article 27 provides for the entry into force of the proposal on the 20th day following its publication in the Official Journal, Article 26 mandates Member States to achieve the transposition within 18 months of its entry into force.

According to Article 25, the Commission would be expected to present a report on the implementation of the proposed directive to the Parliament, the Council and the European Economic and Social Committee (EESC) one year after the transposition deadline. Then, the Commission would be entrusted with evaluating the directive and presenting its main findings to the Parliament, Council and EESC four years after the transposition deadline.

Advisory committees

The EESC adopted an [opinion](#) on the defence of democracy package, which includes the proposed directive, on 25 April 2024, during its plenary session; the opinion supports the proposal. The rapporteur was Christian Moos (Civil Society Organisations – GR III, Germany).

National parliaments

Two reasoned [opinions](#) were submitted by national parliaments by the deadline of 21 March 2024. The Hungarian National Assembly adopted a [resolution](#) on 19 March 2024, where it challenges the choice of the legal basis for the proposal, as well as several of its provisions, such as the choice of a full harmonisation approach. On 13 March 2024, the Irish Houses of Oireachtas also adopted a reasoned [opinion](#), based on the opinion adopted earlier by the Joint Committee on Finance, Public Expenditure And Reform. While welcoming the adoption of the defence of democracy package, the Irish Houses deem the rationale for choosing the legal basis to be unclear, and stress the discrepancies between the proposed provisions and several current Irish provisions on lobbying regulation which also include criminal sanctions, whereas the proposal would oblige Member States to adopt only administrative fines.

Stakeholder views³

The European Partnership for Democracy, a network of non-profit organisations active in promoting democracy globally, has published an [opinion](#) in which it acknowledges the reality of foreign interference and its adverse impacts on democracy, while expressing its doubts regarding the focus of the proposal. The focus on interest representation activities conducted on behalf of or by third-country entities would not cover all the risks of foreign interference, which might continue to be conducted through other legal means, such as the creation or control of EU-based legal entities by third countries. However, although it considers that the proposed directive would be ineffective in reining in the full spectrum of foreign interference, EDP stresses that the focus on third countries might fuel a risk of discrimination against such third countries, authorities and persons. EDP therefore calls on the co-legislators to amend the proposed directive to turn it into a 'general transparency act' that would require the registration of all entities exerting interest representation activities in the EU, regardless of their place of establishment and the origin of their funding.

The European Civic Forum, another pan-European network of associations active in 29 European countries, provides a similar [analysis](#) of the proposal. It highlights its concern that organisations in charge of conducting activities to promote democracy through grants from like-minded third countries such as the United States might face issues in continuing their operations.

The European University Association co-signed an [open letter](#) to express its concerns regarding the proposal. While also stressing its doubts regarding the scope of the proposal, which might lead to stigmatisation of those entities funded by third countries, it emphasises the risks that the proposal may pose for freedom of research, if the tabled transparency obligations thwart access to funding and international cooperation.

Several stakeholders also praised the proposal. Carnegie Europe published a [paper](#) in 2024 on the defensive turn in support for European democracy, where it notes that the proposal would illustrate

a shift in the EU's democracy agenda, with a renewed interest in improving the democratic playing field inside the EU to better contribute to its global commitment to democracy.

Legislative process

In the Parliament, the file was referred to the Committee on Internal Market and Consumer Protection (IMCO) and Pablo Arias Echeverría (EPP, Spain) has been appointed rapporteur.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

Szczepanski M., [EU anti-coercion instrument](#), EPRS, European Parliament, March 2024.

Evroux C., [Enhancing research security](#), EPRS, European Parliament, March 2024.

Caprile A., [Foreign interference in EU democratic processes: Second report](#), EPRS, European Parliament, May 2023.

OTHER SOURCES

[Establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries](#), Legislative Observatory (OEL), European Parliament.

ENDNOTES

- ¹ This is notably the case in the United States, with the [Foreign Agents Registration Act](#) of 1938. The Act requires the persons representing the interest of a foreign principal (including a foreign government, business, association or individual) to register their activities and funding in a register curated by the US Department of Justice. In 2021, 450 active registrants were representing around 750 foreign principals. FARA includes a registration exemption for eight categories: diplomatic or consular offices; officials of foreign governments; staff members of diplomatic or consular offices; private and non-political activities; religious, educational and scientific activities; defence of a foreign government vital to US defence; persons qualified to practice law and engaged in legal representations; and persons engaged in lobbying activities but registered under the Lobbying Disclosure Act.
- ² The proposed Article 12(3) enumerates [Article 1](#) (Human dignity), [Article 2](#) (Right to life), [Article 3](#) (Right to the integrity of the person), [Article 4](#) (Prohibition of torture and inhuman or degrading treatment or punishment) and [Article 6](#) (Right to liberty and security).
- ³ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.

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