

IN-DEPTH ANALYSIS

Requested by the ING2 special committee



Legal loopholes and the risk of foreign interference



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ABSTRACT

There is ample evidence that malign foreign actors are engaging in foreign interference in the politics and democracy of the European Union (EU) and its Member States. Much of this foreign interference escapes identification or censure by exploiting loopholes in the EU's legislative and policy acquis. This in-depth analysis identifies some of those loopholes and proposes measures to close them. An EU focal point would significantly improve the EU's capacity to investigate and respond strategically to foreign interference, its strategic drivers and related financial flows. Foreign interference should be restricted by criminalisation, sanctions and a ban on foreign involvement in third-party election campaigning. Legitimate foreign influence should be made more transparent by enhancements to the EU Transparency Register and stricter 'revolving door' requirements. To minimise online manipulative practices, political candidates and incumbents should formally pledge to avoid them, the public relations industry should be encouraged to scrutinise its ethical codes and a compendium could be prepared with a view to eventual restrictions. In all these activities, the EU should take care to ensure that its measures are compatible with fundamental rights and do not have the impact of shrinking civil space.

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List of abbreviations

A-G	Attorney-General
CoC	Code of Conduct
CSO	Civil Society Organisation
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EU	European Union
FARA	United States' Foreign Agents Registration Act
FBI	Federal Bureau of Investigation
FITS	Australia's Foreign Influence Transparency Scheme
GRU	Russia's Main Intelligence Directorate
INGE(2)	European Parliament's Special Committee on Foreign Interference in all Democratic Processes in the European Union, including Disinformation
MEP	Member of the European Parliament
OECD	Organisation for Economic Co-operation and Development
OSCE	Organisation of Security and Cooperation in Europe
PR	Public Relations
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
USA	United States of America

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1 Introduction

This in-depth analysis identifies policy areas in which European Union (EU) legislation or other measures could be adopted in order to prevent and deter foreign interference in the democratic and political processes of the EU as well as its Member States¹.

Foreign interference is illegitimate interference in the politics and democracy of the EU and its Member States by foreign powers. There is ample evidence that malign foreign actors, in particular Russia and China, are engaging in foreign interference campaigns: for example, China's COVID-19 propaganda and disinformation campaigns in Central Europe (Karásková et al, 2020) and Russia's regarding the war in Ukraine². Foreign interference can be strategic and targeted: a foreign power may deploy multiple methodologies and tactics in order most effectively to interfere with the democratic and political processes of its target state(s) (Bentzen, 2020). Such strategic attempts at interference call for holistic investigation and strategic responses by the EU and its Member States, identifying and responding to interference as a threat to European security.

This analysis does not attempt to re-diagnose the challenges posed by foreign interference, as defined by the Special Committee on Foreign Interference in all Democratic Processes in the EU, including Disinformation (INGE)³ but to explore potential new solutions. The EU and its Member States have taken many measures to reduce the impact of interference, both in the online information environment⁴ and in political and democratic processes more generally (see Table 1). However, in some areas, such as tackling foreign interference aggressors and strengthening democratic processes specifically to shield against foreign interference, few measures have yet been taken (Andriukaitis et al, 2021). This paper's proposals aim to contribute to filling these gaps.

This paper uses the term **foreign power** to encompass foreign (i.e. non-EU) states, governments and political parties, as well as entities associated with them (for example, operating under their direction, authority or control). It therefore includes state-owned companies but does not include foreign-registered private companies except where indicated.

Section 2 discusses steps to tackle foreign interference. It recommends holistic investigation, potential criminalisation as well as sanctions and restrictions on foreign involvement in third-party election campaigning. Tackling foreign interference would disrupt perpetrators, deter third parties who might otherwise work with them, expose pernicious interference attempts, clearly define unacceptable behaviour and demonstrate a 'zero tolerance' approach. Properly calibrated foreign interference measures may also contribute to establishment of good practices internationally and potentially to future international normative development in this field. The aim of such measures would not be widespread prosecution or punishment of foreign interference, given likely jurisdictional and evidentiary obstacles in many cases.

Section 3 discusses measures to reduce risks arising from foreign influence, recommending increased transparency of lobbying activities and a strengthening of the rules on engagement of former politicians and officials by foreign powers. **Foreign influence** is distinct from foreign interference. It includes all activity by foreign powers which has the aim or effect of influencing EU politics and democracy. Foreign influence is a normal and legitimate aspect of international relations and diplomacy. Accelerated globalisation, advances in digital technologies, increased public engagement in policy-making, social and

¹ The author would like to thank all those individuals who kindly consented to be interviewed or provided written material that contributed to this report, as well as the reviewers and editors for their valuable comments.

² European External Action Service's East StratCom Task Force flagship project, [EUvsDisinfo](#).

³ INGE Studies, [Briefings, In-Depth Analysis and EP Research](#).

⁴ European Commission's [webpage](#) on Tackling online disinformation.

political fragmentation, as well as the rise of ‘modern authoritarian regimes’ have all contributed to a rapid increase in foreign influence (Mansted, 2021). When foreign influence is covert or deceptive, it may facilitate or cloak foreign interference: hence the need for transparency.

Section 4 discusses measures to promote good practice both by disavowing online manipulative practices and by identifying and potentially restricting such activity, regardless of origin. **Online manipulative practices** are those adopted with the aim of distorting political and democratic processes, whether conducted by foreign or domestic actors. They include deceptive practices such as disinformation campaigns and measures for clandestine artificial amplification of specific viewpoints. Such practices, while available to both foreign and domestic actors, are frequently deployed by those engaging in foreign interference.

The following table (Table 1) provides an overview of current restrictions on foreign interference and transparency measures for foreign influence in political processes, together with the potential further measures discussed in this paper.

Table 1: Current and potential responses to foreign interference and foreign influence in political and democratic processes

Foreign interference and influence in political processes: potential responses	
Investigation, prosecution and punishment: current	Well-resourced independent prosecutors and judiciary
Potential further measures	<i>Focal point for investigation and strategic response</i>
	<i>International sanctions</i>
Legal restrictions on foreign interference: current	Nationality restrictions for holding public office
	Limitations on foreign funding of political parties
	Laws on espionage and cyber-attacks
	Corruption and bribery laws
	Laws against hate speech
Potential further measures	<i>Criminal offence of foreign interference</i>
	<i>Ban on foreign involvement in third-party campaigning</i>
	<i>Ban on lobbying by certain sectors</i>
	<i>Restrict foreign powers’ capacity to engage former politicians and senior officials</i>
	<i>Discourage and restrict online manipulative practices</i>
Transparency measures on foreign influence: current	Transparency Register
	Register of interests for politicians
	Transparency of political advertising
Potential further measures	<i>Foreign Transparency Register</i>
	<i>Transparency of former politicians/senior officials’ engagements with foreign powers</i>

Societal and environmental defences against foreign interference: current and in development	Robust protection of freedom of opinion and expression, robust data protection
	Strong civic appreciation of national/regional identity and values
	Strong democratic participation
	Robust ethics codes for politicians and civil servants
	Digital and media literacy, and critical thinking skills
	Infrastructure for free and fair elections
	Well-resourced independent, ethical and diverse media
	Well-resourced independent and active civil society
	Digital platform policies and accountability
	Fact-checking services
	Rapid detection of and responses to disinformation and influence operations

Source: Author's own compilation.

This paper does not aim to be comprehensive. In focusing on measures to tackle foreign interference with democratic and political processes, this in-depth analysis does not address foreign interference outside the political context, ranging from foreign investment and ownership of strategic assets such as critical infrastructure to attempts to manipulate the media and to skew the direction of university research. Similarly, this paper does not focus on measures outside the political context that may have an impact on foreign interference, such as measures under competition laws or immigration rules.

1.1 Protecting fundamental rights and civic space

Any measures to tackle foreign interference, to increase the transparency of foreign influence, or to tackle manipulative practices must be consistent with the fundamental human rights of those affected and should not have the impact of shrinking civil space.

Measures that restrict foreign actors' capacity to express themselves freely, or to associate with whomsoever they please, are likely to infringe their human rights to freedom of expression and association respectively. Any such measures must therefore be prescribed by law, with sufficient precision that anyone affected can regulate their conduct accordingly and foresee the consequences of their actions. In addition, any measures must pursue a legitimate aim such as the interests of national security or prevention of disorder and must be necessary in a democratic society and proportionate to the legitimate aim pursued (European Court of Human Rights, 2022a; 2022b). Freedom of expression protects not only the content of information but also the means of its dissemination (European Court of Human Rights, 1990; 1999; 2012) – however, it is unlikely to protect the use of deceptive manipulative practices to amplify information.

The European Parliament has previously expressed concern about shrinking space for civil society in Europe, including as a result of restrictions on foreign funding of civil society organisations (CSOs) (European Parliament, 2022a). Both the European Court of Human Rights (ECtHR) and the European Court of Justice (ECJ) have found restrictions and registration requirements on foreign-funded CSOs, imposed by Russia and Hungary respectively, to breach CSOs' right to freedom of association. Foreign interference measures should not have the impact of restricting civil space, save to the extent necessary and proportionate to achieving the aim of reducing foreign interference. Consequently, any requirements imposed to guard against foreign influence, such as transparency of CSO funding, should not stigmatise or be unduly onerous for foreign-funded organisations.

In finding rights-respecting ways of tackling foreign interference, the EU and its Member States are demonstrating their capacity to tackle this scourge while safeguarding and reinforcing the core principles of their democracies, including respect for fundamental rights and open democratic debate. This approach should be contrasted with that of less democratic states. For example, Singapore's Foreign Interference (Countermeasures) Act 2021 also targets foreign interference but does so by creating vague and wide-ranging offences and affording its government broad discretionary powers to proscribe and limit online communication. The EU and Member States should take care to ensure and demonstrate publicly how their responses to foreign interference are implemented while respecting fundamental human rights and civic space.

2 Foreign interference

2.1 Introduction

Foreign interference is illegitimate interference by foreign powers in the democratic and political processes of the EU and Member States. It includes covert or coercive interference by a foreign power in the political or governmental system from within, such as politicians and officials who are working for or under the influence of overseas regimes; influence on the political system from without, such as abuse of the lobbying system, corruption, espionage, cyber-attacks; and manipulative influence on public engagement or views, for example through online disinformation and manipulation campaigns.

The term ‘foreign interference’ reflects the names of the INGE and INGE2 Special Committees and is consistent with the terminology used by the United States of America (USA), Australia and the United Kingdom (UK). It is synonymous with ‘third country interference’ and ‘external interference’, also used by the EU institutions (Berzina and Soula, 2020). Qualifiers such as ‘malign’, ‘malicious’ and ‘manipulative’ are unnecessary, as ‘interference’ is illegitimate as defined.

Various provisions of EU and Member State laws – such as anti-corruption laws and nationality restrictions for holders of public office – have the effect of blocking or restricting foreign interference (see Table 1 above). But there are few measures that directly tackle foreign interference. This section proposes four sets of potential measures to tackle foreign interference:

- Systematic investigation;
- Criminalisation;
- Imposition of international sanctions;
- Restriction of foreign funding of and participation in third-party election campaigning.

2.2 Systematic investigation of foreign interference

The perpetrators of foreign interference may adopt a strategic approach to their toolbox of foreign interference methodologies, selecting techniques according to their target’s vulnerabilities. To defend against such an approach, a strategic response is required, combining investigative and strategic decision-making capabilities across the spectrum of potential foreign interference threats. A centralised investigation and decision-making capacity would facilitate increased understanding of foreign interference threats, a capacity for information-sharing and targeted investigation, as well as implementation of strategic country-specific deterrence and vigilance measures.

Moreover, such a centralised capacity would enable investigators to ‘follow the money’, crucial to understanding foreign interference as a strategic threat. In the words of Tom Keatinge, ‘Western democracies must fight to protect themselves from the influence of malign financial flows, strategic corruption and the broad weaponization of finance by adversary countries’ (Keatinge, 2022).

At present, a wide range of disparate EU public and private institutions witness different elements of foreign interference. For example, there is no structured relationship between those who administer the Transparency Register, those who assess requests for approval of post-Institutional employment and those who investigate online information operations.

Some other democracies have already established centralised investigative points for foreign interference. For example, the US Foreign Influence Task Force, led by the Federal Bureau of Investigation (FBI), aims to identify and counteract foreign interference operations targeting the USA. According to the FBI’s website, such operations include: the use of false personas and fabricated stories on social media; targeting US officials and others through traditional intelligence tradecraft; efforts to suppress voting and provide illegal

campaign financing; cyber-attacks against voting infrastructure; and exploiting elected officials (FBI, 2022a).

As previously proposed by the INGE Special Committee, a European Centre for Interference Threats and Information Integrity could meet the need for a centralised investigating and decision-making capacity (European Parliament, 2022b). Any such centre should harness the expertise and capacities of civil society and academic organisations to support its investigative efforts. At domestic level, investigations could be undertaken by intelligence agencies or interior ministries.

2.2.1 Recommendation

The EU should establish a focal point for investigation and strategic responses to foreign interference.

2.3 Criminal offence of foreign interference

2.3.1 The problem to be addressed

At present there is no general prohibition of foreign interference in the EU. Perpetrators may engage in it and third parties may assist them, without fear of penalty unless their conduct happens to amount to an existing offence (such as bribery or criminal hate speech). Yet there is widespread evidence that hostile states are deploying foreign interference techniques in order to damage political processes within the EU. Criminalisation would directly target and stigmatise such activity.

2.3.2 Fundamental rights

Any criminal offence restricting freedom of expression is likely to be compatible with Article 11 of the EU Charter of Fundamental Rights if it is clearly defined and limited by law, serves the aim of protecting European democracy and political purposes from foreign threats, and is proportionate to that aim, including by being limited to activity perpetrated by, or connected with, a foreign power and constraining only activity that includes an element of deception, coercion or threat, similar to the limitations of the Australian and proposed UK offences.

2.3.3 Comparative approaches

Australia criminalised foreign interference in 2018, as part of its national Counter Foreign Interference Strategy⁵. The UK's National Security Bill, currently undergoing Parliamentary scrutiny, proposes new offences of foreign interference and foreign interference in elections (UK, 2022a).

The USA does not have an offence of foreign interference but has launched prosecutions for other offences against individuals associated with foreign powers allegedly involved in election interference. Twelve Russian nationals, all members of the Russian intelligence agency, Main Intelligence Directorate (GRU), were indicted for interfering in the 2016 Presidential elections. The charges against them are: criminal conspiracies to commit offences against the USA through cyber operations and through attempting to hack into public and private computers; aggravated identify theft and using stolen identities to further a computer fraud scheme; and conspiracy to launder money to fund costs related to their activities (United States Department of Justice, 2018). The defendants remain on the FBI's 'Most Wanted' list (FBI, 2022b).

The tightly constrained elements of the Australian and the proposed UK offences of foreign interference are summarised in Table 2. To date one person has been charged under the Australian law (Needham, 2020), while others have been investigated (Australian Associated Press, 2021). The High Court of Australia has upheld the validity of search warrants issued against one individual under the Act (High Court of Australia, 2021a). The British Government has announced its intention to designate foreign interference

⁵ Australian Government Department of Home Affairs' webpage on [Australia's Counter Foreign Interference Strategy](#).

a ‘priority offence’ under the Online Safety Act, once enacted, meaning that social media platforms will have an obligation proactively to look for and tackle foreign interference on their services (UK Department for Digital, Culture, Media and Sport, 2022).

Table 2: Australian (in force) and United Kingdom (proposed) offences of foreign interference⁶

	Australia	United Kingdom (proposed)
Title	<p>Intentional foreign interference (Australian Government, 1995: section 92.2)</p> <p>(a) Interference generally; or (b) Interference involving a targeted person</p>	<p>Foreign interference (UK, 2022a: clause 13)</p>
Action	A person engages in conduct	A person engages in conduct
Foreign element	<p>They do so</p> <ul style="list-style-type: none"> on behalf of/in collaboration with; or directed/funded/supervised by a foreign principal or a person acting on their behalf. 	<p>They do so</p> <ul style="list-style-type: none"> for or on behalf of a foreign power (including instigation by/under direction or control of/with financial or other assistance of/in collaboration or agreement with a foreign power); and they know, or ought reasonably to know, that this is the case.
Intention	<p>Interference generally:</p> <p>The person intends that the conduct will</p> <ul style="list-style-type: none"> influence a political or governmental process in Australia; influence the exercise of an Australian democratic or political right or duty; support intelligence activities of a foreign principal; or prejudice Australia’s national security. <p>Interference involving a targeted person:</p> <p>The person intends that the conduct will influence another person (the target)</p> <ul style="list-style-type: none"> in relation to a political or governmental process of Australia; or in the target’s exercise of an Australian democratic or political right or duty. 	<p>The person intends that the conduct will</p> <ul style="list-style-type: none"> interfere with the exercise of a right in the European Convention on Human Rights by a particular person; affect the exercise of public functions; manipulate whether/how public services are used; manipulate participation in UK political processes; manipulate participation in UK legal processes; or prejudice UK safety or interests.

⁶ Related offences, such as knowingly or recklessly supporting a foreign intelligence agency, are not included in this table.

Criminality, deception or threat	<p>Interference generally:</p> <p>Any part of the conduct:</p> <ul style="list-style-type: none"> • is covert or involves deception; • involves a threat to cause serious harm; or • involves a demand with menaces. <p>Interference involving a targeted person:</p> <ul style="list-style-type: none"> • The person conceals that intention from/fails to disclose it to the target. 	<p>The conduct either:</p> <ul style="list-style-type: none"> • constitutes an offence (or would do if it took place in the UK); • involves coercion such as threats, violence or financial loss; or • involves making a misrepresentation (express or implied).
Maximum sentence	20 years' imprisonment	14 years' imprisonment
	Reckless foreign interference (Australian Government, 1995: section 92.3)	
Elements	As for intentional foreign interference, substituting recklessness for intention	
Maximum sentence	15 years' imprisonment	
		Foreign interference in elections (UK, 2022a: clause 14)
Activity		Commission of a relevant electoral offence
Foreign element		As above
Maximum sentence		2-7 years' imprisonment, depending on the electoral offence
General conditions (all offences)	Attorney-General's consent required for prosecutions	Attorney General's consent required for prosecutions

Source: Author's own compilation.

2.3.4 Options for EU measures

Article 83(1) of the Treaty on the Functioning of the European Union (TFEU) provides for the establishment of minimum rules for criminal defences and sanctions in the areas of 'particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis'. Acting unanimously after obtaining the consent of the European Parliament, the Council of the EU (hereafter mentioned 'Council') may add to the areas of crime listed in Article 83(1).

Foreign interference is serious, threatening the political stability and integrity of the EU and its Member States. By its nature, it has cross-border dimensions both between the EU and non-EU States and between the EU and Member States. There is an evident need to combat it on a common basis, given evidence of orchestrated interference by some foreign powers in several Member States and the EU institutions as well as the interrelated nature of European democracy.

Foreign interference shares characteristics with crimes already listed in Article 83(1). Like terrorism, it may be directed against the security and stability of democratic institutions. Like money laundering, its actors are frequently transnational and may exploit legal loopholes in any affected state in order to achieve their goals. It would therefore be open to the Parliament and the Council, acting with the specified majorities, to add foreign interference to the list of crimes in Article 83(1) and then to establish minimum definitions, elements and penalties for its prosecution, narrow enough for consistency with fundamental rights.

The Australian and proposed UK crimes, with their broadly similar elements, provide valuable starting points for an EU offence of foreign interference. The EU's own expertise in identifying and tackling disinformation and other forms of foreign interference would also help inform the content of an EU offence. For example, the European External Action Service's (EEAS) current definition of 'foreign information manipulation and interference' is slightly different from the elements of the Australian and UK offences, as it is restricted to 'intentional and coordinated' behaviour but includes activity by non-state actors⁷.

The likely effectiveness of a foreign interference offence is difficult to measure. The offence will make it more difficult and more costly for foreign states to engage in foreign interference. The offence may curb criminal behaviour and deter third parties within the EU from supporting foreign actors in that behaviour. It will demonstrate the EU's perception that foreign interference is a criminal activity that should not be tolerated, and the EU's commitment to tackling it. Issues of jurisdiction and evidentiary sufficiency mean that the number of prosecutions may be very small: in Australia, for instance, only one set of proceedings has been brought in the first four years of the offence. In the USA, indictment of individuals in respect of the 2016 elections has not resulted in successful prosecution.

Criminalisation of foreign interference may also have indirect effect: it may encourage social media companies to devote more resource to detecting and tackling foreign interference on their platforms. Conceivably, it might be relevant in discussions on the extent to which foreign interference is or should be prohibited in public international law.

2.3.5 Recommendation

The EU should consider adding foreign interference to the areas of crime in Art 83(1) TFEU, and legislating to criminalise offences of foreign interference, with such elements as (i) foreign involvement; (ii) manipulative intent; and (iii) deception, coercion or threat.

2.4 International sanctions in response to foreign interference

2.4.1 The problem to be addressed

The EU currently has no foreign policy tool by which to impose costs upon the perpetrators of egregious offences of foreign interference, so as to retaliate against foreign interference and deter potential aggressors from engaging in it.

The European Parliament has previously called upon the EU to strengthen its deterrence tools with a view to establishing an effective sanctions regime, observing that targeting individuals may not be sufficient and other tools such as trade measures could also be envisaged (European Parliament, 2022b). Similarly, the European Democracy Action Plan raises the possibility of imposing sanctions following repeated foreign influence offences (European Commission, 2020).

⁷ European External Action Service's [webpage](#), Tackling Disinformation, Foreign Information Manipulation & Interference, 2021.

2.4.2 Fundamental rights

Any international sanctions that have the effect of interfering with individuals' or entities' fundamental rights, particularly their freedom of expression, must be defined by law and narrowly confined so as to be proportionate and necessary to the aim of restricting foreign interference. In addition, any international sanctions must be consistent with public international law, as discussed below.

2.4.3 Comparative approaches

The USA imposes sanctions in response to foreign interference in US elections. Under Executive Order 13848 of 12 September 2018, the US intelligence agencies must assess whether there has been foreign interference in a US election, such as tampering with election infrastructure or covert distribution of propaganda and disinformation, within 45 days of that election occurring (US Presidential Documents, 2018). The US Attorney-General and the Secretary of Homeland Security are then charged with evaluating the intelligence assessment to establish the extent to which foreign interference materially affected the security or integrity of the election or of a campaign or candidate. The Secretary of the Treasury reviews their assessment and makes a decision on the imposition of sanctions. Sanctions can include asset freezes, travel bans and restrictions on the largest business entities within the country whose government supported the foreign interference.

Sanctions have been issued against 101 individuals and entities under this provision, including the Russian Intelligence Services (Federal Security Service, GRU and Foreign Intelligence Service), the Internet Research Agency and its affiliates. Those sanctioned include entities and individuals who were found to have attempted to influence the 2020 US presidential election at the behest of the Russian government. The Treasury issues brief public explanations of its sanction decisions (US Department of the Treasury, 2021).

These sanctions for foreign interference complement Executive Order 13757 of 28 December 2016, which authorises sanctions against individuals or entities determined to have been complicit in or responsible for malicious cyber activities, including tampering with information in order to undermine elections or institutions (US Presidential Documents, 2016).

2.4.4 Options for EU measures

Sanctions targeting foreign interference could be adopted by the Council, acting by unanimity under the Common Foreign and Security Policy. In principle, a sanctions regime could target either individuals or organisations overseas.

Any sanctions regime must be compatible with public international law. Any targeted measures against individuals and entities (including state entities), such as travel bans and asset freezes, constitute an interference with their human rights and may be challenged before the ECJ's General Court. The Court will wish to be assured that any measures are justified and proportionate to the goal pursued, and that the individuals affected have been given concrete and specific reasons for the measures, supported by adequate evidence.

Any sanctions which restrict the capacity of overseas media organisations, other entities or individuals to disseminate information will infringe their fundamental right to freedom of expression. Such measures may be taken only if they are clearly laid down by law; foreseeable and temporary; pursue an objective of general interest; and are proportionate, in other words appropriate and necessary to the aims to be achieved. The General Court has upheld temporary bans on broadcasting imposed against *RT* and *Sputnik*, in respect of their systematic propaganda campaigns in support of destabilisation and aggression against

Ukraine (General Court, 2022)⁸. However, the thresholds are so high that only in extreme situations are bans on broadcasting likely to be compatible with them.

Any sanctions against states or state entities must be consistent with the United Nations' draft Articles on the Responsibility of States for Internationally Wrongful Acts (the 'draft Articles') (United Nations, 2001), either as lawful acts of retorsion (i.e. acts that are not unlawful as a matter of international law)⁹, or as lawful countermeasures taken in response to an unlawful act in order to bring about the cessation of the act and reparation for the wrong caused. Establishing the lawfulness of countermeasures is likely to be challenging, for two reasons: foreign interference is not clearly unlawful as a matter of international law (Hollis, van Benthem and Dias, 2022); and even if it were unlawful, the complex relationships between actors involved in foreign interference may make it difficult to attribute that interference to a state to the legal standard of 'instruction', 'direction' or 'control' required by the draft Articles (Bogdanova and Vásquez Callo-Müller, 2021). The lawfulness of countermeasures does not have to be established for sanctions that constitute retorsion, such as withholding aid, suspending or withdrawing diplomatic relations, and imposing economic sanctions that are not inconsistent with any legal obligations – including under multilateral and bilateral trade agreements - owed by the EU or its Member States towards the state being sanctioned¹⁰.

The European Parliament has suggested that sanctions for foreign interference could include trade measures, similar to the US regime (European Parliament, 2022b). Doing so may have more impact than asset freezes and travel bans in deterring foreign interference. However, as discussed, if sanctions were to involve the taking of measures contrary to a trade agreement or other international obligation, their compatibility with public international law would be in doubt.

A sanctions regime targeting foreign interference would be analogous to the sanctions regime targeting cyber-attacks adopted by the Council in 2019 (Council of the EU, 2019a; Council of the EU, 2019b) which has been used to impose sanctions against individuals, companies and state entities, namely the perpetrators of the WannaCry/NotPetya/Operation Cloud Hopper cyber-attacks and the 2015 Bundestag hack (Council of the EU, 2020a; 2020b). The EU has imposed this cyber sanctions regime despite similar questions concerning the illegality and attribution of cyber-attacks. However, at present there is a greater degree of consensus as to the illegality of serious cyber-attacks as a matter of public international law than there is for the illegality of foreign interference (UN General Assembly, 2021). The cyber sanctions regime entails imposition of asset freezes on persons and entities responsible for or supporting cyber-attacks and does not include trade measures.

The likely effectiveness of a sanctions regime would be similar to the Council of the EU's assessment of the sanctions regime targeting cyber-attacks: the regime would 'influence the behaviour of potential aggressors in cyberspace, thereby reinforcing the security of the Union and its Member States' and would 'encourag[e] cooperation, facilitat[e] the mitigation of immediate and long-term threats, and influenc[e] the behaviour of potential aggressors in the long term' (Council of the EU, 2019a: preambular paragraph 2).

⁸ The judgment is subject to appeal.

⁹ For state practice on measures of retorsion in response to hostile cyber activity, see the Cyber Law Toolkit, [Retorsion: national positions](#), 2022.

¹⁰ See national positions to this effect, including from some EU Member States via the Cyber Law Toolkit, [Retorsion: national positions](#), 2022.

2.4.5 Recommendation

The EU should consider imposing sanctions in response to serious cases of foreign interference with political processes, such as interference in election campaigns. Such sanctions must be imposed consistently with the human rights of individuals and entities affected. Sanctions prohibiting the dissemination of information are likely to be consistent with freedom of expression only in extreme cases. Sanctions against state entities should not entail infringement of any international legal obligation of the EU or its Member States.

2.5 Foreign funding of and participation in third-party election campaigning

2.5.1 The problem to be addressed

Foreign interference risks are heightened during election periods. Foreign funding of political parties and candidates is not discussed in this paper as it is already the subject of a draft Regulation (European Commission, 2021). Distinct from funding political parties and candidates, foreign interference may take the form of ‘third-party campaigning’, in other words, engagement in political campaigning by individuals or entities who operate independently of a political party or candidate. Foreign powers may become involved in such campaigning in two ways:

1. **Foreign third-party campaigning:** undertaking campaigning themselves. For example, a foreign power may run social media campaigns for or against political parties or candidates.
2. **Foreign-funded third-party campaigning:** funding other entities, unrelated to political parties or candidates, which engage in political campaigning. For example, a foreign power may donate money to a pro- or anti-abortion organisation which is campaigning in favour of a specific political party or candidate because of its stance on abortion.

Third-party election spending has increased significantly in the 21st century (OSCE, 2020). In 2016, before concern arose about foreign interference in elections, the Organisation for Economic Co-operation and Development (OECD) highlighted the risks to elections posed by the funding of third parties, enabling evasion of spending limits by re-channelling election spending through supposedly independent bodies (OECD, 2016).

Even when the purpose of election interference may be to sow division and undermine confidence in political systems, as the purpose of Russian election interference has been identified, a significant proportion of this interference takes the form of third-party campaigning designed to affect voter preference for or against specific parties or candidates (Brattberg and Maurer, 2018).

To restrict foreign and foreign-funded third-party campaigning would therefore be to restrict foreign interference in elections.

2.5.2 Fundamental rights

Third-party campaigners have a right to freedom of expression, which may be subject only to restrictions prescribed by law and consistent with international standards (ECtHR, 1998).

Consequently, any restrictions on foreign power involvement in election campaigning should be clearly and narrowly legislated and should be necessary and proportionate to the purpose of supporting democratic self-government free of interference. Any restrictions should be limited to subject matter and/or time periods that may have an impact on elections.

In particular, care must be taken to limit the scope of any ban on third-party financing to campaigning on elections and not to restrict financing for campaigning on issues. The freedom of civil society bodies to

receive foreign funding, including in support of advocacy for social change, is extremely important in a democratic society and is a freedom for which the EU has often advocated. This freedom has been upheld by both the ECtHR (ECtHR, 2022c) and the ECJ (ECJ, 2020). A clear distinction should be maintained between funding of issue advocacy, including advocacy for social change, and funding of election campaigning.

Other democratic states which limit foreign third-party campaigning draw the same distinction. For example, in the USA, the Supreme Court has repeatedly taken the view that it is constitutional for the government to exclude foreign citizens from activities 'intimately related to the process of democratic self-government', including funding of third-party campaigning, but not to exclude them from 'issue advocacy' that does not expressly advocate for or against a specific candidate (US Supreme Court, 2012).

2.5.3 Comparative approaches

USA: Federal law prohibits foreign funding of third-party campaigning. Federal law bans any contributions, donations, expenditures and disbursements solicited, directed, received or made directly or indirectly by or from foreign nationals in connection with any federal, state or local election. This includes a prohibition on 'independent expenditure', defined as 'an expenditure for a communication that expressly advocates the election or defeat of a clearly identified candidate and that is not made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate, or his or her authorized committees or agents, or a political party committee or its agents' (US Code of Federal Regulations, 2022: Title 11).

Canada: Federal law prohibits third parties from using foreign funds for electoral campaigning or advertising. Moreover, the law prohibits foreign third parties (parties who are not Canadian nationals, permanent residents or actual residents and are not businesses otherwise active in Canada) from incurring campaigning expenses during pre-election periods (Government of Canada, 2000).

UK: The Elections Act 2022 restricts third-party campaign spending to UK-based entities and eligible overseas electors, as well as requiring any campaigners spending more than GBP 10 000 during an election period to register with the Electoral Commission (UK, 2022b). This follows a 2021 recommendation from the Committee on Standards in Public Life to ban foreign organisations or individuals from buying campaign advertising in the UK, in line with the principle of no foreign interference in UK elections (UK Committee on Standards in Public Life, 2021).

Sweden: The Swedish Penal Code bans any person from accepting money from a foreign power with the intention of influencing public opinion on the foundations of the country's form of government or on matters of significance to the country's security (Swedish Ministry of Justice, 1962).

2.5.4 Options for EU measures

The draft EU Regulation on the statute and funding of European political parties states that the funding of third parties in elections to the European Parliament is a matter for the national law of each Member State. Most European countries do not regulate third-party funding or campaigning (OSCE, 2020).

In 2016, the OECD called for rules to limit spending on third-party campaigning to influence voters for or against a party or a category of candidates, while observing that there were grey areas as to what kind of political activities should be subject to third-party campaigning regulation. That report did not focus on foreign influence (OECD, 2016: 56). In a 2020 review of third-party campaigning, the Organization for Security and Co-operation in Europe (OSCE) recommended that restrictions on foreign financing of political parties and candidates be extended to third-party campaigning (OSCE, 2020: para 85), in order to close down potential avenues for circumventing restrictions on sources of donations.

Consequently, the EU and/or Member States should consider banning foreign third-party campaigning and foreign-funded third-party campaigning during election periods, while framing those bans narrowly

for consistency with fundamental rights as discussed above. Given the prevalence of foreign interference in the form of online election campaigning, such a ban could have significant effect, both deterring foreign interference and encouraging social media platforms to detect and remove it.

2.5.5 Recommendation

The EU and/or Member States should ban foreign and foreign-funded third-party election campaigning.

3 Foreign influence

3.1 Introduction

Foreign influence on political affairs is a normal and legitimate element of international relations. Governments routinely seek to influence each others' affairs and decision-making in order better to advance their own interests. In doing so, they make positive contributions to open democratic debate. In general, liberal democracies are more open to foreign influence than authoritarian regimes (Mansted, 2021). Foreign influence activities include diplomacy, lobbying and public communications.

The crucial distinction between foreign influence and foreign interference is that the former is open and honest whereas the latter is covert and/or deceptive. The recipient of foreign influence is aware of the source and nature of the influence.

The nature and tools of foreign influence have evolved rapidly in recent years. While such evolution brings benefits to democratic processes, it can herald risks of foreign interference if it facilitates or shields covert or deceptive activities such as corruption or espionage. Such foreign interference may damage democracy by enabling unwitting prioritisation of foreign over domestic interests as well as facilitating access to contacts and networks which may be leveraged for interference and espionage purposes.

This Section of the paper discusses potential EU responses to two specific developments in foreign influence that herald risks of foreign interference. First, foreign powers increasingly contract Public Relations (PR) agencies, law firms and other entities to advocate on their behalf in foreign capitals and fund CSOs to do the same (**'foreign interest lobbying'**). Sections 3.2 and 3.3 below consider potential responses. Second, foreign powers increasingly bolster their lobbying power and networks by recruiting former politicians and senior officials in support of their influence efforts (the **'revolving door'**), discussed in Section 3.4.

Foreign powers may respond to any measures imposed by the EU with reciprocal measures. Besides fundamental rights concerns, there is therefore a mutual political benefit in ensuring that any restrictions on foreign influence are limited to those necessary to prevent foreign interference, while guarding against further interference through transparency. Worldwide, more transparency of foreign influence should generate more open and informed decision-making.

3.2 Transparency of foreign influence

3.2.1 The problem to be addressed

As discussed above, foreign influence is open and honest whereas foreign interference is clandestine and deceptive. At present, there are inadequate transparency measures for legitimate foreign influence, specifically foreign interest lobbying, to ensure that it cannot be used to hide foreign interference in European political affairs. Although the EU Transparency Register was strengthened in 2021, it does not clearly reveal foreign influence as it does not provide results by reference to principal (the source of the influence) and, being optional, does not include requirements or strong incentives for foreign interest lobbyists to register. Increasing transparency should have no adverse impact on legitimate lobbying activities, yet should act as a shield against foreign interference.

3.2.2 Fundamental rights and civic space

Any measures to mitigate the risks of foreign interference arising from foreign interest lobbying should not erode the EU's commitments both to open, robust democratic debate and processes and to civic space.

Measures to promote lobbying transparency may infringe the fundamental rights of foreign principals and advocacy groups, particularly if they are unnecessarily onerous or discriminatory as between domestic and

foreign principals. Transparency measures may nonetheless be imposed but any such measures must interfere with rights to freedom of expression and association only to the extent that they are clearly defined by law, serve the legitimate aim of reducing foreign interference and are necessary and proportionate to that aim.

The Australian Foreign Influence Transparency Scheme, discussed below, provides a good example of transparency measures consistent with human rights. The High Court of Australia has found the Scheme to be constitutional and consistent with Australia's implied freedom of political communication, because although the Scheme burdens that freedom, it does so only modestly and is necessary and proportionate to the aim of protecting Australia's political and electoral processes (High Court of Australia, 2021b).

As regards rules affecting the foreign funding of CSOs, the EU must exercise caution not to restrict or stigmatise such funding, which would be contrary to the EU's support for civic space (European Parliament, 2022a: paras 37 and 47). The Commission successfully took legal action against Hungary in respect of the onerous registration, declaration and publication requirements it imposed on foreign-funded CSOs, for breach both of Article 63 of the TFEU (free movement of capital) and of the fundamental rights to private and family life, protection of personal data and freedom of association (ECJ, 2020). Similarly, the ECtHR found that the Russian Foreign Agents Act, which stigmatised foreign-funded CSOs, subjected them to inspections and document disclosure requirements, placed restrictions on their operation and in some instances led to their dissolution, violated the right to freedom of association of the CSOs affected (ECtHR, 2022c).

In its judgment, the ECtHR stated that the objective of increasing transparency in the financing of associations may correspond to the legitimate aim of protection of public order (ECtHR, 2022c: para 122). However, the ECtHR agreed with the ECJ that this objective cannot justify legislation based on an indiscriminate presumption that foreign funding poses risk of jeopardy to the state's political and economic interests and its ability to operate free from interference (ECtHR, 2022c: para 166; ECJ, 2020: para 86). Any EU-imposed actions must be consistent with this ruling: they must be narrowly tailored to tackling foreign interference and markedly less onerous than those imposed by Hungary and Russia.

Any restrictions must not constitute a restriction on the free movement of capital within the EU, prohibited by Article 63 TFEU unless within the scope of a specific justification (ECJ, 2020). Further, experience shows that measures designed to protect CSOs from funding abuse can in practice have a negative impact on CSO funding levels. Until 2016, Recommendation 8 of the Financial Action Task Force required states to take steps to prevent abuse of funding of civil society and the humanitarian sector by terrorists. Its impact was the imposition of restrictions on CSO funding that caused significant narrowing of civil society space (Baydas, 2017; Rutzen, 2015). Care must be taken to avoid transparency or other requirements that might have similar effects.

3.2.3 Comparative approaches

Some states, including a wide array of EU Member States, have non-binding or compulsory lobby registers that capture foreign interest lobbying among their entries. Only the USA and Australia currently have transparency regimes focusing specifically on foreign interest lobbying. The US Foreign Agents Registration Act (FARA) has required registration of foreign agents since 1938, when it was introduced as part of efforts to counter foreign propaganda in the run-up to the Second World War. In 2018, Australia introduced a Foreign Influence Transparency Scheme (FITS). More states may soon join them: the UK has recently published a draft Foreign Influence Registration Scheme; and Canada, which already has a Registry of Lobbyists that includes foreign activity, is considering introducing a foreign agent registry. The following table (**Table 3**) summarises the existing and proposed schemes.

Table 3: Foreign Influence Transparency Registers

	United States	Australia	United Kingdom (proposed)
Name of scheme	Foreign Agents Registration Act (FARA)	Foreign Influence Transparency Scheme (FITS)	Foreign Influence Registration Scheme (proposed)
Legislation	FARA 1938	FITS Act 2018	National Security Bill
Who has to register	Individuals acting on behalf of foreign principals (governments, political parties, companies, civil society organisations or individuals) who are engaged in political activities or other activities under the statute.	Any person acting on behalf of a foreign principal (government, political organisation, government related entity or individual) for the purposes of political or governmental influence.	Any person acting on behalf of a foreign power, company or association. A foreign power, company or association acting themselves (excluding other governments).
For what activity	Political activities or those designed to influence the US government or public regarding domestic or foreign policy; perception management efforts or public relations; publicity agent; fundraising or disbursement of funds; lobbying Congress or the Executive Branch.	Parliamentary or general political lobbying; communications activities; disbursement activities (e.g., the payment of money or things of value).	Political activities for the purpose of influencing UK public life e.g., elections, government decisions or Parliamentary proceedings, including communications with UK ministers, election candidates, Members of Parliament or senior civil servants. Public communications; disbursement activities.
Where	Department of Justice: FARA Unit of the Counterintelligence and Export Control Section in the National Security Division	Attorney-General's Department: FITS Scheme	
Register is public	Yes	Yes	Yes (subject to data protection legislation)
Restrictions on those who have registered	Make periodic public disclosures of their relationships with the foreign principal and of activities, receipts and disbursements in support of those activities.	Reporting of registrable activities. Enhanced obligations during election periods.	
Consequence of violation	Prosecution for 'wilful violation'. Civil enforcement by Attorney-General for injunctions to prevent violations and for other enforcement. Potential prosecutions of public officials.	Criminal offences for failing to comply; failing to register; providing false or misleading information.	Criminal offences for failing to register; providing inaccurate information; etc. Enhanced tier: where the Secretary of State has specified a foreign power, as necessary for the safety and interests of

			the UK, there are further offences carrying higher penalties.
More information	Foreign Agents Registration Act Department of Justice	Foreign Influence Transparency Scheme Attorney-General's Department (ag.gov.au)	Foreign Influence Registration Scheme (FIRS): National Security Bill factsheet - GOV.UK (www.gov.uk)

Source: Author's own compilation.

The US scheme, unchanged since the advent of the digital age, is currently a rather blunt instrument. On the one hand, its enforcement has increased in recent years. There were 10 successful prosecutions between 2017 and 2021, some stemming from Russian interference in the 2016 election (US Department of Justice, 2022).

On the other hand, the US scheme has been widely criticised for its breadth and ambiguity (Covington, 2019) and is accused by civil society of capturing an unduly broad range of individuals and organisations and chilling legitimate political speech (International Center for Not-for-Profit Law, 2022). It was cited by Russia as a precedent for its foreign civil society registration law, arguably because of its apparent breadth (Rebo, 2021). A task force of the American Bar Association has recommended reforms, and the US Department of Justice has recently sought suggestions in advance of planned amendments to the FARA implementing regulations (American Bar Association, 2021; US Federal Register, 2021).

Pending reform of the US scheme, the Australian and proposed British schemes offer more helpful precedents, as they have been or are being established to promote transparency of contemporary foreign influence.

The breadth of those who must register varies between all three schemes in two ways. First, in broad terms, the US and Australian schemes require registration by foreign agents engaging in political activities on behalf of foreign principals. In the case of the draft UK scheme, registration is required both by foreign agents and by foreign principals themselves, except for foreign governments. Second, the US scheme and the proposed UK scheme require registration of individuals acting on behalf of any foreign principals engaged in political activities, whether those principals are in the public, private or third sectors. In contrast, the Australian scheme restricts registration to persons conducting political or governmental influence activities on behalf of foreign governments, political organisations, government related entities and government related individuals.

In its submission to an ongoing review of FITS, the Australian Attorney-General's (A-G) Department, which administers Australia's scheme, has proposed that the definition of 'foreign principal' in the Australian legislation be extended, similar to that in the US' scheme. It observes that the current focus on entities closely connected to a foreign government or political organisation means that 'there are instances where it is not capturing activities where the connection to a foreign government or political organisation is opaque or difficult to establish', and that broadening the definition would enable more effective enforcement of the scheme in those instances (Australian AG's Department, 2021: 17-18).

Between 2018 and October 2022, 104 individuals and entities registered with the Australian scheme, covering 434 activities on behalf of 209 different foreign principals from 42 countries (Australian A-G's Department, 2022). There have been some criticisms that the sign-up rate could be higher (Iggulden, 2019). The Australian experience indicates that an adequate public information and communications strategy is important for successful initial implementation of the scheme (Australian A-G's Department, 2022).

As regards effectiveness, the A-G's Department assesses that:

'The department has seen behavioural change following the introduction of the Scheme. Some organisations and individuals have chosen to tailor their activities and arrangements to the Scheme's obligations, in order to make transparent the extent of their relationship with a foreign principal. Others have chosen to cease engaging in certain activities that would otherwise be subject to registration. Some entities have integrated consideration of foreign influence risks into their institutional policies and practices, to ensure that instances of foreign influence are appropriately registered with the department.' (Australian A-G's Department, 2021: 11)

The A-G Department assesses that the scheme performs an important role in providing transparency of foreign influence. It receives dedicated ongoing funding of approximately AUD 2.2 million per year to administer the scheme and has 13 staff to support administration. The scheme results in a modest regulatory burden on the range of individuals and entities required to register (Australian A-G's Department, 2022).

The A-G Department receives information about non-compliance, to which it calibrates its investigative responses on a case-by-case basis. The most serious cases can be referred to the Australian Federal Police for criminal investigation. Up to November 2021 no such referrals had been made. The A-G Department and commentators have suggested that the enforcement capacities of FITS should be expanded to include more civil as well as criminal measures and so provide more calibrated response options (Australian A-G's Department, 2021: 19). The scheme has been criticised for low registrations and enforcement, with some criticising its failure to take a targeted approach to threats from different jurisdictions (Ward, 2021). The draft UK scheme does adopt a calibrated approach, as it allows for Ministerial designation of foreign powers for enhanced scrutiny.

3.2.4 Options for EU measures

The EU Transparency Register (hereafter 'Transparency Register') was strengthened significantly in 2021 following conclusion of an Interinstitutional Agreement (European Parliament, Council of the EU and European Commission, 2021). All individuals, companies or organisations engaging in activities with the objective of influencing policy, legislation or decision-making are eligible for registration, with few exceptions. The Transparency Register includes foreign agents and principals, except foreign governments acting on their own account.

Registration is not mandatory but is incentivised by making certain activities conditional upon registration. These include meetings with senior officials and politicians, entry to buildings and invitations to speak at hearings or public events. Registered individuals and organisations must comply with the Code of Conduct (CoC) annexed to the Interinstitutional Agreement. The CoC requires registrants to be open about their affiliation and objectives; refrain from dishonesty or improper pressure; keep their registered information up to date; respect the Institutions' rules; and avoid inducing breaches.

The Register's Secretariat examines registration material by reference to open-source data. It can launch an investigation either on its own initiative or by following up third party complaints. As the primary function of the Transparency Register is transparency rather than investigation, staff resources devoted to investigations are small.

The Transparency Register could be strengthened in a number of ways to increase the transparency of foreign influence. The Australian experience since 2018, discussed above, provides an indication of the likely impact of doing so.

1. *Clearer presentation of data on foreign influence*

The Transparency Register does not currently clearly reveal foreign influence. At present information on foreign interest lobbying cannot easily be disaggregated from information about other forms of influence.

The Transparency Register provides results by reference to lobbying entity and interest but not by reference to client. For example, it is not readily apparent whom the Chinese Government and Chinese entities have contracted to engage in political activity on their behalf¹¹.

If foreign influence is to be transparent, it should be possible to search for results by reference to the principal (the source of the influence) as well as the agent. For each of the world's countries, it should be possible to see a list detailing the entities that are engaged in lobbying, in what policy areas and with what budget. This would then mirror the Australian FITS which enables the A-G's Department to provide statistics on how many foreign principals are listed and from which jurisdictions. As at present, the register should not include direct contacts between foreign states and the EU, nor any contacts instigated by the EU.

Because it entails risks of foreign interference, foreign influence differs from other political influence. Consequently, there is a rationale for enhanced transparency requirements for foreign influence. Foreign influence would be more visible and could be subject of more stringent requirements and oversight if it were to be registered separately from other influence, either in a separate register or a distinct section of the Transparency Register. Such separation would mirror approaches taken in the US, Australian, proposed UK and potential Canadian registers.

2. *Stronger requirements or incentives for foreign interest lobbyists to register*

The current incentives for registration may not persuade all foreign interest lobbyists to register. They may be content to conduct influence activities without meeting senior officials, accessing the premises of the EU institutions or addressing events, for example by conducting meetings off-site and with less senior officials who may have operational responsibility for policy briefs. If an organisation is seeking to engage in foreign interference, it is unlikely to be incentivised to join a voluntary register.

A mandatory Register would likely result in more registrations. Alternatively, stronger incentives could also help promote registration. There is legitimate reluctance to strengthen incentives for all influencers, so as not to deter or prevent contacts with vulnerable actors who may be ill-equipped to register. This reluctance should not extend to foreign powers. As regards foreign interest lobbyists, incentives could be increased to encompass more contact with European officials or institutions; ultimately, all but passing casual contact, or contact initiated by the EU, could be made contingent on registration.

Having a separate Register, or section of the existing Transparency Register, devoted to foreign influence would simplify the application of tighter rules to foreign interest lobbyists than to other influencers.

¹¹ To give a specific example: a search for 'Qatar' returned a list of 11 entities. One of these is a state-owned company registered in Qatar (Qatar Airways). Others include civil society groups whose membership includes Qatari persons or entities (such as the European Academy of Dermatology and Venereology) and groups with interests in Qatar (such as the Fédération Internationale de Football Association). The list of 11 entities does not include any institution acting for the Qatari Government. However, a search for 'DLA Piper' reveals that one of its current clients is the 'Mission of the State Qatar to the European Union and NATO'. Similarly, a search for 'China' provides 185 results, ranging from CSOs with concerns about activities in China, to EU public entities with offices in China, to global business associations with Chinese members, to organisations lobbying on China-related issues. It is not immediately evident which of the 185 have connections with the Chinese Government or other Chinese principals.

3. *Strengthened requirements or incentives for disclosure of foreign funding of non-commercial organisations*

At present, registrants who do not represent commercial interests must provide information on their budgets and sources of funding. They must state their main sources of funding by category (EU funding; public financing; grants; donations and/or members' contributions), the amount and source of each contribution above EUR 10 000 that exceeds 10 % of the organisation's total budget and the total budget for the most recently ended financial year. This information is noted in the Transparency Register.

This provision ought to capture CSOs funded by foreign powers. However, a recently declassified US intelligence assessment asserts that Russia's influence attempts between 2014 and 2022 include using front organisations, such as CSOs, to pass money to preferred causes or politicians in Europe (AP in Washington, 2022). This report indicates that the current rules are not tight enough to forestall foreign interference via CSO funding.

Assuming the US information is correct, strengthening transparency requirements for foreign-funded CSOs could, if properly tailored, serve the legitimate purpose of tackling foreign interference. As discussed above, any stronger requirements will breach fundamental rights if they stigmatise or restrict foreign funding of non-governmental organisations. Moreover, they risk shrinking civil society space if their effect is to restrict such funding. Requirements should therefore be tightly defined and should not have the impact of stigmatising or restricting foreign funding.

4. *Increased enforcement capacity*

The purpose of the Transparency Register is transparency, not prosecution. Consequently, enforcement is very low. While the Register's administrators can launch investigations either on their own initiative or following receipt of a complaint, they have access only to open-source data and not to any other institutional source of investigative data. As the Transparency Register is not legally binding, there is no opportunity to investigate those who choose not to register.

The principal sanction for non-cooperation or breach, removal from the Transparency Register, risks making influence non-transparent.

It is recommended that there be more capacity to investigate and prosecute breaches of the foreign influence section of the Register, given the threat that foreign influence poses to European democracy, supported by a wider array of enforcement tools. A centralised investigation capacity, as discussed in Section 2.1 above, would assist in the strategic tackling of potential foreign interference threats arising from foreign interest lobbying. Making the register binding would entail that more resource should be devoted to enforcement.

Consideration could be given to enhanced enforcement in respect of influence from designated countries, as proposed in the UK and as some have recommended in Australia.

5. *Labelling lobbying activities*

Alongside strengthening the Transparency Register, the EU could consider increasing transparency specifically for the benefit of those to whom lobbying is directed. For example, interest representatives could be required to state their government affiliation prior to or at the start of every meeting with Parliamentary, Commission and Council officials. Similarly, all online foreign lobbying activity could be required to carry an imprint to that effect.

3.2.5 Recommendations

Transparency of foreign influence is vital if it is not to facilitate or shield foreign interference such as corruption or espionage. Consequently, it is recommended that the EU Transparency Register be enhanced by presenting data on foreign influence more clearly. This could most effectively be achieved by establishing a Foreign Influence Register, or a Foreign Influence section of the existing Transparency Register.

The Transparency Register should be searchable by reference to principal as well as agent, so that it is possible to see how each foreign power is exerting its influence. There should be stronger requirements or incentives for foreign powers to register as well as enhanced enforcement capacity. Consideration could be given to enhanced enforcement in respect of designated foreign powers.

The EU should consider enhanced registration and disclosure requirements for CSOs receiving foreign funding, while taking care to comply with human rights obligations and to maintain civic space by refraining from unduly onerous commitments or stigmatising foreign funding.

The EU should consider embedding transparency at the time of lobbying, by requiring interest representatives to declare any foreign power affiliation at the start of any meeting and requiring any online political activity (not just advertising) to carry an imprint if conducted for the benefit of a foreign power.

3.3 Restriction of foreign influence?

3.3.1 The problem to be addressed

The EU has restricted foreign influence from Russia. In its sixth package of sanctions on 3 June 2022, the EU prohibited the provision of public relations services as well as business and management consulting to the Russian government and entities (Council of the EU, 2014a; Council of the EU; 2014b). These sanctions constitute countermeasures taken in response to Russia's unlawful acts in Ukraine, with the aim of encouraging Russia to change her behaviour; they are not responses to perceived foreign interference in the EU. Some EU Member States argue that the sanctions should be strengthened by inclusion of an explicit ban on Russian funding for EU-registered lobbying firms and CSOs (Rettman, 2022). Others argue that foreign influence should be restricted in a wider range of situations than the exceptional circumstances of the Ukraine conflict.

3.3.2 Comparative approaches

Taiwan has restricted foreign influence but only from 'foreign hostile forces'. Taiwan's Anti-Infiltration Act forbids activities by foreign hostile forces that constitute not only interference but also influence. Election interference and the spread of disinformation, political donations and lobbying are all prohibited under threat of jail terms and/or fines. This restriction applies only to 'hostile forces', namely any country or group at war or in a military stand-off with Taiwan that threatens to jeopardise its sovereignty. Therefore, it addresses the threat Taiwan faces from China (Government of Taiwan, 2020).

3.3.3 Options for EU measures

It has been suggested that there should be legislative restrictions preventing lobbying on behalf of some foreign powers, particularly 'repressive regimes' (Corporate Europe Observatory, 2022). However, such restrictions would restrict legitimate political communication and dialogue with regimes which are not necessarily hostile to the EU but have poor human rights and democracy records. Save in exceptional circumstances, restricting dialogue with such regimes may be difficult to justify and could have a counterproductive effect of embedding division and non-cooperation. More proportionate to the aim of reducing foreign interference would be a power to designate regimes that must meet enhanced

transparency requirements, as discussed above. Restrictions on lobbying risk being viewed as a hostile political act that could risk reciprocal measures and have significant consequences for diplomatic relations.

A more fertile ground for consideration would be restrictions on lobbying for the interests of specific sectors, such as the fossil fuel industry. These would parallel existing, well-established constraints on lobbying by the tobacco industry (World Health Organization, 2003: Article 5.3)¹². Such restrictions fall outside the scope of this paper as they would have wider objectives and impact than the restriction of foreign interference and their justifications for any interference with human rights would rest, at least in part, on different rationales. Nonetheless, in light of the significant interplay between foreign government and industry interests in some sectors, the extensive lobbying in these sectors and the important economic and political interests at stake which could conceivably motivate foreign interference, it is recommended that this avenue be explored further.

3.3.4 Recommendations

The EU should not restrict foreign influence, save in exceptional circumstances.

The EU should explore the possibility of prohibiting or limiting lobbying for the interests of specific sectors, such as the fossil fuel industry, where current practice demonstrates extensive lobbying, important interests at stake as well as significant interplay between foreign power and industry interests that raises the risks of foreign interference.

3.4 The 'revolving door'

3.4.1 Introduction

In general, there is considerable media and civil society disquiet over the assumption of other employment by politicians and senior officials recently departed from European Institutions and respective governments of EU Member States. This stems from a number of high-profile cases in which there appear to have been conflicts of interest and reports from the European Ombudsman raising concerns about a 'permissive institutional culture' (O'Reilly, 2022).

As this paper focuses on foreign influence, it considers only the potential engagement by foreign powers of European and Member State politicians and senior officials. Such engagement, if not transparent or constrained, may deploy the knowledge, networks and profile of former politicians and senior officials to amplify and distort foreign influence in European and Member States affairs. Consequently, the 'revolving door' risks facilitating foreign interference. The following table (**Table 4**) summarises the existing rules for European politicians and senior officials on professional activities after leaving office, as the rules vary slightly between institutions.

¹² There has been criticism of EU measures to implement constraints on lobbying by the tobacco industry, see Hawkins and Holden, 2018.

Table 4: Rules for Members of the EU Parliament (MEPs), Commissioners and senior EU officials on assuming political engagements after leaving office

Rules for	MEPs	Commissioners	Senior Officials	National politicians and senior officials	Potential strengthening
Source of rules	Rules of Procedure of the European Parliament	Code of Conduct for Members of the European Commission	Staff Regulations of Officials of the European Union; Commission Decision C(2018) 4048	Domestic law.	Harmonise the rules.
Requirement to report approaches by foreign power while in office	None	None	None	Varies according to domestic law.	Introduce requirement.
Restrictions and transparency requirements on assuming roles with foreign power immediately after leaving office	Indefinite requirement to inform the European Parliament of professional lobbying or representational activities directly linked to the EU decision-making process. May not benefit from facilities granted to former MEPs while engaging in such activities.	For two years (three years for the President of the Commission), Commission scrutiny of intention to engage in professional activity. If linked to Commissioner's former portfolio, Commission must consult Independent Ethical Committee.	For two years, must seek approval of intended occupational activity. If the activity is related to the official's work in last three years of service and could lead to a conflict of interest, it may be refused or permitted with conditions. For twelve months, senior officials in principle prohibited from lobbying their former institution on matters for which they were responsible.	Varies according to domestic law.	Strengthen the restrictions and their enforcement. Consider prohibiting engagement with a foreign power or make approval subject to specific regard to the risk of foreign interference. Maintain a public register of any role with a foreign power.
Restrictions and transparency requirements thereafter	Above requirement is indefinite.	Duty of integrity and discretion.	Duty of integrity and discretion.	Varies according to domestic law.	Introduce long-term or indefinite duty to register publicly any role with a foreign power.

Source: Author's own compilation.

At present, Commissioners and senior officials must seek approval for professional activities assumed within, generally, two years of leaving office. However, the European Ombudsman has criticised enforcement of these rules. Only cases in which approval is withheld are reported publicly. Former MEPs must report lobbying or representational activities to the Parliament. In most cases there are no indefinite restrictions or transparency obligations, save for a general duty of integrity and discretion.

3.4.2 Comparative approaches

In Australia, the FITS scheme requires former Cabinet Ministers to register any activity undertaken on behalf of a foreign principal, after any period and including non-political activity, unless an exemption applies (e.g., if delivering humanitarian assistance). Former members of the Australian Parliament and senior officials must register any activity undertaken on behalf of a foreign principal which draws on the experience, skills or contacts of their former position, except for transparent employment arrangements. This applies for 15 years after conclusion of their Australian political or governmental positions (Australian Government, 2018: sections 22 and 23). Following criticism of the breadth of the registration requirements for former Cabinet Ministers (Murphy, 2020), the A-G's Department has proposed refining and better targeting the obligations for this cohort, for example by exempting involvement in communications activities - such as international media interviews - which are not for the purposes of political or governmental influence in Australia. The A-G's Department also mentions the possibility of shortening the timeframes for which broader obligations apply after a person leaves office (Australian A-G's Department, 2021: 19-20). The rules in other countries, such as the UK and Canada, are similar to those currently in place in the EU.

3.4.3 Options for EU measures

The final column of Table 4 suggests measures that EU institutions could take to tighten the current rules. Essentially:

- Politicians and senior officials should be required to report any approach by a foreign power made while they are in office, if necessary receiving whistle-blower protection. In other sectors, there is evidence of approaches being made to prominent individuals while they are still in office (Sénécat, 2022). Such a rule would expose attempts at foreign interference made before current 'revolving door' protections begin.
- Engagement by a foreign power within two years of leaving office (three years for the President of the Commission) could be prohibited or subject to stricter requirements of approval that include specific consideration of whether the engagement would deploy knowledge, networks or profile gained in office and therefore create a risk of foreign interference.
- Engagement by a foreign power within two years of leaving office (three years for the President of the Commission) should be made public on the Foreign Influence Register (if adopted) or Transparency Register, to minimise the risk that foreign influence facilitates or shields foreign interference.
- Consideration should be given to creating a long-term or indefinite duty for former politicians and senior officials to register publicly any role with a foreign power that draws on their EU experience or networks.

Harmonising the rules between EU institutions would help the general public, foreign powers and members of EU Institutions to understand the rules clearly, thereby promoting transparency. Furthermore, consideration should be given to harmonising the rules between the EU and its Member States in order to minimise the risk of foreign interference with EU institutions. As Member States politicians and senior officials commonly have knowledge, networks and profiles in Brussels, their engagement may be as likely to have an impact on foreign influence in European institutions as in their respective government.

3.4.4 Recommendations

The 'revolving door' rules for former EU politicians and senior officials should be strengthened as regards appointments by foreign powers. It is recommended:

- **that politicians and senior officials be required to report any approach by a foreign power made while they are in office, if necessary receiving whistle-blower protection.**
- **concerning engagement by a foreign power within two years of leaving office (three years for the President of the Commission), that the EU either:**
 - (1) prohibit this; or**
 - (2) impose stricter approval requirements that include specific consideration of whether the engagement would deploy knowledge, networks or profile gained in office and would therefore create a risk of foreign interference.**
- **if the EU does permit engagements by a foreign power within two years of leaving office (three years for the President of the Commission), that these should be made public by registration on the Foreign Influence Register (if adopted) or Transparency Register.**
- **that consideration be given to establishment of a long-term or indefinite duty for former politicians and senior officials to register publicly any role with a foreign power that draws on their EU experience, networks or profile.**
- **that the rules be harmonised between EU institutions.**
- **that the EU consider harmonising the rules between the EU and EU Member States, given the risk of foreign interference in EU affairs resulting from the engagement of prominent former Member States' politicians or senior officials.**

4 Online Manipulative Practices

4.1 The problems to be addressed

Some foreign interference activity deploys online manipulative practices, such as the purchase of fake Facebook 'likes', the use of troll farms to amplify messaging and impersonation of legitimate websites. Major social media platforms provide regular information on foreign powers' use of such practices, such as Meta's archives on coordinated inauthentic behaviour¹³. The platforms take steps to restrict the use of such practices, with policies such as Twitter's on platform manipulation¹⁴. Nonetheless, some of these practices are widely available from for-profit companies online, whilst others may be established away from the open marketplace by foreign powers or their agents. Exposing online manipulative practices and encouraging their avoidance would reduce their availability for foreign interference, as well as bolstering good practice in domestic political and democratic processes. Tackling all online manipulative practices should limit foreign interference while avoiding the challenge of attributing manipulation activities to foreign actors (Ördén and Pamment, 2021).

Many online manipulative practices are currently tolerated in law because there is a blurred line between legitimate political influence and illegitimate manipulation, coupled with concerns that tackling them would infringe fundamental rights. To date, most responses have focused on social media platforms' practice not only in tackling coordinated inauthentic behaviour and manipulation but also in bolstering societal and environmental resilience.

Some online manipulative practices, when conducted by a foreign power, may fall within the scope of the foreign interference offence outlined in the above Section 2. As an example of conduct that would be caught by its proposed foreign interference offence, the UK cites the operation of a foreign power's 'troll farm' which uses coordinated inauthentic behaviour and online manipulation to create and amplify disinformation with the effect of manipulating how people engage with public functions (UK Home Office, 2022).

4.2 Fundamental rights

Any steps to restrict online manipulative practices must be consistent with the fundamental human rights to expression and association of those who generate and spread information. However, the right to freedom of expression does not include freedom to use manipulative practices to spread information. A state which tolerates widespread manipulation may be denying its population the freedom to receive information which is also an important element of the right to freedom of expression. Further, tackling online manipulative practices helps to secure the rights to freedom of thought and opinion and the right to vote in free elections.

Any steps taken should safeguard the ability to remain anonymous online, which is crucial to protection of human rights defenders, journalists, activists and other vulnerable communities from abuse and retaliation.

¹³ For more information, see Meta's webpage on [Coordinated Inauthentic Behavior](#).

¹⁴ For more information, see Twitter's webpage on [Platform manipulation and spam policy](#).

4.3 Options for EU measures

The European Parliament has already called for clear and readable labelling of deepfakes; regulation of services offering social media manipulation tools; and detection and suspension of inauthentic accounts linked to coordinated influence operations (European Parliament, 2022b).

Beyond these fields, this area is not yet ripe for legislation. The division between legitimate influence and illegitimate manipulation is not clear. More discussion is required as to where the boundaries between acceptable and unacceptable activity fall. Short of legislation, there are several opportunities to clarify and manage the risks in this area, and to prepare the ground for potential future legislation.

4.3.1 Political candidates: pledges of election integrity

Political candidates have subscribed to voluntary initiatives committing not to engage in inappropriate influence. For example, the Pledge for Election Integrity (hereafter mentioned 'The Pledge') has 357 signatories, including the US President Joe R. Biden. The majority of signatories are Members of (or candidates) for the European Parliament or Member State Parliaments¹⁵. The Pledge comprises an undertaking not to aid and abet 'those who seek to undermine democracy'. Signatories commit to:

- 'not fabricate, use or spread falsified, fabricated, doxed or stolen data or materials for disinformation or propaganda purposes;
- avoid the dissemination of doctored media that impersonate other candidates, including deep-fake videos;
- make transparent the use of any coordinated network activity to disseminate messages; avoid using such networks to attack opponents and other electoral stakeholders, or coordinate third-parties, proxies or fake accounts to undertake these actions;
- take active steps to maintain good cyber hygiene, such as regular cybersecurity checks and password protection, and train campaign staff in media literacy and risk awareness, in order to recognize and prevent attacks;
- transparency in foreign and domestic sources of campaign financing, including online political advertising purchases, in an effort to maximize public trust in the electoral process.'

Election candidates and parties should be encouraged to make pledges of this nature, pending further consideration of legal restrictions.

4.3.2 Political incumbents: commitments to integrity

In the field of hate speech, internationally accepted documents call on all political parties to adopt and enforce ethical guidelines in relation to the conduct of their representatives, so that they refrain from messages of intolerance or incitement to violence, hostility or discrimination (United Nations, 2013; Council of Europe, 2005).

Political leaders could make equivalent pledges not to engage in or spread disinformation, which can be a denial of individuals' right to seek and receive information (UN General Assembly and Human Rights Council, 2021), and not to engage in online manipulative practices for the dissemination of their messages.

4.3.3 Public relations industry: strengthening codes of ethics

The practices of the PR industry have developed significantly over the last few years. The boundaries of legitimate activities online are quite widely drawn. For example, it has become common practice for

¹⁵ Alliance of Democracies, [webpage](#) on 'The Pledge for Election Integrity'.

influencers to buy Instagram followers. In addition, it is possible that some public relations companies engage in illegitimate activities, such as shadowy deniable campaigns, in parallel to transparent ones.

The CoC for registrants in the EU Transparency Register focuses on lobbying of members of the EU institutions, not on public relations activities.

PR industry bodies have codes of ethics, which include broad commitments to honesty, integrity and transparency. Examples of these are available online¹⁶. In the wake of the 2017 Bell Pottinger scandal (Newman et al, 2017), renewed focus on industry ethics led to conclusion of two international statements of ethical principles for the PR industry (ICCO, 2017a; Global Alliance, 2018). At least one industry body has recommended principles of ethics specifically in digital communication (ICCO, 2017b).

It is unclear whether these Codes are sufficiently clear and comprehensive to guide the PR industry on the distinction between legitimate influence techniques and online manipulative practices, particularly when these are used to amplify content. Nor is it apparent how rigorously these Codes are complied with or enforced. Industry bodies could be encouraged to undertake research to establish the adequacy of these Codes to discourage the use of online manipulative practices today and to consider whether measures should be taken to strengthen their contents or their incentives and mechanisms for compliance.

4.3.4 Online influence: compendium of techniques with a view to restricting manipulative practices

Many online influence techniques are designed to bolster amplification of content on social media. Such techniques include (Swedish Civil Contingencies Agency, 2019; Bayer et al, 2021):

- buying fake likes, fake re-tweets, fake followers etc;
- the use of troll farms to disseminate and amplify content;
- the deliberate abuse of algorithms to skew consumption of electoral content;
- impersonation of legitimate sources of information or shilling (giving the impression of independence when actually working for someone else);
- the use of false institutions and networks of false personas;
- the use of so-called 'Potemkin' personas (inauthentic personas ranging across multiple platforms, posting content on multiple topics to give an appearance of authenticity);
- the use of sock-puppets (imposter accounts which are used to stimulate debate and polarisation);
- the abuse of ostensibly apolitical groups deliberately to manipulate political opinion.

Some of these techniques amount to online manipulative practices but are not yet subject to any legal restriction although their impact may be to deceive as well as to polarise. Some are commercially available. A compendium of techniques that are or may amount to manipulative practices could be prepared, with a view to establishing which are online manipulative practices that could be discouraged, made unprofitable or legally restricted while maintaining respect for fundamental rights.

¹⁶ International Public Relations Association, '[Code of Conduct](#)', 5 November 2010; Public Relations and Communications Association '[Professional Charter and Codes of Conduct](#)', n.d.; and Public Relations Society of America Inc., '[PRSA Code of Ethics](#)', n.d.

4.4 Recommendations

EU and Member States election candidates and parties should be encouraged to make pledges of election integrity and political incumbents should be encouraged to pledge not to engage in or spread disinformation nor to engage in online manipulative practices.

The PR industry should be encouraged to scrutinise its ethical codes, with a view to establishing their adequacy to discourage the use of online manipulative practices and whether measures should be taken to strengthen their contents or compliance with them.

The European Parliament could commission the preparation of a compendium of influence techniques that are or may amount to online manipulative practices, with a view to identifying online manipulative practices that could be discouraged, made unprofitable or legally restricted compatibly with fundamental rights.

5 Conclusions

Loopholes in current EU legislation, policy and practice risk being exploited for the purposes of foreign interference. This in-depth analysis identifies examples of such loopholes and makes recommendations for their closure.

Tackling these loopholes would complement the measures the EU has already taken to combat disinformation and foreign interference. In all its efforts, the EU must comply with fundamental rights of freedom of speech and association and avoid any inadvertent shrinking of civic space. It must also act in compliance with public international law, for example in establishing any sanctions regime.

Of primary importance is the creation of a **focal point for investigation and strategic responses** to foreign interference. At present, EU officials involved each have sight of different pieces of the jigsaw, from disinformation response to Transparency Register enforcement to consideration of requests for post-Institutional employment. An ability to view the elements of foreign interference holistically would not only bring to light the strategic drivers and financial flows behind foreign interference but could also transform the EU's capacity for strategic response.

Second, the EU should restrict **foreign interference**, namely illegitimate interference in the politics and democracy of the EU and EU Member States by foreign powers. This paper recommends three methods for doing so, all of which could be pursued in parallel:

- the creation of a criminal offence of foreign interference;
- the establishment of a Common Foreign and Security Policy sanctions regime; and
- the prohibition of foreign funding and participation in third-party election campaigning.

The combined power of these measures should have the effect of clearly stigmatising foreign interference, thereby reducing its occurrence, deterring perpetrators and third parties who may otherwise work with them, protecting election campaigns and imposing retaliatory measures on the most egregious foreign power offenders. All these measures are currently being pursued by other democracies.

Foreign influence is legitimate activity by foreign powers with the aim or effect of influencing EU politics and democracy. The increase in foreign influence over recent years, and rapid development of foreign influence techniques, entail a risk that it facilitates or shields foreign interference. That risk can be mitigated by ensuring the transparency of foreign influence.

This paper provides two examples of ways in which foreign influence transparency may be improved:

- **First, it proposes strengthening the EU Transparency Register** to present data on foreign influence more clearly, ideally by means of a specific Foreign Influence Register or specific foreign influence section within the existing Register. It proposes strengthening the requirements or incentives for foreign powers and those associated with them to register and increasing enforcement capacity.
- **Second, it proposes tightening 'revolving door' requirements for EU and Member State politicians** to safeguard against the risk that their knowledge, networks and profile are used to amplify and distort foreign influence, as well as harmonising these requirements between EU Institutions. As engagement of a prominent politician or senior official from a Member State may be as likely to have a distorting impact on foreign influence within European Institutions as in a Member State government, it is recommended that consideration be given to harmonising the rules on engagement by a foreign power as between the EU and Member States.

The paper discusses, but does not recommend, restrictions on foreign influence, save in exceptional circumstances such as Russia's aggression on Ukraine. It leaves open the possibility of restricting foreign lobbying in industry sectors where there is significant interplay between foreign government and industry interests, extensive lobbying and important economic and political interests at stake.

Finally, this in-depth analysis proposes measures to discourage and potentially restrict the use of **online manipulative practices** which are deployed for purposes of foreign interference. There are grey zones in this field, both in defining the boundaries between legitimate influence activities and illegitimate manipulative practices, and in establishing what restrictions may be consistent with fundamental rights. Consequently, the paper does not recommend immediate legislation in this field. Rather, it recommends the strengthening of good practices and public disavowal of bad practices by politicians and the PR industry, as well as preparation of a compendium of techniques with a view to establishing which of those constitute online manipulative practices that could be discouraged or restricted.

The full recommendations are as follows:

Foreign interference:

1. That the EU establish a focal point for investigation and strategic responses to foreign interference (**Section 2.2.1**).
2. That the EU consider adding foreign interference to the areas of crime in Article 83(1) TFEU and legislating to criminalise offences of foreign interference, with such elements as foreign involvement, manipulative intent, and deception, coercion or threat (**Section 2.3.5**).
3. That the EU consider imposing sanctions in response to serious cases of foreign interference with political processes, such as interference in election campaigns. Such sanctions must be imposed consistently with the human rights of individuals and entities affected. Sanctions prohibiting the dissemination of information are likely to be consistent with freedom of expression only in extreme cases. Sanctions against foreign powers should not entail infringement of any international legal obligation of the EU or Member States (**Section 2.4.5**).
4. That the EU and/or Member States ban foreign and foreign-funded third-party election campaigning (**Section 2.5.5**).

Foreign influence:

5. That the Transparency Register be enhanced by presenting data on foreign influence more clearly. This could most effectively be achieved by establishing a Foreign Influence Register, or a Foreign Influence section of the existing Transparency Register (**Section 3.2.5**).
6. That the Transparency Register be searchable by reference to principal as well as agent, so that it is possible to see how each foreign power is exerting its influence. There should be stronger requirements or incentives for foreign powers to register and enhanced enforcement capacity. Consideration could be given to enhanced enforcement in respect of designated foreign powers (**Section 3.2.5**).
7. That the EU consider enhanced registration and disclosure requirements for CSOs receiving foreign funding, while taking care to comply with human rights obligations and maintain civic space by refraining from unduly onerous commitments or stigmatising foreign funding (**Section 3.2.5**).
8. That the EU consider embedding transparency at the time of lobbying, by requiring interest representatives to declare any foreign power affiliation at the start of any meeting and requiring any online political activity (not just advertising) to carry an imprint if conducted for the benefit of a foreign power (**Section 3.2.5**).

9. That the EU refrain from restricting foreign influence, save in exceptional circumstances (**Section 3.3.4**).
10. That the EU explore the possibility of prohibiting or limiting lobbying for the interests of specific sectors, such as the fossil fuel industry, where current practice demonstrates extensive lobbying, important interests at stake and significant interplay between foreign power and industry interests that raises the risks of foreign interference (**Section 3.3.4**).
11. That the EU require politicians and senior officials to report any approach by a foreign power made while they are in office, if necessary receiving whistle-blower protection (**Section 3.4.4**).
12. That the EU either:
 - (a) prohibit engagement by a foreign power within two years of leaving office (three years for the President of the European Commission); or
 - (b) impose stricter approval requirements for engagement by a foreign power within two years of leaving office, including specific consideration of whether the engagement would deploy knowledge, networks or profile gained in office and would therefore create a risk of foreign interference (**Section 3.4.4**).
13. That if the EU does permit engagements by a foreign power within two years of leaving office (three years for the President of the European Commission), these should be made public by registration on the Foreign Influence Register (if adopted) or Transparency Register (**Section 3.4.4**).
14. That the EU consider establishing a long-term or indefinite duty for former politicians and senior officials to register publicly any role with a foreign power that draws on their EU experience, networks or profile (**Section 3.4.4**).
15. That the EU consider harmonising the rules on post-employment engagement by foreign powers between the EU institutions and between the EU and Member States (**Section 3.4.4**).

Online manipulative practices:

16. That EU and Member State election candidates and parties be encouraged to make pledges of election integrity and political incumbents be encouraged to pledge not to engage in or spread disinformation nor to engage in online manipulative practices (**Section 4.4**).
17. That the PR industry be encouraged to scrutinise its ethical codes, with a view to establishing both their adequacy to discourage the use of online manipulative practices and whether measures should be taken to strengthen their contents or compliance with them (**Section 4.4**).
18. That the European Parliament commission the preparation of a compendium of influence techniques that are or may amount to online manipulative practices, with a view to identifying online manipulative practices that could be discouraged, made unprofitable or legally restricted compatibly with fundamental rights (**Section 4.4**).

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