

## **TI EU Policy Position**

### **Defence of Democracy Package**

#### **Background**

As part of the Defence of Democracy Package, presented in December 2023, the European Commission proposed a [Directive](#) aimed at establishing common transparency and accountability standards for interest representation carried out on behalf of third countries. The **Directive's sole focus on foreign-funded interest representation resembles so-called 'Foreign Agent' laws**, which are misguided and problematic for a variety of reasons. First, these legal instruments have often been used to stigmatise entities, including civil society, based on their funding sources. Second, these laws risk **disproportionally restricting freedom of association and expression**. The Commission recognised this and took Hungary to the ECJ over a similar law, where [the Court ruled against Hungary](#). The EU's [High Representative also criticised](#) Georgia's recent attempt at introducing a law on transparency of foreign influence. Finally, by limiting the scope to just foreign-funded entities, harmonisation with [existing registers](#) will be impossible and avenues of circumvention by malign actors will be countless. Therefore, to avoid known negative consequences of a foreign agent law, to achieve the proposal's policy objectives, and to comprehensively increase the transparency of interest representatives in EU policy-making, **The scope of the Directive must be expanded to cover all interest representatives**, regardless of their funding source.

#### **Recommendations**

##### **Ensuring full harmonisation and limiting fragmentation of transparency rules**

The Commission has relied on article 114 of the Treaty on the Functioning of the European Union for the proposal, aiming for **full harmonisation**, which TI EU fully supports. There are [currently 15 EU Member States with either mandatory or partially mandatory provisions related to lobbying at national level](#). However, all these registers cover interest representation, rather than focusing on foreign influence alone. Since the Commission's proposal only aims at harmonizing foreign-funded interest representation, the broader market for interest representation will not be harmonised, but fragmentation will further increase.

The question of who must register as a lobbyist is one of the most crucial ones. A restrictive definition essentially creates a legal loophole for certain actors to avoid public scrutiny associated with a mandatory framework. For example, the Polish parliament's definition only applies to private consultants, meaning that a mere 19 individuals are said to be officially influencing public decisions in a country of 37 million. By comparison, Ireland applies a broad-scope definition, resulting in 2430 registered organisations in 2022. Similarly, both the French and German systems apply a broad-scope definition, resulting in respectively 6026 and 3046 organisations being registered. The proposal must address these disparities to avoid further fragmentation.

### **Expanding the scope of the Directive to create an Interest Representatives Register**

The current proposal only covers third country entities and entities providing interest representation services to them, which amounts to a foreign agent law. This carries the risk of undermining the EU's own efforts to strengthen civil society, both within and outside of the EU.

The current proposal is also not effective at countering malign foreign influence for two main reasons. First, **this instrument will not fully address malign influence**, as malign actors do not play by the rules, and it will be impossible for national authorities to keep an up-to-date and accurate list of EU entities with connections to external actors. Such approach would also be much **more burdensome than having a holistic approach of registering all interest representatives**. The latter would at the same time make circumvention more difficult. Second, it does not cover situations in which support for third-country objectives is funded by likeminded EU entities not directly associated with those countries. At the same time, the proposal fails to address internal threats to Democratic EU decision-making procedures posed by EU entities and individuals pursuing their own goals, with no connection to third countries.

As such, in order to reduce the risk of circumvention, and to also capture non-foreign funded interest representation, the scope of the **Directive must therefore be significantly expanded to all entities carrying out interest representation activities or providing interest representation services in the EU** independent of their legal status (for-profit, not-for-profit, consultancy, etc.); place of establishment (inside or outside the EU); funding type (remuneration, profits from commercial activities, project-based grants, etc.); and source of funding (third country entity or otherwise). At the same time, **expanding the scope would reduce the negative consequences** of having a foreign agent law, such as risk of stigmatisation to civil society and negative geopolitical consequences.

### **Ensure the independence of the national authorities responsible for management and supervision**

National authorities would oversee setting up transparency registers, monitoring the compliance of covered entities and applying sanctions in case of non-compliance. Conferring such wide-ranging powers to Member State authorities bears a high risk, particularly in EU Member States undermining the rule of law. In these Member States, the Directive would create a strong legal instrument without providing for sufficient safeguards or effective judicial redress. Further, the current proposal only asks for the independence of the authorities with supervisory powers, but not for the ones in charge of the register. However, the **Directive must ensure full independence of all authorities involved** to prevent any kind of stigmatisation of registered entities.

For further information, please contact: Vitor Teixeira, Senior Policy Officer

[vteixeira@transparency.org](mailto:vteixeira@transparency.org)