



DEFENCE OF DEMOCRACY

Foreign funding directive: Here's what you need to know.

On 12 December 2023, the European Commission published its long-awaited **Defence of Democracy package**, including a directive to introduce “common transparency and accountability standards” for “interest representation activities”. This directive **has caused alarm** among civil society actors, academics and others for the potentially negative impacts it could have on civil society. **Here's what you need to know.**

What's in the directive?

The directive **creates a register of entities** that carry out interest representation services or activities on behalf of third countries to **influence** the “development, formulation or implementation of policy or legislation or public decision-making in the internal market.”

Upon registration, entities will receive a **European Interest Representation number (EIRN)**, which is required whenever they enter into contact with public officials. The register will be overseen by a national authority and supervisory authority at the national level. Administrative sanctions will be applied, following prior warning, in case of non-compliance.

Why is civil society concerned?

The scope and extent of the problem is unclear

- The scale of the problem of “covert foreign interference” remains **unknown**.
- The **definition** of the problem and its scope within the directive is broad and unclear.
- The directive **does not stem from an evidence-based approach** and has not been properly assessed for necessity and proportionality.

Lack of clarity leaves room for abuse and misinterpretation

- **Broad and vague wording** used, for example “on behalf of”, “influenced by” or “attributed to” may result in diverse interpretations or **misinterpretations**.
- A wide range of **everyday, legitimate activities** CSOs engage in would be considered ‘interest representation activities’, but it doesn’t clearly outline the criteria that will be used to determine whether such activities are being carried out on behalf of a third-country interest.
- Requirements for **record-keeping** are burdensome.

It's likely to negatively impact civic space and fundamental rights & breach of EU law

- The directive **may breach EU primary law**, affecting both **fundamental rights** (freedoms of association, expression and participation) and **economic freedoms** like capital and establishment.



- By focusing only on foreign funding, the directive is likely to **contradict international standards** on the right to association and lead to a disproportionate administrative **burden, stigmatisation and harassment**.
- The directive does not **distinguish between lobbying** on the one hand, and **civil dialogue** and **civil participation** on the other. This could result in further stigmatisation as 'foreign agents' and make access to the policy-making process burdensome and less accessible.
- It **contradicts the EU Court of Justice judgement** in Commission vs Hungary which found reporting duties for foreign funding to be discriminatory and unjustifiable restrictions to the free movement of capital (Article 63 TFEU).

Despite so-called “safeguards”, civil society is at risk

- It does not explain how it will ensure the “**neutrality**” of the register.
- It does not include provisions which **sanction governments who may engage in stigmatisation**.
- No **checks and balances** are put in place for national authorities which oversee the register.
- It creates **legal uncertainty** due to the possibility of multiple registers, leading to a greater administrative burden.
- **Exemptions are broadly and unclearly worded** and so are likely to be ineffective.

How can this directive be improved?

- 1) **Make a clear distinction between market-oriented lobbying activities, civil dialogue and participation**, as defined by Article 11 of the Treaty of the European Union (TEU).
- 2) **Distinguish between for-profit entities and non-profit entities advocating for fundamental rights**.
- 3) **Ensure that activities related to democracy** and the implementation of the Charter of Fundamental Rights, and European Convention of Human Rights are **not considered as interest representation activities**.
- 4) **Apply minimum thresholds** for entities engaged in interest representation activities, in line with best practices of lobbying transparency legislation, including a **minimum funding threshold** requirement for registration.
- 5) **Impose sanctions if public officials engage in stigmatisation and harassment** campaigns against CSOs.
- 6) **Put in place checks and balances for national authorities** that oversee the register.
- 7) **Invite civil society organisations as experts to the EU level oversight advisory body** annually as part of a structured dialogue to provide feedback on the directive.

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