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NOTE

From:	General Secretariat of the Council
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No. prev. doc.:	16889/23 +ADD1, 10266/24
Subject:	Proposal for a Directive on Transparency of Interest Representation on behalf of Third Countries - Policy debate

I. INTRODUCTION

1. On 12 December 2023, the Commission adopted the 'Defence of Democracy' package. It consists of:

   i. A Commission communication on Defence of Democracy[1].

   ii. A proposal for a new Directive on Transparency of Interest Representation for third countries[2] (hereinafter referred to as 'the proposed Directive').

   iii. A proposal for a Regulation amending Regulations (EU) 1024/2012 and (EU) 2018/1724[3] accompanying the proposed Directive.

[1] 16935/23 + ADD 1.
[2] 16889/23 + ADD 1 + ADD 2.

iv. An impact assessment[4] accompanying both legislative proposals in points (ii) and (iii).

v. A Commission recommendation on inclusive and resilient electoral processes in the Union and enhancing the European nature and efficient conduct of the elections to the European Parliament[5].

vi. A Commission recommendation on promoting the engagement and effective participation of citizens and civil society organisations in public policy-making processes[6].

2. In the European Parliament, the Committee on the Internal Market and Consumer Protection (IMCO) is the lead committee. The appointed rapporteur is Pablo ARIAS ECHEVERRIA (EPP, Spain). Work in the European Parliament is still ongoing.

3. The European Economic and Social Committee adopted its Opinion[7] on 24 April 2024.

4. On 8 February 2024, the Committee of Permanent Representatives (Part 2) agreed on the optional consultation[8] of the Committee of the Regions. The Committee of the Regions adopted its Opinion[9] on 17 April 2024.

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3 17076/23.
4 16889/23 + ADD 3 + ADD 4; 17076/23 ADD 1 + ADD 2.
5 7434/24.
6 7433/24.
7 9738/24.
8 6003/24.
9 10327/24.

II. WORK IN COUNCIL

5. The Commission presented the main elements of the package, including the proposed Directive and the accompanying impact assessment, at the meeting of the Working Party on General Affairs (GAG) on 9 January 2024 and the two Commission recommendations at the meeting of GAG on 11 January.

6. Ministers held an orientation debate on the 'Defence of Democracy' package, including the proposed Directive, at the meeting of the General Affairs Council (GAC) on 29 January on the basis of a Presidency non-paper[10].

7. On this basis, GAG completed a first examination of the proposed Directive including an exchange on the practical aspects of the proposed Directive and the EU transparency register. Some delegations also shared information on their existing and upcoming national registers / legislation.

8. From the discussions at the GAG level and informal consultations, the Presidency identified the following key political issues which were referred to the Permanent Representative Committee (COREPER) for guidance on further work:

   i. Scope and objectives;

   ii. Level of harmonisation; and

   iii. Registers.

9. The Council Legal Service issued a written opinion[11] on the legal basis of the proposal on 25 April 2024.

[10] 5428/24.
[11] 9328/24.

III. STATE OF PLAY

10. The COREPER discussed the key political issues referred to in paragraph 8 above at its meeting on 29 May 2024 on the basis of a note[12] identifying the key areas requiring guidance for further work and questions to be addressed.

11. On this basis, the Presidency drew the following operational conclusions to guide further work on the three key political issues identified in paragraph 8 above:

12. On the scope and objectives:

    i. Article 114 TFEU provides the appropriate legal basis for the proposed Directive.

    ii. Therefore, the link to economic activities must be maintained and the proposed Directive should apply to interest representation activities covering interest representation services and interest representation activities "*that are linked to or substitutes activities of an economic nature and are thus comparable to an interest representation service*" (Article 3(1)(b) of the proposed Directive).

    iii. The proposed directive should cover entities carrying out interest representation activities on behalf of third countries.

    iv. Definitions must be clear and based on objective criteria. The definition of 'interest representation activities' must be linked to direct communications (both oral and written) with public officials or authorities.

[12] 10226/24.

13. On level of harmonisation:

    i. Further flexibility needs to be introduced in the proposed Directive in various provisions to address specific national circumstances and approaches as well as to allow for stricter national measures when desired, including on provisions on competent and supervisory authorities, as well as on sanctions.

    ii. It is acknowledged that some provisions may require an adequate level of harmonisation to ensure the effective and smooth implementation of the proposed Directive. Such harmonisation should also cover some elements of the national registers, such as the information provided and cross-border cooperation.

14. On registers:

    i. Registers should be maintained at national level, possibly based on a common architecture, and linked through a portal at the EU level.

    ii. While this functionality requires some level of harmonisation, there should still be the possibility for Member States to collect additional information, should they deem it necessary.

15. In addition, the Presidency noted that the risk of foreign interference in our democratic processes remains clearly of concern to all delegations. While all delegations agree that this proposed Directive can contribute to address this risk, concerns have also been raised as regards the risks of stigmatisation of civil society and on the impact the proposed directive may have on certain fundamental freedoms, and in particular freedom of speech and of association.

IV. CONCLUSIONS

16. In view of the above, Ministers are invited to hold a policy debate at the meeting of the Council (General Affairs) on 25 June on the basis of the Presidency discussion paper in Annex to this note, addressing the questions specified therein.

ANNEX

Proposal for a Directive on Transparency of Interest Representation on behalf of Third Countries

General Affairs Council meeting on 25 June 2024

Presidency discussion paper

Background

The risk of foreign interference in public policy-making processes is a growing concern for all Member States. In recent years, the EU has developed a wide range of tools to address and tackle foreign interference. As part of this effort, it is important to develop now a European approach, consistent with the EU's values, as regards interest representation on behalf of third countries.

The main aim of the proposed Directive is to contribute to the proper functioning of the internal market for interest representation activities carried out on behalf of third countries, in full respect of fundamental rights and democratic principles, values and liberties. It proposes to do so by putting in place transparency and accountability requirements applicable to entities carrying out interest representation activities on behalf of third countries only. In other words, these requirements do not apply to entities which receive financial support from third countries for purposes unrelated to interest representation activities.

Furthermore, the proposed Directive focuses on transparency and is not intended to negatively label the activities of specific entities (stigmatisation) nor to limit civic space and freedom of expression and of association. In addition, it does not ban any type of activity, nor does it require transparency of foreign funding that is unrelated to interest representation activities.

However, despite the above-mentioned safeguards in the proposed Directive, concerns remain regarding the possible unintended risks of stigmatisation of entities, including of Civil Society Organisations (CSOs), and the possible limitations to freedom of expression and of association that might result from its implementation.

Hence, while transparency and accountability are legitimate objectives to address democratic concerns in today's geopolitical environment, any means to achieve these objectives must be both effective and conducive to the promotion civic space.

Questions for Ministers

In terms of the key areas of the proposed Directive requiring further guidance, operational conclusions seem within reach on the scope and objectives, the level of harmonisation, and the registers.

At the same time, it is fundamental that EU measures are proportionate and strike the right balance between transparency / accountability requirements on the one hand, and safeguarding freedom of expression and of association on the other. Sufficient safeguards also need to be put in place to ensure the protection of these freedoms as well as avoid stigmatisation of entities falling within their scope.

In light of all the above and of the operational conclusions presented in Part III of the note, Ministers are invited to answer the following questions:

1. ***Do you agree that the operational conclusions outlined in paragraphs 12 to 14 of the note provide a good basis for further work on the proposed Directive at the technical level?***

2. ***Do you consider the safeguards against stigmatisation and for protecting the freedoms in the proposed Directive to be sufficient? If not, which additional safeguards should, in your view, be included? Do you see other ways of promoting civic space which are complementary to the proposed instrument?***