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PROPOSAL

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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 637 final
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937

Delegations will find attached document COM(2023) 637 final.

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2023/0463 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937

(Text with EEA relevance)

{SEC(2023) 637 final} - {SWD(2023) 660 final} - {SWD(2023) 663 final} - {SWD(2023) 664 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal aims to contribute to the proper functioning of the internal market for activities conducted with the objective of influencing the development, formulation or implementation of policy or legislation, or of public decision-making process, in the Union ("interest representation activities") carried out on behalf of third countries by laying down harmonised rules for a high level of transparency of such activities when carried out in the internal market.

A high level of transparency in this field will also place citizens, public decision-makers and other stakeholders in a better position to understand which third countries request the provision of interest representation activities.

To the extent that it is normally provided against remuneration, interest representation, including interest representation provided to third countries, constitutes a service within the meaning of Article 57 of the Treaty on the Functioning of the European Union ('TFEU').

The provision of interest representation in the Union is a growing and increasingly cross-border activity. Interest representation activities are regulated in different ways in the Member States. Currently, 15 Member States[1] have a transparency register on interest representation activities, though not always at the national level. Those Member States that have a regulatory framework provide for measures that differ in the following respects: the scope of the entities and activities covered, including the relevant definitions of interest representation activities; the thresholds for the size of entities or level of activities triggering transparency or registration requirements; the requirements concerning record keeping; the data collected from entities engaged in interest representation, including regarding their identity and the identities of their clients; the existence, powers, structure and independence of supervisory authorities; the nature of sanctions and the amounts of fines, where they exist; and the frequency of updates to the registered information. 12 Member States do not regulate the transparency of interest representation activities. The legislative framework is therefore highly fragmented across the Union[2].

This fragmentation causes obstacles in the internal market for interest representation activities, including when carried out on behalf of third countries, which undermine the proper functioning of the internal market. The divergences among Member States create an uneven playing field and increase compliance costs for entities seeking to carry out cross-border interest representation activities. The uneven playing field directs cross-border interest representation activities away from more regulated Member States towards less regulated ones. There is, in turn, a risk of forum shopping and regulatory arbitrage, that is, the exploitation of differences in regulatory requirements, by entities seeking to evade regulation in certain Member States.

Interest representation activities are increasingly used by third country governments alongside formal diplomatic channels and processes to promote their policy objectives[3]. This situation is recognised by Member States as presenting an opportunity for third-country actors to evade transparency requirements and covertly influence decision-making and democratic processes

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1 A comprehensive analysis of the legislative frameworks existing in Member States is provided in Annex 6 of the Impact Assessment accompanying this proposal (SWD(2023) 663 final).

2 See accompanying Impact Assessment.

3 OECD (2021), Lobbying in the 21st Century: Transparency, Integrity and Access, OECD Publishing, Paris, https://doi.org/10.1787/c6d8eff8-en, page 43.

in the Union. Some Member States are therefore considering developing new rules to address foreign influence, including by imposing general obligations on entities receiving foreign funding that would in practice apply to the provision of interest representation on behalf of third countries. The fragmentation described is therefore likely to increase specifically in relation to interest representation carried out on behalf of third countries. This would expose entities carrying out interest representation to additional obstacles when providing interest representation for third countries in the internal market.

When presented transparently, ideas from third countries can contribute positively to public debate and are a welcome part of international engagement. However, when carried out covertly, interest representation on behalf of third countries is prone to being used as a channel for interference in Union democracies[4]. By shaping public opinion, this is in turn can influence political choices to the detriment of the political life in the Member States and the Union as a whole.

As noted by the Organisation for Economic Co-operation and Development ("OECD"), "influence and lobbying by foreign interests can have a transformative impact on the political life of a country, not only on domestic policies but also on its foreign policy, its election system, economic interests and its ability to protect its national interests and national security"[5]. Foreign governments can make use of public resources to carry out wide-ranging and sustained influence campaigns. The risks involved in lobbying and influence activities by foreign government are therefore higher than the risks posed by purely domestic activities[6].

There is also a lack of information about interest representation carried out on behalf of third countries in the internal market. Member States do not consistently collect or systematically share information on such interest representation. This makes it difficult to identify and map interest representation activities carried out on behalf of third countries in the Member States and do so in a coordinated and efficient way across the Union. In addition, the lack of transparency regarding the funding of certain interest representation activities does not allow citizens and policymakers to identify sources of such funding. This lack of information is another factor that could lead Member States to respond to this phenomenon in different ways. There is a public interest in such information, both as an objective of the national legislation regulating interest representation activities already mentioned, but also of interested actors and citizens more generally seeking to understand how public decisions are influenced.

This lack of information and the resulting obstruction of effective oversight not only acts to the detriment of the functioning of the internal market but also of democracy in the Union, as it impacts Union citizens' trust in democratic processes and decision-makers' and their ability to exercise their rights and responsibilities. A recent Eurobarometer on Citizenship and Democracy showed that about 8 in 10 Europeans consider that foreign interference in Union democratic systems is a serious problem that should be addressed[7]. 84.5% of respondents to the public consultation consider that lobbying or public relations activities remunerated by or

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4 The term 'foreign interference' is used to differentiate influencing activities that are integral to diplomatic relations from foreign interference, that is, activities that are carried out by, or on behalf of, a foreign state-level actor, which are coercive, covert, deceptive, or corrupting and are contrary to the sovereignty, values, and interests of the Union.

5 OECD (2021), Lobbying in the 21st Century: Transparency, Integrity and Access, OECD Publishing, Paris, https://doi.org/10.1787/c6d8eff8-en, page 44.

6 OECD (2021), Lobbying in the 21st Century: Transparency, Integrity and Access, OECD Publishing, Paris, https://doi.org/10.1787/c6d8eff8-en, page 45.

7 See Flash Eurobarometer 528 on Citizenship and Democracy.

controlled by third countries are associated with a high risk of covert foreign interference. The European Parliament[8] and the Council[9] have underlined the importance of addressing the threat to democracy posed by foreign interference. These concerns have intensified since Russia's war of aggression against Ukraine.

The main aim of this proposal, which complements existing measures at Union level, would be to **introduce common transparency and accountability standards in the internal market for interest representation activities carried out on behalf of third countries**. By providing common transparency requirements for such activities, the initiative would improve the functioning of the internal market of such activities, creating a level-playing field, reducing compliance costs for entities that seek to carry out interest representation activities on behalf of third countries across borders, and preventing regulatory arbitrage. A core element of the proposal is the establishment of national registers for entities carrying out such activities.

By providing for full harmonisation, the proposed Directive would provide for proportionate harmonised transparency requirements and a comprehensive system of safeguards, including effective judicial review, a harmonised sanction regime limited to administrative fines, independent supervisory authorities, obligations to prevent stigmatisation, and in particular the need to ensure that no adverse consequences arise from being subject to the transparency rules. This will effectively prevent gold-plating and stigmatisation. Member States would, within the framework of the harmonised rules, be prohibited from diverging from the rules by laying down more extensive transparency requirements.

This intervention would also aim to enhance the integrity of, and public trust in, the Union's and Member States' democratic institutions by ensuring the transparency of interest representation activities carried out on behalf of third countries, and by improving the knowledge of the magnitude, trends and actors behind such activities. Furthermore, a coherent and proportionate Union approach focusing on transparency and democratic accountability to address the challenges posed by interest representation on behalf of third country entities could serve to set standards globally. In comparison, the current fragmented approach by Member States is more likely to be damaging to the Union's reputation, as it lacks a consistent and coherent approach.

Action at Union level is needed to prevent the emergence of new obstacles and to ensure the proper functioning of the internal market of interest representation activities carried out on behalf of third countries. Without Union action, Member States will address the identified risks to democracy unilaterally, risking undermining the internal market of interest

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8 Since 2019, the European Parliament established two Special Committees INGE and INGE2 on foreign interference in all democratic processes in the European Union, including disinformation, and the strengthening of integrity, transparency and accountability in the European Parliament that adopted resolutions in this area. See European Parliament resolution of 9 March 2022 on foreign interference in all democratic processes in the European Union, including disinformation (2020/2268(INI)), European Parliament resolution of 13 July 2023 on recommendations for reform of European Parliament's rules on transparency, integrity, accountability and anti-corruption (2023/2034(INI)), European Parliament resolution of 1 June 2023 on foreign interference in all democratic processes in the European Union, including disinformation (2022/2075(INI)).

9 Council Conclusions "Complementary efforts to enhance resilience and counter hybrid threats", 10 December 2019, 14972/19; Council Conclusion "Global approach to Research and Innovation - Europe's strategy for international cooperation in a changing world", 28 September 2021, 12301/21; Council Conclusions "on Foreign Information Manipulation and Interference (FIMI)", 18 July 2022, 11173/22.

representation carried out on behalf of third countries. Approximation of the legislation of the Member States is therefore the primary purpose of this initiative.

This proposal puts forward specific and targeted measures in a proportionate manner, seeking to ensure that entities carrying out interest representation activities on behalf of third countries in the internal market are able to do so in a harmonised, transparent and more predictable legal environment, benefitting the entities involved, the decision-makers targeted, and citizens. Strong safeguards prevent potential negative impacts on the entities concerned, ensuring full respect for fundamental rights and democratic principles and values. The proposal does not cover entities which receive financial support from other Member States, or from third country entities for purposes unrelated to interest representation.

This approach differs radically from those observed in certain other jurisdictions (characterised as 'foreign agent' laws)[10]. Such laws often include measures that unduly restrict civic space by stigmatising, intimidating and curtailing the activities of certain civil society organisations (CSOs), journalists or human rights defenders. The label of 'foreign agent' under such laws frequently seeks to undermine both the financial stability and credibility of the organisations targeted.

In contrast to such 'foreign agent laws', this proposal does not negatively label the activities of specific entities, including CSOs, nor does it seek to limit civic space. Instead, it provides for transparency and accountability requirements applicable to all entities carrying out interest representation activities on behalf of third countries, regardless of their legal status. Furthermore, the measures do not ban any type of activity or require transparency of foreign funding that is unrelated to interest representation activities carried out on behalf of third countries. Finally, the proposal includes safeguards aimed at ensuring a proportionate transposition and enforcement and avoiding risks of stigmatisation.

- **Consistency with existing policy provisions in the policy area**

This proposal complements the proposal for a **Regulation on the transparency and targeting of political advertising**[11]. The proposal on political advertising seeks to provide a high level of transparency for political advertising services in the Union regardless of the medium used, and to provide additional safeguards applicable to the targeting of political advertising based on the processing of personal data.

This initiative has a different scope than the proposal on political advertising: it covers interest representation activities carried out on behalf of a third country entity. This includes interest representation activities consisting of the organisation of communication or advertising campaigns, which could also be considered as political advertising. However, interest representation mainly covers activities which are not also 'political advertising' (e.g.

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10 The Union consistently condemns any undue limitation on fundamental freedoms and restrictions on civic and political space in violation of international human rights law, including so-called 'foreign agent laws'. See, for example, 'Russia: Declaration by the High Representative on behalf of the EU on the 10th anniversary of the introduction of the Law on Foreign Agents' available at: https://www.consilium.europa.eu/en/press/press-releases/2022/07/20/russia-declaration-by-the-high-representative-on-behalf-of-the-eu-on-the-10th-anniversary-of-the-introduction-of-the-law-on-foreign-agents/, 'Georgia: Statement by the High Representative on the adoption of the Georgian "foreign influence" law' available at: https://www.eeas.europa.eu/eeas/georgia-statement-high-representative-adoption-%E2%80%9Cforeign-influence%E2%80%9D-law_en, and 'EU in BiH on recent developments in the RS' available at: https://www.eeas.europa.eu/delegations/bosnia-and-herzegovina/eu-bih-recent-developments-rs_en?s=219

11 Proposal for a Regulation of the European Parliament and of the Council on the transparency and targeting of political advertising (COM(2021) 731 final).

lobbying individuals directly). Also, the political advertising proposal would cover activities within its scope regardless of whether they are provided on behalf of a third country.

Under the proposal on political advertising, transparency is ensured in particular by making available to individuals certain information with each political advertisement. In addition, political advertising publishers that are very large online platforms within the meaning of the Digital Services Act[12] would have to make the information contained in the transparency notice available through the repositories of advertisements published pursuant to Article 39 of the Digital Services Act. The current initiative complements this by providing public access to complementary information in the national registers of the Member States related to the providers of the interest representation activities, in particular a clear indication regarding the third country on behalf of which the interest representation activity is carried out, the Member States where the interest representation will be carried out, and the legislative proposals, policies or initiatives targeted by the interest representation activity.

This proposal also complements the **Digital Services Act**, which requires providers of online platforms to make available certain information about advertisements they present on their online interfaces. In addition, the Digital Services Act requires providers of very large online platforms or of very large online search engines that present advertisements on their online interfaces to compile and make publicly available in a specific section of their online interface, through a searchable and reliable tool, a repository containing information on the advertisements. It also obliges such providers to assess and mitigate risks related to the functioning, design or use of their service that have actual or foreseeable negative effects on a series of societal risks including as regards civic discourse, electoral processes and public security.

This initiative has a different scope than the Digital Services Act, as it covers interest representation activities on behalf of third countries. Such activities can involve (e.g. as part of the organisation of and advertising or communication campaign) placing advertisements on the online interfaces of online platforms within the scope of the Digital Service Act. When this is the case, the current initiative provides that the providers of online platform services should be included by the entity carrying out interest representation activities in its registration, and the relevant costs attributed to their services should be included in the amount of remuneration declared by that entity. However, this initiative does in such situations not regulate responsibilities of online intermediaries and does not impose requirements directly on the providers of online platform themselves.

Furthermore, the proposal complements the proposal for a **European Media Freedom Act**[13], which aims to address fragmented national regulatory approaches related to media freedom and pluralism and editorial independence to ensure the free provision of media services within the internal market, while ensuring that Member States remain able to adapt media policy to their national context, in line with their competences. That proposal also focuses on the independence and stable funding of public service media as well as on the transparency of media ownership and of the allocation of state advertising. Media service providers providing news and current affairs content would be required by that proposal to make easily and directly accessible to the recipients of their services their legal name and names of their direct,

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12 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EU (Digital Services Act) (OJ L 277, 27.10.2022, p. 1, ELI: http://data.europa.eu/eli/reg/2022/2065/oj).

13 Proposal for a Regulation of the European Parliament and of the Council of 16 September 2022 establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU (COM(2022) 457 final).

indirect or beneficial owners, which could in principle also include third country governments. In addition, media service providers would be obliged to take measures that they deem appropriate with a view to guaranteeing the independence of individual editorial decisions.

The **Audiovisual Media Services Directive**[14] aims to create and ensure the proper functioning of a single market for audiovisual media services, while contributing to the promotion of cultural diversity and providing an adequate level of consumer and child protection. It is rather unlikely that advertising campaigns carried out with the objective of influencing the development, formulation, or implementation of policy or legislation, or public decision-making processes, in the Union covered by this proposal would fall within the scope of that Directive.

Where media service providers disseminate advertisements as a service for entities carrying out interest representation activities on behalf of third countries, this proposal would provide that such media service providers must be named in the registration of the entity, and the relevant costs must be included in the amount of remuneration declared. However, this proposal would in such situations not impose requirements on the providers themselves.

This proposal does not cover activities regulated by Regulation (EU, Euratom) 1141/2014 of the European Parliament and of the Council[15], which governs the statute and funding of **European political parties and European political foundations**, including donations from a public authority of a third country, or from an undertaking over which such a public authority may exercise, directly or indirectly, a dominant influence.

Since 2020, the annual **Rule of Law Reports**[16] monitor, under their anti-corruption pillar, the regulation of interest representation and lobbying in all Member States within the framework of existing European and international standards. Since 2022, the Commission has been making recommendations to Member States in the context of the Rule of Law Reports, including on aspects relevant to interest representation. For instance, in 2022, Denmark and Slovakia were recommended to introduce rules on lobbying, while Romania was invited to introduce rules on lobbying for Members of Parliament. Belgium was called upon to complete a legislative reform on lobbying establishing a framework that includes a transparency register and a legislative footprint and covers both members of Parliament and Government. In the same year, Spain was recommended to continue efforts to table legislation on lobbying, including the establishment of a mandatory public register of lobbyists[17].

In 2023, the Commission noted in the context of the Rule of Law Reports that developments in the area of lobbying continued, as some Member States had revised their lobbying transparency rules in line with recommendations from 2022. For example, in Latvia, a new lobbying law had been adopted, which provides for the creation of a lobbying register. In Estonia, the authorities had continued efforts to effectively implement the guidelines on

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14 Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1, ELI: http://data.europa.eu/eli/dir/2010/13/oj).

15 Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations (OJ L 317, 4.11.2014, p. 1, ELI: http://data.europa.eu/eli/reg/2014/1141/oj).

16 https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en

17 In the 2022 Rule of Law Report, further recommendations on lobbying concerned DE, EE, IE, FR, HR, IT, LV, LU, HU, NL and PL.

lobbying. Cyprus had adopted an implementing regulation on lobbying, which clarified the procedure for declaring, recording, and publishing lobbying activities. In Lithuania, current rules on lobbying gave positive results in terms of submitted declarations. The 2023 Rule of Law Report also contained further recommendations to Member States related to lobbying and interest representation where recommendations from 2022 had not been fully addressed or new challenges had emerged[18].

The proposed **Directive on combating corruption**[19] seeks to protect democracy as well as society from the impact of corruption and proposes updating the Union criminal legal framework to include, beyond the offences of bribery and misappropriation, trading in influence, abuse of functions, obstruction of justice, and enrichment from corruption. If left unaddressed, covert influencing and a general lack of transparency in interest representation could enable and breed corruption. Where such offences are committed to the benefit of a third country, the proposed Directive provides that Member States should consider this an aggravating circumstance. This proposal would complement the proposed Directive on combating corruption as the transparency of interest representation activities on behalf of third country entities is equally expected to make a positive contribution to the prevention and detection of corruption.

- **Consistency with other Union policies**

Nurturing, protecting, and strengthening democracy in the Union is at the heart of the Commission's priorities as set out in the Political Guidelines issued by President von der Leyen[20]. In 2020 under the headline ambition 'A new push for European Democracy', the Commission presented the **European Democracy Action Plan**[21], with the aim of protecting and strengthening Union democracies by safeguarding the integrity of elections, promoting free and fair elections, strengthening media freedom and pluralism, and countering disinformation and foreign interference.

In the 2022 State of the Union address[22], President von der Leyen announced a package of measures to defend democracy from covert foreign influence. The package complements actions already taken at Union level under the European Democracy Action Plan. Apart from this initiative, the package includes specific measures on electoral matters ahead of the elections to the European Parliament and measures to foster an enabling civic space and promote inclusive and effective engagement by public authorities with civil society organisations (CSOs) and citizens[23]. All these measures aim to bolster democratic resilience from within.

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18 Further recommendations related to lobbying concern DE, CZ, DK, DE, IE, ES, FR, HR, IT, LV, LU, HU, NL, AT, PL, RO and SK.

19 Proposal for a Directive on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council (COM(2023) 234 final).

20 https://commission.europa.eu/document/aa3bc4a8-50b7-425a-a81c-e7360e01a24d_en

21 https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/new-push-european-democracy/european-democracy-action-plan_en

22 https://ec.europa.eu/commission/presscorner/detail/en/speech_22_5493

23 COM(2023) 630 final, C(2023) 8626 final and C(2023) 8627 final.

This initiative would amend the **Whistleblower Directive**[24] to ensure that whistleblowers are able to alert the supervisory authorities to be set up by Member States of actual or potential infringements of the proposal's requirements.

This initiative does not affect in any way the application of Union restrictive measures adopted pursuant to Article 29 of the Treaty on European Union ('TEU') and Article 215 TFEU. These measures are an essential tool of the Union's Common Foreign and Security Policy through which the Union can intervene where necessary to prevent conflict or respond to emerging or current crises in the international sphere, and to promote peace, democracy, respect for the rule of law, human rights and international law. In particular, this proposal does not affect the prohibition to make available, directly or indirectly, funds or economic resources to or for the benefit of natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them which are listed in Union restrictive measures.

This initiative will have a link to the proposal for a Directive on **cross-border activities of associations (ECBAs)**[25]. While that proposal creates an additional legal form of non-profit association and will facilitate their cross-border activities and grant them certain rights, this legislative initiative will introduce common transparency and accountability standards for interest representation activities seeking to influence the decision-making process in the Union and carried out on behalf of third countries. In practice, ECBAs will have to comply with the targeted transparency requirements under this proposal only if they carry out interest representation activities on behalf of third country entities.

This initiative would not affect the prerogatives of the Commission to initiate and conduct investigations into distortive foreign subsidies under the **Foreign Subsidies Regulation**[26] or to issue opinions under the **Foreign Direct Investment Screening Regulation**[27].

Finally, some entities carrying out interest representation on behalf of third countries could fall within the scope of the **Corporate Sustainability Reporting Directive (CSRD)**[28]. These cases would be limited and restricted to the situation where the actions of a large company would be attributed to a third country.

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24 Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17, ELI: http://data.europa.eu/eli/dir/2019/1937/oj).

25 Proposal for a Directive of the European Parliament and of the Council on European cross-border associations (COM(2023)516 final), which addresses the fragmentation of national rules for associations and non-profit organisations across the Union and facilitate their activities across borders in the internal market.

26 Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market (OJ L 330, 23.12.2022, p. 1, ELI: http://data.europa.eu/eli/reg/2022/2560/oj), which aims to establish a harmonised framework to address distortions of competition on the internal market caused, directly or indirectly, by foreign subsidies.

27 Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79I, 21.3.2019, p. 1, ELI: http://data.europa.eu/eli/reg/2019/452/oj) provides an Union framework for the screening of direct investments from third countries on the grounds of security or public order.

28 Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (OJ L 322, 16.12.2022, p. 15, ELI: http://data.europa.eu/eli/dir/2022/2464/oj). It applies to all Limited Liability Companies (LLC) which are not SMEs as defined by the accounting directive, and all LLC companies listed on a regulated market (including listed SMEs) but excluding micro-enterprises.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis for the proposal is Article 114 TFEU, which provides for the adoption of measures to ensure the establishment and functioning of the internal market. This provision enables the adoption of measures for the approximation of the provisions laid down by law, regulation or administrative action in the Member States which have as their object the establishment and functioning of the internal market. It is the appropriate legal basis for an intervention covering service providers in the internal market and addressing differences between Member States' provisions which obstruct the fundamental freedoms and have a direct effect on the functioning of the internal market.

Differences in national laws exist and are increasing, given that some Member States have legislated or intend to legislate on transparency requirements applicable to interest representation. This situation creates regulatory fragmentation insofar as the rules addressing transparency of entities carrying out interest representation in relation to third countries differ as to the specific elements of transparency that they require (the information to be disclosed, the frequency of their update) and their scope (the types of activities covered or exempted).

Such fragmentation poses obstacles to the cross-border provision of interest representation and is likely to increase specifically with respect to the provision of such activities carried out on behalf of third countries. The harmonised transparency measures aim at creating an even playing field, reduce existing compliance costs and regulatory arbitrage as well as the emergence of additional obstacles in the internal market for interest representation activities carried out on behalf of third countries, resulting from inconsistent development of national laws. Without action at Union level, this variety will be further aggravated with the adoption of new initiatives in some Member States addressing, in particular, interest representation carried out on behalf of third countries, whereas in other Member States the transparency of interest representation services will remain unaddressed.

In line with its internal market objective, this proposal provides that entities would need to register in the Member State of its main establishment, regardless of the Member State(s) where it seeks to carry out its interest representation activities. In addition, the proposal provides that in specific cases and in a proportionate manner, a supervisory authority would be able to request information that could be shared with supervisory authorities of other Member States.

In line with Article 2 TEU[29], this initiative also aims to enhance the integrity of, and public trust in, the Union and Member State democratic institutions by ensuring the transparency of interest representation activities carried out on behalf of third countries, and by improving the knowledge of the magnitude, trends and actors of interest representation activities carried out on behalf of third countries. While the objective of ensuring transparency of activities whereby third countries seek to influence public decision-making in the Union is an important factor in the choices involved in the harmonisation measures contained in this proposal, the proposal has as its main objective the improvement of the conditions for the functioning of the internal market.

[29] See judgement of 16 February 2022, *Hungary v European Parliament and Council,* Case C-156/21, ECLI:EU:C:2022:97, where the Court ruled that the European Union must be able to defend its values within the limits of its powers as laid down by the Treaties.

In view of the above, full harmonisation at Union level is necessary and Article 114 TFEU is the relevant legal basis for this initiative[30].

- **Subsidiarity**

According to the principle of subsidiarity (Article 5(3) TEU), action at Union level should be taken only when the aims envisaged cannot be achieved sufficiently by Member States alone and can therefore, by reason of the scale or effects, be better achieved by the Union.

As Member States' rules affecting interest representation on behalf of third countries diverge in their scope, content and effect, a patchy framework of national rules is appearing and risks to increase, especially when it comes to interest representation activities carried out on behalf of third countries. It undermines the internal market by creating an uneven playing field and unnecessary costs for entities that seek to carry out cross-border interest representation activities on behalf of third countries. It invites regulatory arbitrage to avoid transparency measures which in turn impacts the citizens' confidence and trust in the effectiveness of regulation.

Only intervention at Union level can solve these problems, as regulation at national level already results in the creation of obstacles to cross-border interest representation activities in the internal market. In contrast, the effects of any action taken under national law would be limited to a single Member State and risk being circumvented or be difficult to oversee in relation to entities carrying out interest representation on behalf of third countries from other Member States. Furthermore, some Member States are currently considering legislative initiatives in the field of foreign influence that might not align with the proportionate and targeted approach of this initiative and that might not provide with a comprehensive system of safeguards. Only action at Union level can address this consistently across the internal market. Introducing common and proportionate standards for transparency of interest representation carried out on behalf of third countries at Union level is essential to ensure that such measures are established consistently across all Member States with respect to all fundamental rights and in particular subject to comprehensive safeguards including access to the courts.

Finally, interest representation activities carried out on behalf of third countries is a transnational issue with cross-border implications that need to be addressed at Union level. Influencing policy decisions and political processes in one Member State can have an impact beyond that Member State's borders, in another Member State or at the European level. The absence of Union-level action may result in some Member States being less aware than others about interest representation activities carried out on behalf of third countries. It seems unlikely that Member States would converge on aligned standards on how to collect comparable data on interest representation activities carried out on behalf of third countries, or establish a systematic Union-wide cooperation mechanism to exchange information with each other and the Commission.

- **Proportionality**

Regarding proportionality, the content and form of the proposed action does not exceed what is necessary to achieve the goal of ensuring the proper functioning of the internal market.

The proposal builds on existing Union legislation and is proportionate and necessary to achieve its objectives. The envisaged measures are limited to what is necessary to tackle the current and expected fragmentation of the relevant regulatory framework.

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[30] See also judgment of 10 December 2002, *British American Tobacco (Investments) and Imperial Tobacco*, C-491/01, ECLI:EU:C:2002:741, paragraph 75.

The proposal is limited to transparency requirements addressed only to entities that are carrying out interest representation services on behalf of third countries. The proportionality of the transparency obligations has been carefully considered and is reflected in the limited requirements imposed (clearly limited information requirements, limited obligations in terms of record keeping, etc.). The proposal does not aim to restrict the provision of interest representation services, but rather to improve the functioning of the internal market and facilitate their provision across borders by making them more transparent in a coherent manner across the Union.

The proposal includes necessary safeguards aimed at ensuring a proportionate transposition and enforcement and avoiding risks of stigmatisation. The proposal does not seek to prevent third countries from promoting their views but aims to ensure that this is taking place in a transparent and accountable manner. It does not impose requirements on entities merely because they receive funding from abroad, but instead focuses on ensuring increased transparency when they carry out interest representation activities on behalf of third countries that seek to influence the development, formulation or implementation of policy or legislation, or of public decision-making processes in the Union. For this reason, contributions to the core funding of an organisation or similar financial support, for example provided under a third country donor grant scheme to a non-profit organisation, should not be considered as remuneration for an interest representation service where they are unrelated to an interest representation activity, that is, where the entity would receive such funding regardless of whether it carries out specific interest representation activities for the third country providing such a funding.

In addition, the proposal includes a specific requirement that the information in Member States' national registers is presented in a neutral and factual manner and in such a way that it does not lead to stigmatisation of registered entities. In particular, the information should not be presented with or accompanied by statements or provisions that could create a climate of distrust with regard to the registered entities or that are apt to deter natural or legal persons from Member States or third countries from engaging with them or providing them with financial support.

The powers of supervisory authorities to ask for information from entities within the scope of the initiative are carefully framed to ensure that the concerned entities are not subject to unnecessary or excessive requests. That framing is twofold: supervisory authorities may only require limited information additional to what is included in the national register and only in limited circumstances.

In order to ensure the proportionality of the sanctions, the proposal provides that supervisory authorities may only impose sanctions limited to administrative fines and below a certain ceiling based on the entity's economic capacity for breaches of the proposed obligations. Criminal sanctions are explicitly excluded. Member States are responsible for ensuring that it is prohibited to participate in activities that circumvent the provisions of the Directive.

- **Choice of the instrument**

Article 114 TFEU grants the legislator the power to adopt regulations and directives.

A Directive providing for full harmonisation of the transparency requirements applicable to entities carrying out interest representation on behalf of third countries conducted with the objective of influencing the development, formulation or implementation of policy or legislation, or public decision-making processes in the internal market, is appropriate.

By imposing the full harmonisation of the transparency and accountability requirements, the initiative also prevents gold-plating. Member States would in particular, within the framework

of the harmonised rules, be prohibited from imposing more extensive transparency requirements. Member States would maintain a limited discretion within the scope of the fully harmonised measures, and as expressly framed by the legal initiative. For instance, Member States would be free to provide for one or multiple national registers and supervisory authorities in their territory (e.g. several authorities in charge of different parts of the territory).

The competence of Member States to establish rules in full respect of Union law for the aspects not covered by the harmonised rules is not affected, for example, to establish rules for their public officials contacting entities carrying out interest representation activities on behalf of third countries.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Stakeholder consultations

This proposal is the result of extensive consultations with stakeholders, in which the Commission applied the general principles and standards for consultation of interested parties. A consultation strategy identified key relevant stakeholders. The Commission conducted a first wave of broad consultations of stakeholders between October 2022 and May 2023. The Commission conducted additional consultations with Member States authorities, commercial entities and CSOs including on potential policy options in the course of August and September 2023.

The Commission contracted an external specialised study to support the preparation of this proposal[31]. As part of this supporting study, the contractor conducted a series of individual consultations with key stakeholders.

A public consultation, accompanied by feedback on the Call for Evidence document[32], was published on 16 February 2023 and ran until 14 April 2023. Feedback and contributions from stakeholders provided in particular information to develop the problem definition and policy options. The public consultation was promoted through a social media campaign as well as through the Commission's website.

The Commission conducted two Flash Eurobarometer surveys, on Democracy and on Citizenship and Democracy respectively. The first one showed that over 1 in 5 Europeans considers propaganda and false or misleading information from a non-democratic foreign source and covert foreign interference in the policies and economy of their country, including through financing of domestic actors, to be among the most serious threats to democracy[33]. The second one showed that about 8 in 10 Europeans agree that foreign interference in European democratic systems is a serious problem that should be addressed[34].

In addition, an Impact Assessment has been prepared presenting the rationale, analysis and evidence available to address the topic at stake[35]. The Impact Assessment contains a detailed presentation and analysis of the consultation strategy and its results.

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31 The study will be made available under https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/eu-citizenship/democracy-and-electoral-rights/studies_en

32 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13744-Transparency-of-covert-interference-by-third-countries_en.

33 Flash Eurobarometer 522 on Democracy.

34 Flash Eurobarometer 528 on Citizenship and Democracy.

35 See Accompanying Impact Assessment.

The Commission organised several focus group meetings with key stakeholders to gather additional evidence and data on the specific problems addressed by the initiative, as well as on the policy approach and its impact. Such focus groups meetings gathered stakeholders engaged in public relations and lobbying such as representative organisations of relevant sectors of the business community, lobbying, consultancy and public relations firms, CSOs and legal professionals providing interest representation services. Focus groups also gathered subject matter experts in relevant fields, such as academia, relevant national authorities, including at local level, as well as international organisations and standard setting bodies. Additional meetings, including at high-level, took place with CSOs and Member States.

The Commission also analysed positions and analytical papers and studies, received in the context of the preparation on the proposal. Finally, it also conducted bilateral consultations with stakeholders at their own initiative.

Overall, participants to focus groups expressed their support for an initiative addressing common transparency rules for interest representation activities carried out on behalf of third countries. They emphasised the challenges resulting from having to comply with different systems and rules across Member States and were in favour of harmonised rules at Union level.

In addition, the public consultation showed there was a general agreement amongst stakeholders that Union action is needed to increase transparency regarding lobbying, public relations activities and any other activity that, when carried out on behalf of third countries, significantly impacted the democratic sphere.

In particular, the vast majority of respondents to the public consultation stated that lobbying and public relations activities on behalf of third countries would trigger high risk that third countries covertly interfere with the Union democratic space and public debate and enabled corruption.

Union citizens are concerned about the impacts of foreign interference on Union democracies. The vast majority of them asked for more transparency regarding interest representation activities, and a coordinated response at Union level.

The Commission received 29 replies to the additional consultations with stakeholders carried out during August and September 2023: 11 replies from CSOs, 15 replies from Member States, and three replies from organisations representing the interest representation industry.

In their replies to the questionnaire, Member States broadly agreed that society has a fundamental interest to be informed about interest representation activities carried out on behalf of third countries. Five Member States specifically expressed the view that it is necessary to put in place harmonised measures enhancing the transparency of interest representation activities seeking to influence decision-making processes. Two Member States highlighted that the legislative proposal should be designed with due regard for fundamental rights. Seven Member States expressed that supervisory authorities should be permitted to ask for specific information from registered entities, subject to safeguards.

In their replies to the questionnaire, nine CSOs expressed a view that the legislative intervention should cover all types of interest representation activities and not be limited to those carried out on behalf of third countries. Three CSOs expressed the need to provide a clear definition of the notion of interest representation. Eight CSOs put an emphasis on the issue of avoiding stigmatisation, explaining that registration should not lead to stigmatisation but to normalisation of interest representation, as legitimacy of interest representation does not depend on whose interest is being represented, but on the ethical standards that are applied when carrying out interest representation activities. Three CSOs specifically referred to the

need to ensure safeguards required by the right to an effective remedy and to a fair trial. Four CSOs called for exemptions from the requirement to register for smaller entities.

All industry representatives having replied to the questionnaire are in favour of registration and transparency requirements to be harmonised at Union level. Two industry representatives recommended the Commission to take into consideration all forms of interest representation activities and not to harmonise only those performed on behalf of third countries. All industry representatives agreed that no specific entity should benefit from exemptions for the scope of transparency requirements, in order to avoid risks of circumvention.

- **Collection and use of expertise**

The Commission has relied on a wide array of expertise to prepare this proposal.

The evidence base is drawn from internal and external research, extensive consultation activities, bilateral meetings with stakeholders, and was supported by an external study.

Relevant work in the European Parliament (including the Special Committee for foreign interference in all democratic processes in the Union, including disinformation[36]) and the Council[37] constituted further input to the Commission analytical process.

In addition to the public consultation, the Commission has engaged in particular in several focus group meetings with relevant stakeholders, with questions specifically tailored for each category.

Guidance from international standard setting bodies, including the Council of Europe or the Organisation for Economic Co-operation and Development (OECD) were also taken into account[38]. They notably recommended the legal regulation of lobbying activities in the context of public decision-making, as well as transparency and integrity in lobbying and foreign funding, while recalling the importance of respect for fundamental rights.

The study underpinning the initiative includes a literature review confirming the prevalence of foreign interference in democratic processes, which is widespread and has increased over time.

- **Impact Assessment**

In line with its "Better Regulation" policy, the Commission conducted an Impact Assessment for this proposal[39].

The Commission examined different policy options to achieve the general objectives of the proposal. Three policy options of different degrees of regulatory intensity were assessed:

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36 European Parliament resolution of 9 March 2022 on foreign interference in all democratic processes in the European Union, including disinformation (2020/2268(INI)).

37 See, for example, Council Conclusions of 10 December 2019 on complementary efforts to enhance resilience and counter hybrid threats (14972/19), Council Conclusions of 28 September 2021 on the Global approach to Research and Innovation – Europe's strategy for international cooperation in a changing world (12301/21), Council Conclusions of 18 July 2022 on Foreign Information Manipulation and Interference (FIMI) (11429/22) and Council Conclusions 10 March 2023 on the application of the EU Charter of Fundamental Rights; The role of the civic space in protecting and promoting fundamental rights in the EU (7388/23).

38 Such as the OECD Principles for Transparency and Integrity in Lobbying, or the Council of Europe's Recommendation of the Committee of Ministers to member States on the legal regulation of lobbying activities in the context of public decision making, CM/Rec(2017)2.

39 SWD(2023) 663 final.

The first option considered a non-legislative intervention. This policy option would have consisted in recommending to Member States a set of measures to be applied to interest representation activities carried out on behalf of third countries. Member States would have been encouraged to provide for similar and proportionate transparency measures aimed at facilitating accountability and oversight and addressing the challenges for democratic processes associated with such activities. Appropriate monitoring of implementation of the Recommendations would have been conducted. A report would have assessed the effects of the Recommendation and considered other measures including possible future legislation. This option was discarded because an intervention relying solely on non-legislative measures would not have prevented the development of further obstacles in the functioning of the internal market for interest representation activities carried out on behalf of third countries. In addition, in the absence of registration applicable Union-wide, this option would have implied higher compliance costs. This policy option would have also left very broad discretion at national level to implement transparency requirements and in particular would not have ensured the implementation of the safeguards provided by the retained option.

The second option considered and ultimately retained, is a targeted legislative intervention focusing on the transparency of interest representation activities carried out on behalf of third countries. Under this scenario, the legislative instrument would define the transparency and accountability requirements applicable to entities carrying out interest representation activities on behalf of third countries. It would require economic operators to keep limited records and provide, in a harmonised manner, limited information to national registers established by Member States on themselves, the activities they carry out, and on the third country entities on whose behalf they act. This option includes safeguards aimed at ensuring a proportionate transposition and enforcement and avoiding risks of stigmatisation.

The third option considered would have consisted of an extensive legislative intervention including enhanced reporting requirements as well as the creation of a prior authorisation or licencing system where Member States could refuse granting a licence on the ground of public security concerns. Such a system would have created an obligation for entities that carry out interest representation on behalf of third countries in the internal market to obtain a licence in order to be able to provide such services for third countries. This was considered likely to raise proportionality issues and could have led to negative impacts for business, in particular for affected smaller economic actors and non-commercial organisations. This option could have had a disproportionate impact on fundamental rights, in particular the freedom of association and the freedom of expression. Additionally, prior authorisation or licensing would have risked being detrimental to the geopolitical interests of the Union: it would have created a risk of retaliatory measures from countries currently engaging in influence activities in the Union if their activities are refused. Similarly, to the extent that this option might have included disproportionate restrictions to the right to freedom of association, the Union's reputation could have also been negatively impacted.

The retained policy option appropriately addresses the regulatory gaps and differences between Member States while ensuring full compliance with the principles of proportionality and subsidiarity. This approach has also shown to be the most beneficial in terms of impacts.

First, economic impacts are expected to be very limited, with few compliance costs for the required record keeping and registration requirements (aligned as much as feasible with existing business process) and a limited number of concerned entities in the internal market, estimated at between 712 and 1,068 according to different scenarios, as well as limited enforcement costs for national administrations. The public registers to be established by Member States would be supported by publicly accessible IT tools, in line with the 2030 Digital Compass Communication and the need to promote "digital by default" policymaking

in Union legislation. The costs incurred are expected to be offset by reducing and avoiding fragmentation across the internal market.

Second, taking into account the tailored nature of the requirements and the important safeguards embedded in the proposal, the social impacts of this proposal are expected to be positive, as the initiative will enhance the transparency and accountability of relevant market players and would improve knowledge about the magnitude, trends and actors of interest representation activities carried out on behalf of third countries. It is also anticipated that the initiative will strengthen public confidence and trust in decision-making and the nature of the regulated services, thereby contributing to the achievement of Sustainable Development Goal n°16 to "Promote peaceful and inclusive societies for sustainable development, access to justice for all and build effective, accountable and inclusive institutions at all levels".

Specific options on the scope of the intervention were discarded from the outset. Covering only interest representation activities carried out on behalf of certain third countries was discarded due to the operational difficulties in establishing and agreeing on the relevant differentiating criteria, and the increased risk of stigmatisation for the entities carrying out interest representation on behalf of those countries. Covering interest representation activities seeking to influence decision-making in the Union carried out on behalf of any entity was discarded as it would not be targeted enough in view of the pursued aim of the initiative (transparency of covert influence by third country administrations), and would be disproportionate.

Lastly, the initiative is expected to have no environmental impacts, and will therefore respect the "do no significant harm" principle and is consistent with the climate neutrality objective, its intermediate targets and the adaptation objectives as set out in the European Climate Law.

On 17 November 2023, the Regulatory Scrutiny Board issued a 'positive opinion with reservations' on the draft Impact Assessment[40]. Its comments were focused on the narrative underpinning the initiative as well as the presentation of the policy options and their impacts (with an emphasis on the proposed governance structure and the Commission's role in it). An explanation as to how the comment were implemented are included in the Impact Assessment accompanying this proposal.

- **Fundamental rights**

The measures are designed in full respect of fundamental rights and freedoms including freedom of expression and information, the right to vote, the right to good administration and the right to freedom to conduct business.

Fundamental rights and freedoms can be restricted only where it is justified by the pursuit of a legitimate public interest under the condition that the restriction is proportionate to the objective pursued. The guarantee of transparency, fairness, impartiality and democratic accountability in the context of public decision-making and public administration, and the prevention of undue covert interference in such decision-making and administration are overriding reasons of public interest.

The proposal imposes limited restrictions to the following fundamental rights enshrined in the Charter of Fundamental Rights of the European Union (hereafter, 'the Charter'): the right to private life (Article 7), the right to the protection of personal data (Article 8), the freedom of association (Article 12), the freedom of the arts and sciences (Article 13), the freedom of expression and information (Article 11) and the freedom to conduct a business (Article 16).

40 SEC(2023) 637.

While these rights are not absolute and limitations may be introduced, any restriction must comply with the requirements set out in Article 52(1) of the Charter, including to be limited to what is necessary and respect the principle of proportionality.

Right to private life and the right to the protection of personal data

The proposal imposes limited restrictions on the **right to private life** (guaranteed both under Article 7 of the Charter and Article 8 of the European Convention on Human Rights ('ECHR')) and the **right to the protection of personal data** (Article 8 of the Charter), insofar as it requires that entities keep and provide certain information to the national authorities and provides for the exchange of such information among competent national authorities as well as public access to a part of that information.

As noted by the Court of Justice of the European Union, provisions imposing or allowing the communication of personal data such as the name, place of residence, or financial resources of natural persons to a public authority must be characterised as an interference in their private life and therefore as a limitation on the right guaranteed in Article 7 of the Charter, without prejudice to the potential justification of such provisions. The same is true for provisions providing for the dissemination of such data to the public[41]. Furthermore, the Court of Justice has considered that making personal data available to the public in a manner where such data are accessible to a potentially unlimited number of persons constitutes a serious interference with the fundamental rights enshrined in Articles 7 and 8 of the Charter[42]. At the same time, as reiterated by the Court of Justice, the fundamental rights enshrined in Articles 7 and 8 of the Charter are not absolute rights, and must be considered in relation to their function in society. These rights may be restricted if such restriction is provided by law, it respects the essence of these rights and if it is strictly necessary and proportionate in relation to the objective of general interest recognised by the European Union. In this regard, Article 8(2) of the Charter requires that personal data must be processed for specified purposes and on the basis of consent or some other legitimate interest laid down by law[43].

By providing for citizens' access to information on entities active in the internal market carrying out interest representation activities on behalf of third countries, as well as the third country entities they represent, the proposal seeks to ensure that citizens, public officials and stakeholders such as journalists and CSOs can exercise democratic scrutiny over public administration and public decision-making to ensure that this is done fairly, impartially and transparently, in particular by being able to obtain information about the entities that have access to decision-makers, such as officials and elected representatives. Decision-makers also have special interest in being able to obtain information about the entities which seek to influence them. As voters, citizens are also important decision-makers in their own right, and can also be the target for certain interest representation services.

The proposal aims to enhance the integrity of, and public trust in, the Union's and Member States' democratic institutions by ensuring the transparency of interest representation activities carried out on behalf of third countries, and by improving available information and public awareness of the magnitude, trends and actors of interest representation activities

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41 See, to that effect, judgments of 20 May 2003*, Österreichischer Rundfunk and Others*, C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraphs 73 to 75 and 87 to 89; of 9 November 2010, *Volker und Markus Schecke and Eifert*, C-92/09 and C-93/09, EU:C:2010:662, paragraphs 56 to 58 and 64; and of 2 October 2018, *Ministerio Fiscal*, C-207/16, EU:C:2018:788, paragraphs 48 and 51).

42 Judgment of the Court of Justice of 22 November 2022, *Luxembourg Business Registers*, joined cases C-37/20 and C-601/20, EU:C:2022:912, paragraphs 42 to 44.

43 Judgment of 22 November 2022, *Luxembourg Business Registers*, joined cases C-37/20 and C-601/2, EU:C:2022:912, paragraphs 45-63 and the case-law cited.

carried out on behalf of third countries[44]. The Court of Justice has recognised that the objective of increasing transparency is an overriding reason in the public interest[45]. The aim pursued by this proposal therefore constitutes an objective of general interest that is capable of justifying interferences with the fundamental rights enshrined in Articles 7 and 8 of the Charter.

Public access to information on interest representation carried out on behalf of third countries is appropriate for contributing to the attainment of the objective of general interest pursued, since the public nature of that access and the increased transparency resulting therefrom contribute to the creation of an environment of democratic scrutiny and accountability.

The proposal also ensures that the interference with the fundamental rights enshrined in Articles 7 and 8 of the Charter resulting from public access to information on interest representation carried out on behalf of third countries is proportionate and limited to what is strictly necessary. Firstly, the set of data to be made available to the public is limited, clearly and exhaustively defined and fully harmonised throughout the Union. In addition, the personal data made publicly available is limited to the minimum required for citizens to be informed about the entity carrying out interest representation and the activity carried out on behalf of third countries. Information of relevance only to affected decisions makers and the competent national authorities supervising and monitoring compliance with the proposal, would not be made publicly available, to safeguard against the risks of abuse of the information provided.

Secondly, as an additional safeguard to avoid disproportionate disadvantages in individual cases, the principle that the public should have access to information on interest representation carried out on behalf of third countries may be derogated from. The proposal provides that registered entities may request that all or part of the information provided is not made publicly available where there are overriding interests justifying withholding publication.

In view of the above, it must be concluded that the limitations on the right to private life and the right to the protection of personal data provided for by the proposal respect the essence of those rights, genuinely meet a general interest recognised by the Union, and are proportionate and limited to the minimum necessary.

Freedom of association

The fundamental right to **freedom of association** is guaranteed both under Article 12 of the Charter and Article 11 of the ECHR to all associations, including CSOs, interest groups, trade unions and political parties. Freedom of association constitutes one of the essential pillars of a democratic and pluralistic society, in as much as it allows citizens to act collectively in fields of mutual interest and to contribute to the proper functioning of public life[46].

Associations must be able to pursue their activities and operate without unjustified interference. The Court of Justice considered that legislation which renders significantly more

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44 As stated by the Venice Commission, "*lobbying activities fall (...) in between the political party activities and ordinary NGO activities. (...) The public has a clear interest in knowing the lobbying actors who have access to government decision making process for the purpose of influence, including their financial sources whether domestic or foreign*". Venice Commission Report on Funding of Associations CDL-AD(2019)002, paragraph 105.

45 See by analogy judgment of 18 June 2020, *Commission v Hungary (Transparency of associations)*, C-78/18, EU:C:2020:476, paragraph 79.

46 Judgment of 18 June 2020, *Commission v Hungary (Transparency of associations)*, C-78/18, EU:C:2020:476, paragraph 112.

difficult the action or operations of associations, whether by strengthening the requirements in relation to their registration, by limiting their capacity to receive financial resources, by imposing obligations of declaration and publications such as to create a negative image of them or by exposing them to the threat of penalties, in particular of dissolution, is to be classified as a limitation to the freedom of association[47].

The Venice Commission of the Council of Europe considers that an outright ban on foreign funding or requiring prior authorisation from the authorities to receive or use such funds, is not justified[48].

The proposal does not ban foreign funding or negatively label activities of CSOs, nor does it create a system of licensing or preauthorisation, requiring CSOs or other associations to apply at the Union-level for a licence to conduct interest representation activities on behalf of a third country entity.

The proposal is limited to providing common transparency and accountability standards regarding interest representation activities carried out on behalf of third country entities and seeking to influence decision-making processes in the Union.

While imposing transparency obligations, which may be considered as having a limited impact on the effective enjoyment of the right to freedom of association inasmuch as the concerned organisations would have to comply with the registration and reporting obligations and pay the related costs – the proposal does not affect the essence of that right.

The common transparency and accountability standards should strengthen democracy by increasing trust in public decision-making processes and institutions by ensuring the transparency of interest representation activities carried out on behalf of third countries, and by improving the information available about and public awareness of the magnitude, trends and actors of interest representation activities carried out on behalf of third countries. The Court has recognised that the objective of increasing transparency is an overriding reason in the public interest[49]. The Venice Commission of the Council of Europe has indicated that "lobbying activities fall (…) in between the political party activities and ordinary NGO activities. (…). The public has a clear interest in knowing the lobbying actors who have access to government decision-making process for the purpose of influence, including their financial sources whether domestic or foreign"[50].

The proposal meets an objective of general interest, in the light of the principles of openness and transparency, which must guide the democratic life of the Union in accordance with the second paragraph of Article 1 and Article 10(3) TEU and in conformity with the democratic values shared by the Union and its Member States pursuant to Article 2 TEU.

Specific safeguards

In addition, as to the proportionality of the limitation, the proposal is limited to what is necessary to meet this objective, and **specific safeguards** have been introduced. It does not apply indiscriminately to any entity receiving financial support from abroad. First, the proposal focuses on specific interest representation activities carried out for third countries and does not cover funding given by a third country entity (such as a structural grant,

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47 Judgment of 18 June 2020, *Commission v Hungary (Transparency of associations)*, C-78/18, EU:C:2020:476, paragraph 114.

48 Venice Commission Report on Funding of Associations CDL-AD(2019)002, paragraph 147.

49 Judgment of 18 June 2020, *Commission v Hungary (Transparency of associations)*, C-78/18, EU:C:2020:476, paragraph 79.

50 Venice Commission Report on Funding of Associations CDL-AD(2019)002, paragraph 105.

donation, etc.) that is unrelated to such interest representation activities[51]. Second, it only covers interest representation for specific third country actors: third country governments and entities whose action can be attributed to them. By focusing on a specific type of activities carried out on behalf of a specific type of actors, the proposal only targets activities that are genuinely likely to have a significant influence on public life and public debate, the imposition of transparency requirements on which can be justified by the overriding public interest stated.

The proposal is carefully framed to avoid stigmatising CSOs or other non-profit associations. It regulates a specific type of activity – interest representation carried out in the internal market on behalf of third country governments – independent of the nature of the entity carrying out that activity. The transparency requirements apply equally to any organisation.

In addition, the proposal contains strong safeguards to further limit the possibility of stigmatisation. First, the national public registers would have to be presented in a neutral and factual manner and in a way that does not lead to the stigmatisation of the entities included in the national register. Second, Member States would need to ensure that when carrying out their tasks, the national authorities ensure that no adverse consequence arises from the mere fact that an entity is registered. Third, by imposing the full harmonisation of these transparency requirements, the proposal prevents their gold-plating and ensures that registered entities cannot be required to present themselves publicly on the basis of conditions which would have the effect of stigmatising them[52]. Finally, registered entities would be able to request that all or part of the information is not made publicly available where there are overriding interests justifying the withholding of publication.

Further, the requirements are proportionate and limited to simple record keeping and registration requirements. Member States would be required to transpose and supervise the implementation of these requirements in a manner that is proportionate and does not overburden concerned entities.

- In terms of record-keeping, the concerned entities would be required to keep, for a limited period, information on the identity of the third country entity on whose behalf the activity is carried out, a description of the purpose of the interest representation activity, contracts and key exchanges with the third country entity to the extent that they are essential to understand the nature and purpose of the interest representation carried out as well as information or material constituting key components of the interest representation activity.
- In terms of registration, the concerned entities would only be required to provide limited information on themselves, the activities conducted, and the third country entities they conduct the activities for. The registration would include an approximation[53] of the annual amounts received covering all the tasks carried out

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51 An anti-circumvention clause is included in the proposal to avoid abuses (for example covert remuneration for a representation service, the setting up of companies with a view to obfuscating links to third country governments, or the artificial distribution of activities across multiple entities with a view to falling short of the thresholds established by the Directive).

52 Upon registration, these entities would only be required to provide their registration number in their contacts with public officials, not the wider public.

53 During the registration the precise amount would not be requested. Concerned entities would have to indicate in which bracket (e.g.: EUR 25 000 to <50 000; or EUR 50 000 to <100 000) the annual amount would fall. Information on the annual amounts declared would be made public using wider brackets, corresponding to the level of detail necessary for the purpose of informing citizens, their representatives and other interested parties.

with the objective of influencing the development, formulation or implementation of the same proposal, policy or initiative. Only the information necessary for the application and oversight of the Directive would need to be updated regularly. Other information would only need to be updated annually.

- Apart from the cases where it is necessary to examine non-compliance with the registration requirements, registered entities can only be requested to share their records with the supervisory authority where, based on objective factors, they are particularly likely to have a significant influence on public life and public debate.

Finally, the proposal contains a comprehensive system of safeguards. Supervision would be entrusted to independent supervisory authorities with clearly established powers, whose requests for further information would need to be motivated and subject to effective judicial remedy. Sanctions would be designed in a way that would avoid a chilling effect on the concerned entities and be subject to appropriate safeguards, including the right to effective judicial review. They would be fully harmonised and limited to administrative fines under a specific ceiling based on the entity's economic capacity. The proposal would thus ensure that CSOs and other non-profit associations would not be exposed to the threat of criminal penalties or dissolution. Furthermore, sanctions would only be imposed following a prior early warning, except when such infringement amounts to a violation of the prohibition of circumvention.

It follows from the elements above that while the proposal could impose limited restrictions on the freedom of association, these restrictions would follow the legitimate aim of improving the transparency of interest representation activities carried out on behalf of third countries entities and would be strictly limited to the measures that are necessary to meet that objective.

Freedom of the arts and sciences

The **freedom of the arts and sciences** is guaranteed under Article 13 of the Charter. It protects freedom of scientific research, including academic freedom. It ensures the freedom of academic staff and students to engage in research, teaching, learning and communication in and with society without interference or fear of reprisal. Freedom of scientific research encompasses the right to freely define research questions, choose and develop theories, gather empirical material and employ academic research methods, to question accepted wisdom and bring forward new ideas. It entails the right to share, disseminate and publish the results thereof, including through training and teaching. It is the freedom of researchers to express their opinion without being disadvantaged by the institution or system in which they work or by governmental or institutional censorship. It is also the freedom to associate in professional or representative academic bodies[54]. This proposal does not regulate the freedom to define research questions, nor the right to disseminate and publish the result. The proposal does not contain any ban on international collaboration, including on teaching, research and education activities. It does not affect the institutional autonomy of Union Higher Education Institutions to take independent decisions on their internal governance, including on financial, staffing (ability to recruit independently) and academic matters.

Therefore, none of the proposed measures would affect the essence of the right.

Freedom of expression and information

With regards to the **freedom of expression and information** (Article 11 of the Charter and Article 10 of the ECHR), the proposal would positively contribute to the right of individuals

[54] Bonn Declaration on Freedom of Scientific Research of 20 October 2020.

to receive and impart information and ideas without interference by public authority. Citizens would gain fair access to information on interest representation activities carried out for third countries affecting public decision-making, to support their understanding of such activities, strengthen their confidence in the integrity of public decision-making processes and deter manipulative foreign interference, on the basis of safeguards for the rights to personal data of natural persons providing information to national registries, and also in specific situations where organisations registered have an overriding interest justifying publication of information exceptionally to be withheld. In this regard, the legislative measures in the proposal would improve the transparency and accountability of entities that carry out interest representation activities on behalf of third countries and the knowledge about the magnitude, trends and actors of such activities. The fundamental right to receive information would be reinforced as citizens would gain useful information to exercise their democratic rights and hold their public officials accountable.

The proposed measures would not regulate the content or subject of the interest representation activities covered. It does not require transparency in terms of funding of operating expenditure unrelated to an interest representation activity, such as structural grants or donations.

The provision of transparency measures could have a chilling effect on the decision to carry out the interest representation activities covered and could restrict the freedom of expression of entities whose action can be attributed to a third country government (such as a private entity controlled by a third country). As explained with regards to the right to private life, the right to the protection of personal data and the freedom of association, these measures pursue an objective in the general interest capable of justifying interference with this freedom. As noted, safeguards are provided to ensure that interference is proportionate and necessary in all cases.

Freedom to conduct a business

Article 16 of the Charter recognises the freedom to conduct a business in accordance with Union law and national laws and practices. The harmonised requirements would facilitate and reduce the obstacles for the cross-provision of services by entities carrying out interest representation activities on behalf of third countries, which would support such entities in the exercise of their freedom to conduct business.

Due to the wording of Article 16 of the Charter, the freedom to conduct a business differs from the other fundamental freedoms laid down in Title II of the Charter, such as the freedom of association, the freedom of expression and information and the freedom of the arts and sciences, and may be subject to a broader range of interventions on the part of public authorities to limit the exercise of economic activity in the public interest[55].

The proposal imposes limited restrictions on economic activities, insofar as it imposes on the entities the obligation to comply with certain requirements when carrying out interest representation on behalf of third countries. The transparency measures for interest representation activities carried out on behalf of third countries are measures which pursue an objective in the general interest capable of justifying interference with this freedom.

[55] Judgment of the Court of Justice of 22 January 2013, *Sky Österreich GmbH v Österreichischer Rundfunk,* C-283/11, EU:C:2013:28, paragraph 46.

4. BUDGETARY IMPLICATIONS

This proposal has implications in terms of costs and administrative burden for the Commission relating to two expenditure categories. The recurrent costs of staff within the Commission would be in principle covered under the heading "Administrative expenditure" while costs for the necessary extension of the IMI system would be covered under the Citizens, Equality, Rights and Values Programme.

The financial and budgetary impacts are explained in detail in the legislative financial statement annexed to this proposal.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will assess the implementation of the initiative at the latest one year after the deadline for transposition of the Directive. At the latest four years after the transposition deadline, the Commission will carry out an evaluation of the Directive, including of its effectiveness and proportionality. This evaluation will explore in particular the need for changes to the scope of the initiative.

- **Explanatory documents**

To ensure the proper implementation of this Directive, explanatory documents in the form of correlation tables are necessary.

- **Detailed explanation of the specific provisions of the proposal**

Chapter I sets out general provisions, including the object and purpose of the Directive (Article 1), definitions of the key terms used (Article 2), the scope of the Directive (Article 3) and level of harmonisation (Article 4).

Chapter II contains provisions on the transparency and registration obligations applicable to interest representation activities carried out on behalf of third country entities. In particular, it provides for a possibility to identify third country entities on whose behalf interest representation service is carried out (Article 5), a provision on subcontracting (Article 6), an obligation to keep relevant records (Article 7), and the obligation on entities not established in the Union to appoint a legal representative (Article 8).

In addition, this Chapter also provides for the setting up and maintaining of the national registers to be used for registrations under the Directive (Article 9). Article 10 sets out rules on registration, including the information to be provided (with the detailed list included in Annex I). Article 11 sets out the procedure following registration. In this context, registered entities are to be provided a unique European Interest Representation Number ('EIRN') (whose format is established in Annex II), and the competent authorities in other Member States concerned are to be notified of the registration. Article 12 establishes which parts of the information provided by registered entities are to be publicly available (with the bracket sizes for the publication of the annual amounts included in Annex III), as well as a mechanism allowing registered entities to request that all or part of the information provided is not made publicly available where there are overriding legitimate interests preventing publication. Article 13 establishes a yearly publication of data by Member States and the Commission. Article 14 establishes the obligation that registered entities as well as their subcontractors must provide their EIRN when in direct contact with public officials.

Chapter III sets out rules on supervision and enforcement. Article 15 provides information on the competent national authorities for the purposes of the Directive and the independence criteria of the supervisory authority. Article 16 lays down the conditions for information

requests by supervisory authorities and the accompanying safeguards, including the applicable thresholds. Article 17 lays down rules on cross-border cooperation and Article 18 lays down rules on cross-border information requests between supervisory authorities. Article 19 sets up an advisory group of representatives of the supervisory authorities assisting the Commission in certain tasks.

This chapter also contains a prohibition of activities intended to circumvent obligations in the Directive (Article 20) and obliges Member States to ensure the applicability of Directive (EU) 2019/1937[56] to the reporting of breaches of the Directive and the protection of persons reporting such breaches (Article 21). Finally, this chapter provides that Member States are to lay down rules on sanctions for infringements of national provisions adopted to transpose certain provisions of the Directive (Article 22).

Chapter IV contains final provisions, such as rules on the adoption of delegated acts (Article 23), amendments to Directive (EU) 2019/1937 regarding the list of areas covered by whistleblower protection (Article 24), and the reporting and review clause (Article 25). Finally, the remaining provisions in this Chapter concern the transposition of the Directive (Article 26) and its entry into force (Article 27).

[56] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17, ELI: http://data.europa.eu/eli/dir/2019/1937/oj).

2023/0463 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Having regard to the opinion of the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Interest representation in the Union is a growing and increasingly cross-border activity. When carried out with the necessary level of transparency, such activities allow sharing of experiences and views about problems and solutions, supporting public decision-makers in understanding the options and trade-offs of different approaches.

(2) Interest representation is not only carried out on behalf of domestic stakeholders but increasingly also by third countries. Ideas from third countries can contribute positively to public debate and are a welcome part of international engagement. However, it is not always easy for public officials or individuals to recognise the involvement of third countries in interest representation activities in the context of their decision-making process, or understand the magnitude, trends and actors behind such activities. Third countries should be understood as countries that are not members of the Union or the European Economic Area.

(3) To the extent that it is normally provided against remuneration, interest representation, including interest representation provided to third countries, constitutes a service within the meaning of Article 57 of the Treaty on the Functioning of the European Union ('TFEU'). The market for interest representation also includes interest representation activities carried out by third country entities themselves in a way that is comparable to services and are linked to or substitute activities of an economic

[1] OJ C […], […], p. […].
[2] OJ C […], […], p. […].

nature. These activities should be treated in the same way as interest representation services.

(4) Some Member States have adopted specific measures requiring transparency of interest representation activities, often in the framework of transparency registers linked to a public body. Such national measures often include the obligation for entities carrying out interest representation activities to register themselves or their activities or to obtain and retain specific information, for instance about their clients and the services they provide.

(5) Member States' measures regulating transparency of interest representation activities are very divergent, in particular concerning the record-keeping and registration requirements which apply to entities carrying out interest representation. Some Member States have established mandatory registers aiming, in particular, at ensuring transparency. Others have established voluntary registers, whereas some Member States have no registers for interest representation. There are also considerable variations regarding the granularity of the information provided for transparency purposes, including the type of information required, for instance about the interests represented or about the client. In some Member States information about interest representation must be updated on a regular basis whereas in others the information must be updated every time there is a change in the scope of the interest representation activity carried out.

(6) Such divergences create an uneven playing field and increase compliance costs for entities seeking to carry out interest representation activities in more than one Member State, which may deter the development and provision of new interest representation activities in the internal market. Third countries are likely to seek interest representation in more than one Member State in order to ensure an overall positive policy in their favour across the Union. Such conditions negatively impact economic operators and constitute obstacles to the provision of cross-border interest representation within the internal market. This uneven playing field also directs cross-border interest representation activities away from more regulated Member States towards less regulated ones or where enforcement is limited. Such regulatory arbitrage also presents an opportunity for third-country actors seeking to evade transparency requirements.

(7) In the context of an increased awareness of attempts by certain third countries to influence democratic processes in the Union, some Member States are likely to develop new rules to ensure transparency of foreign influence exerted through interest representation. The obstacles to the provision of such services in more than one Member State created by the fragmentation of the internal market for interest representation activities carried out on behalf of third countries are therefore likely to increase.

(8) The existing national divergences in the measures regulating transparency of interest representation, affecting especially interest representation carried out on behalf of third countries, and the current context of increased awareness of the risks of foreign interference in democratic processes, highlight the need to act at Union level to regulate the provision of interest representation services and engage in interest representation activities carried out on behalf of third countries across the Union, while ensuring a high level of transparency of such activities.

(9) To avoid a situation where Member States seek to unilaterally address their concerns regarding transparency of foreign influence exerted through interest representation and

to prevent the emergence of additional obstacles to the provision of cross-border interest representation activities carried out on behalf of third countries resulting from divergent and inconsistent development of national laws, it is necessary to provide for harmonised measures at Union level.

(10) By providing harmonised transparency requirements applicable across the internal market, this Directive aims to establish a coherent and systematic framework to ensure transparency as regards interest representation activities conducted on behalf of third countries with the objective of influencing the development, formulation or implementation of policy or legislation, or public decision-making processes, in the Union.

(11) Providing common transparency and accountability standards and common reporting standards also support democratic accountability and a better common knowledge of interest representation activities conducted with the objective of influencing the development, formulation or implementation of policy or legislation, or public decision-making processes, in the Union, addressing the need for reliable and consistent data. The need to ensure transparency of interest representation activities carried out on behalf of third countries is a legitimate public goal, in the light of the principles of openness and transparency which must guide the democratic life of the Union in accordance with the second paragraph of Article 1 and Article 10(3) of the Treaty on the European Union ('TEU'), in conformity with the values shared by the Union and its Member States pursuant to Article 2 TEU, also supporting the exercise of citizenship rights.

(12) Covert interest representation activities carried out on behalf of third countries are capable of affecting the development, formulation or implementation of the Union's internal and external policies, including regarding its economic and security interests. This affects democracy more generally, which is a common value of the Union, the securing of which is of fundamental importance to the Union and its Member States. Providing for a harmonised level of transparency across the Union regarding such activities should contribute to enhancing public trust in the Union's and Member States' decision-making processes.

(13) While rules on openness and transparency of interest representation activities exist in certain third countries, these rules do not cover activities seeking to influence the development, formulation or implementation of policy or legislation, or public decision-making processes, in the Union. These rules are therefore not adequate to ensure the transparency of interest representation seeking to influence decision-making in the Union.

(14) The measures set out in this Directive are proportionate and limited to what is necessary to ensure transparency of a specific set of activities, namely interest representation activities carried out on behalf of third countries. They impose requirements related to those activities, and do not impose requirements on entities merely because they receive funding from abroad. This Directive focuses on increased transparency when entities carry out interest representation activities on behalf of third countries in the internal market. In particular, this Directive imposes obligations to ensure that the data made publicly available is presented in a factual and neutral way and to ensure that competent national authorities act in a way that no adverse consequence, such as stigmatisation, arises from the fact that an entity has registered in accordance with the provisions of this Directive. It provides for a comprehensive system of safeguards, including effective judicial review to ensure proportionality of

the harmonised measures. The measures set out in this Directive are in full compliance with fundamental rights and observe the principles recognised in particular by the Charter of Fundamental Rights of the European Union ('the Charter'), including the freedom of expression and information, freedom of assembly and association, freedom of scientific research, including academic freedom, the right to the protection of personal data, the right to an effective remedy and the freedom to conduct a business. By achieving a common level of transparency in relation to interest representation carried out on behalf of a third country, the measures set out in this Directive strengthen citizens' democratic rights as referred to in the Charter.

(15) The harmonised transparency requirements of this Directive should not affect national rules on interest representation activities for entities other than third country entities, nor should they affect the substantive content of such activities nor the substantive rules applicable to public officials when they interact with entities carrying out interest representation activities. They should not affect rules applicable to criminal activities and their detection, investigation, prosecution supervision and sanctioning as established under national or Union law, such as those related to corruption.

(16) In order to harmonise transparency requirements, it is necessary to provide for a common definition of interest representation. To ensure the correct application of the harmonised transparency requirements, the concept of interest representation activities should have a broad meaning. It should cover activities carried out with the objective of influencing the development, formulation or implementation of policy or legislation, or public decision-making processes, including by impacting public opinion, in the Union and its Member States, including at regional and local levels.

(17) A clear and substantial link should exist between the activity and the likelihood that it would influence the development, formulation or implementation of policy or legislation, or public decision-making processes, in the Union. In order to determine the existence of such a link, account should be taken of all relevant factors, such as the content of the activity, the context in which it is conducted, its objective, the means by which it is carried out, or whether the activity is part of a systematic or sustained campaign. The activities covered should not be limited to activities with the objective to promote a change in a given policy, legislation or public decision-making process but should also cover activities aiming to maintain the status quo.

(18) Interest representation could, in particular, be performed through activities such as organising or participating in meetings, conferences or events, contributing to or participating in consultations, parliamentary hearings or other similar initiatives, organising communication or advertising campaigns including through media, platforms, use of influencers in social media, networks and grassroots initiatives, preparing policy and position papers, legislative amendments, opinion polls and surveys, open letters and other communication or information material.

(19) Interest representation could also cover activities carried out on behalf of a third country entity in the context of research and education, such as the dissemination by think tanks of papers recommending or favouring the adoption of a specific public policy. In accordance with the principle of academic freedom and freedom of scientific research, enshrined in Article 13 of the Charter, interest representation should not cover research pursued by researchers in a subject of their choice, the dissemination of the findings of that research, or teaching and education activities that are conducted in accordance with the principle of academic freedom and institutional autonomy, except where the clear purpose of these activities is to influence the development, formulation

or implementation of policy or legislation, or public decision-making processes, in the Union and they are carried out on behalf of a third country entity. Where this is not the case, carrying out such activities should not give rise to registration requirements under this Directive.

(20) Activities carried out by officials of third country governments that are connected with the exercise of official authority, including activities related to the exercise of diplomatic relations between States or international organisations, should be excluded from the scope of this Directive. This Directive should also not cover activities carried out by lawyers consisting of the provision of legal advice or the representation in legal, conciliation or mediation proceedings of third country entities and safeguarding their fundamental rights, such as the right to be heard, the right to a fair trial, and the right of defence. Professional advice other than legal advice should also be outside the scope of this Directive, such as procuring a professional or expert study to serve as evidence in support of arguments in court; getting technical or scientific advice on complying with technical legislation or using mediation services of a professional as mediators who are not necessarily certified lawyers. Ancillary activities such as catering, the provision of a venue, the printing of brochures or policy papers, or the provision of online intermediary services within the meaning of Regulation (EU) 2022/2065[3], such as online platforms services, should not be covered by this Directive.

(21) In order to harmonise transparency requirements, it is necessary to provide for a common definition of providers of interest representation services. Providers of interest representation services could be legal persons governed by private law, natural persons who individually engage in a professional lobbying activity, as well as other natural or legal persons whose principal or occasional occupation is to influence the public decision-making process, including lobbying and public relations companies, think tanks, civil society organisations, private research institutes, public research institutes offering research services, individual researchers and consultants.

(22) For the purposes of this Directive, public officials should be understood as officials of the European Union and officials of Member States holding a legislative, executive, administrative or judicial office at national, regional or local level.

(23) The government or authorities of a third country may be behind the decision of an entity to seek interest representation. This may be as a result of control exercised by the government or public authorities of a third country over the entity, in particular where it has a decisive influence on that entity through economic rights, contractual arrangements, or any other means. It may also result from situations where a third country government or authorities were behind the decision of the entity, in particular by giving instructions or directives. In order to capture such instances, the concept of third country entities should be understood as covering not only the central government and public authorities of third countries but also public or private entities, including Union citizens and legal persons established in the Union, whose actions can be ultimately attributed to that third country. Whether the actions of a public or private entity are to be attributed to a third country government or authority should be determined on a case-by-case basis with due regard to elements such as the characteristics of the relevant entity and the legal and economic environment

[3] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EU (Digital Services Act) (OJ L 277, 27.10.2022, p. 1, ELI: http://data.europa.eu/eli/reg/2022/2065/oj).

prevailing in the third country in which the entity operates, including the government's role in the economy of that country.

(24) An interest representation activity should fall within the scope of this Directive if it is carried out on behalf of a third country entity. This means that it should cover interest representation services provided to third country entities. Furthermore, since a third country government may rely on entities whose actions can be attributed to it to carry out interest representation activities of an economic nature and thus comparable to an interest representation service, the Directive should also cover such activities. It may thus also cover in-house interest representation by third country entities. This Directive should cover interest representation activities carried out on behalf of third country entities directed to natural or legal persons or carried out or brought to the public domain in one or several Member States.

(25) This Directive should not cover activities supporting or aligned with the interests of a third country but without any link to that third country. This includes activities that constitute a manifestation of the freedom of expression and of the freedom to impart and receive information and ideas, or a manifestation of academic freedom, such as activities carried out by natural persons acting in a personal capacity, or journalists working for third country media whose actions cannot be attributed to a third country or do not qualify as interest representation as defined by this Directive. The provision of media services as defined in Article 2 of Regulation (EU) XXXX/XXXX of the European Parliament and of the Council[4] and the provision of audiovisual media services as defined in Article 1 of Directive 2010/13/EU of the European Parliament and of the Council[5] will not fall within the scope of application of this Directive. However, interest representation activities carried out on behalf of third country entities within the meaning of this Directive by media service providers will be covered.

(26) For the purpose of interest representation services provided to a third country entity, any consideration received in return for the interest representation service in question should be considered as remuneration for the purposes of this Directive. This could cover financial contributions, such as loans, capital injection, debt forgiveness, fiscal incentives or tax exemption, received in return of an interest representation activity. Remuneration could also include benefits in kind, such as the provision, construction and maintenance of office space in return for an interest representation service. In such situations, the interest representation services provider would be responsible for estimating the value of the benefit received, for example by using the market rate.

(27) The Court has held that the essential characteristic of remuneration lies in the fact that it constitutes consideration for the services in question. Contributions to the core funding of an organisation or similar financial support, for example provided under a third country donor grant scheme, should not be considered as remuneration for an interest representation service where they are unrelated to an interest representation

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4 Regulation (EU) XXXX/XXXX of the European Parliament and of the Council of XXXX establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU (OJ L XX, XX.XX.XXXX, p. XX, ELI: XXX).

5 Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1, ELI: http://data.europa.eu/eli/dir/2010/13/oj).

activity, that is, where the entity would receive such funding regardless of whether it carries out specific interest representation activities.

(28) To ensure a comprehensive and transparent overview of the amounts used for an interest representation activity as a whole, annual amounts should, for the purpose of this Directive, include the total annual remuneration received from the third country entity for the provision of an interest representation service, and where no remuneration is received, the estimate of the annual costs related to the interest representation activity carried out. For the same reasons, these amounts should include the costs for subcontractors and ancillary activities.

(29) Subcontractors may qualify as an entity carrying out interest representation on behalf of third country entities and thus fall within the scope of the obligations set out in this Directive. To reduce administrative burden and to avoid double-counting of remuneration, as well as to ensure information throughout a chain of contracts, entities carrying out interest representation activities should ensure that their contractual arrangements with subcontractors include information that the interest representation activity is carried out on behalf of a third country entity, as well as an obligation to pass on that information in cases where the activity is further subcontracted. On that basis, subcontractors should be exempted from the obligation to register and keep records, and where applicable, designate a legal representative, laid down in this Directive.

(30) To facilitate compliance with the registration requirements of this Directive, providers of interest representation services should be entitled to ask the entity on whose behalf the service is provided to declare whether it is a third country entity. Providers of interest representation services should make the best possible use of this right in order to make an informed choice enabling them to fully comply with the requirements set out in this Directive when exercising their activities.

(31) In order to support accountability and promote awareness of the third country interests they represent, entities carrying out interest representation activities on behalf of a third country entity should be required to keep certain records. These records should include a description of the purpose of the interest representation activity, in particular the decision-making process it seeks to influence and the result it seeks to obtain. Records should also include the identity of the third country entity, which in cases where the entity is a natural person should be understood as the natural person's full name. They should also include copies of contracts and key exchanges essential to understanding the nature, and purpose of, and financial arrangements behind the interest representation activity, as well as information or material constituting a key component of the activity, such as position papers shared with public officials.

(32) Entities carrying out interest representation on behalf of third countries should not be required to keep the personal data contained in those records longer than necessary to ensure that the supervisory authorities can carry out their supervisory and enforcement tasks. Any such records should be kept long enough to enable supervisory authorities to obtain, in justified cases, the records kept on the third country entity and the interest representation activity as well as the annually aggregated records.

(33) In order to allow for effective oversight, entities carrying out interest representation activities on behalf of a third country entity that do not have a place of establishment in the Union should be required to designate a legal representative established in the Union and ensure that their designated legal representative has the necessary powers and resources to cooperate with the relevant authorities.

(34) In order to provide for harmonised transparency requirements across the internal market, entities carrying out interest representation activities on behalf of a third country entity should be required to register in national registers at their place of establishment. Subsequent updates to an existing registration should also take place in that national register. These registers should be set up, operated and maintained by the Member States. Member States may make use of their existing national registers for the purpose of this Directive, provided that the requirements of this Directive are complied with. In order to respect national divisions of competence, Member States should be entitled to set up more than one such registers. In such cases, Member States should establish rules indicating in which national register entities carrying out interest representation activities on behalf of third countries should register. Logs of personal data processing activities within the national registers should not be kept longer than necessary to monitor the lawfulness of access to personal data and should therefore be limited to a year.

(35) Pursuant to Regulation (EU) 2018/1724 of the European Parliament and of the Council[6], information on the registration obligations and formalities established by this Directive is available via the Single Digital Gateway which, through the Your Europe web portal, sets up a one-stop shop that provides businesses and citizens with information about rules and procedures in the Single Market, at all levels of government and direct, centralised, and guided access to assistance and problem-solving services as well as to a wide range of fully digitised administrative procedures. In addition, the procedure for registration is fully online and organised in accordance with the 'once only' principle to facilitate the reuse of data.

(36) Where the entity carrying out interest representation activities on behalf of a third country entity is established in several Member States, registration should only take place in the Member State where the entity has its main establishment. The main establishment of the entity should be understood as the place where the entity has its head office or registered office within which the principal economic activities and operational control are exercised.

(37) The information to be included for the purpose of this Directive in the registration should be limited to what is necessary to ensure the transparency of the interest representation activities carried out on behalf of third countries and the effective enforcement of this Directive. Such information should include data concerning the entity carrying out interest representation activity itself, the third country on whose behalf the activity is performed, the identity of subcontractors as defined in this Directive carrying out interest representation activities, and information concerning the specific interest representation activity carried out. Where applicable, it should also include a reference to media service providers or online platforms where advertisements are placed as part of the interest representation activity. The registration should not concern information on the amounts or origin of financial support received that is unrelated to an interest representation activity.

(38) To ensure that the information provided for the purposes of registration continues to allow the authorities responsible for the national registers to correctly and precisely

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[6] Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1, ELI: http://data.europa.eu/eli/reg/2018/1724/oj)

identify the third countries on whose behalf interest representation is being carried out and how much is being spent on those activities, the Commission should be empowered to adopt delegated acts adapting the standard set of information.

(39) Entities carrying out interest representation activities on behalf of third countries, registered in a national register, should update information in the national register at least once a year. However, in view of the importance of the accuracy of the information held in such national registers for the application and oversight of the Directive, any changes or additions to the contact information of the registered entity should be made more quickly, and in any event within a reasonable period of time.

(40) The authority responsible for each national register should ensure that the information provided is complete and does not contain manifest errors. That should not involve an in-depth evaluation of the accuracy or truthfulness of the information provided and should not be understood as an official endorsement of the accuracy of the information included in the national register. A refusal to include an entity in the register due to incomplete or manifestly incorrect information should not prevent that entity from submitting a new registration request.

(41) Entities carrying out an interest representation activity on behalf of third countries should be able to demonstrate that they have complied with the registration requirements. Once registered, an entity should be provided with a copy of the information included in a national register and a unique European Interest Representation Number ('EIRN'). The EIRN should serve as a means to facilitate the identification across the Union of entities registered pursuant to this Directive. The composition of the EIRN should therefore allow the identification of the Member State of registration and the specific national register in which registration has taken place. The choice of the code identifying the national register of registration should appear logical to persons familiar with the organisation of the Member State concerned.

(42) Once they are registered in the Member State of their place of establishment, registered entities should not be required to register in other Member States, including when they launch an interest representation activity there. However, to facilitate the access by public officials to information on entities carrying out interest representation activities with whom they might interact, other Member States where such activities will be carried out should include, in their own national registers, the names of the registered entities concerned, their EIRN, and the link to the information contained in the national register of registration made publicly available.

(43) To ensure compliance with the registration requirement, supervisory authorities should, where they have reliable information that an entity failed to register, for example based on a report by a whistleblower, be able to ask the entity to provide the information strictly necessary to establish whether it falls within the scope of this Directive. Such information should typically not extend beyond information directly capable of demonstrating whether it falls within the scope of this Directive. It could consist of the information of the type covered by the record-keeping obligation, including any declarations obtained as to whether an entity on whose behalf an interest representation service is provided is a third country entity. Where possible, the request should be limited to information that should be in the possession of the entity. In addition, supervisory authorities should, where they have reliable information of possible non-compliance with the obligations flowing from registration, be able to ask an entity to provide the information necessary to investigate such possible non-compliance. Such information should typically not extend beyond information directly

capable of demonstrating the completeness or accuracy of the information provided as part of the requirement to register and to update. Where possible, the request should be limited to information that should be in the possession of the registered entity. Any such requests should contain a statement of reasons, the information sought and the reasons for its relevance, and information on judicial review procedures available. Such requests should be without prejudice to national authorities' powers to investigate any conduct liable to constitute criminal offences as provided in national law and Union law.

(44) Democratic accountability is a pillar of well-functioning democracies. By providing for citizens' access to information on entities carrying out interest representation activities on behalf of third countries active in the internal market, as well as the third country entities they represent, this Directive enables citizens and other interested stakeholders to exercise their democratic rights and responsibilities, including their ability to exercise democratic scrutiny in full knowledge of whose interest are being served by the interest representation activities to which they, or their elected representatives, may be exposed. Public scrutiny by citizens and interested stakeholders on issues affecting the democratic sphere supports democratic checks and balances. Democratic accountability also supports citizens' empowerment, allowing them to express and exercise their democratic choices, including when they vote. As voters, citizens are important decision-makers in their own right, and as such, they can be the target for certain interest representation services.

(45) To ensure proportionality, when personal data is made publicly available, it should be limited to what is strictly necessary to the purpose of informing citizens, their representatives and other interested parties about interest representation activities carried out on behalf of third countries. In addition, information on the annual amounts declared should be made publicly available using more general ranges than the ones used for the submission of information to national registers, to ensure the level of detail necessary for the purpose of informing citizens, their representatives and other interested parties. Information that is of relevance only to supervisory authorities, such as the contact details of the persons responsible for a registered entity, should not be made publicly available.

(46) To facilitate access by citizens, the information should be presented in a format which is easily accessible and machine readable, clearly visible and user friendly, including by using plain language. Information should be considered machine readable if it is provided in a format that software applications can automatically process, without human intervention, in particular for the purpose of identifying, recognising and extracting specific data from it. Information should be made available in accordance with the accessibility requirements under Union law to ensure accessibility for persons with disabilities, and in particular, via more than one sensorial channel when technically feasible. Registration may take place in a Member State different to the one in which an interest representation activity is carried out. The accessibility of information to citizens across the Union is substantially improved where that information is made available in at least one official language of the Union broadly understood by the largest possible number of Union citizens. Member States should be encouraged to use technical solutions which would allow translation of as much information as possible into such a language. Member States should however not be required to translate the information provided by registered entities.

(47) To ensure the protection of individuals that may be exposed by the publication of specific information to a violation of their fundamental rights, such as retaliations

against individuals working for a registered entity operating in a third country, Member States should ensure that supervisory authorities are able, upon request, to restrict the publication of whole or part of the information entered in the national register. The registered entity should demonstrate that, taking into account all the relevant circumstances of the individual cases, publication should be restricted due to legitimate interests such as a serious risk that the publication would expose an individual to a violation of their fundamental rights in particular as protected by Articles 1 (Right to human dignity), 2 (Right to life), 3 (Right to the integrity of the person), 4 (Prohibition of torture and inhuman or degrading treatment or punishment) or 6 (Right to liberty and security of the Charter, such as kidnapping, blackmail, extortion, harassment, violence or intimidation), or such as trade secrets. The analysis should take into account risks to the physical integrity of employees, or any individuals working for or affiliated to a registered entity. Legitimate interests should also cover risks to individuals that benefit from the activities of the registered entity. Any decision by the supervisory authority should take into account the objectives of this Directive and should be subject to judicial review procedures in the Member State of registration. The decisions by the supervisory authority and where applicable judicial jurisdiction, should be taken promptly. To enable the public to know that the registered entity has complied with the registration requirement established by this Directive where a restriction of publication is granted, the data field in the national register should be replaced by a mention indicating that the publication has been limited on grounds of legitimate interest.

(48) To support the identification by public officials of interest representation activities carried out on behalf of third countries, registered entities and their subcontractors should provide the EIRN in their direct contacts with such persons. The EIRN should be presented proactively in each contact with public officials.

(49) Member States should designate one or more authorities or bodies in charge of setting up and maintaining the national registers and processing requests for registration submitted by entities carrying out interest representation activities on behalf of third countries. They should also designate one or more supervisory authorities in charge of supervising the compliance with and enforcing the obligations laid down in this Directive as well as of the exchange of information with the supervisory authorities of other Member States and the Commission. To support the upholding of fundamental rights and freedoms, the rule of law, democratic principles and public confidence in the oversight of these entities, it is necessary that supervisory authorities are impartial and independent from external intervention or political pressure and are appropriately empowered and resourced to effectively monitor and take the measures necessary to ensure compliance with this Directive.

(50) In order to prevent stigmatisation of the registered entity, the data made publicly available should be presented in a factual and neutral way. In addition, when carrying out the tasks assigned to them under this Directive, competent national authorities should ensure that no adverse consequences arise from the mere fact that an entity is a registered entity. In particular, the publication should not be presented with or accompanied by statements or provisions that could create a climate of distrust with regard to the registered entities, apt to deter natural or legal persons from Member States or third countries from engaging with them or providing them with financial support. Examples of such stigmatising actions include negatively labelling the registered entities or making disparaging statements seeking to undermine registered

entities' credibility and legitimacy by implying that registered entities are seeking to unlawfully influence democratic processes.

(51) Where a third country spends particularly large amounts on interest representation, or where an entity receives particularly large amounts of remuneration from one or several third country entities, there is heightened likelihood that the interest representation activities carried out would successfully influence the political choices of a Member State or of the Union as a whole. In such cases, supervisory authorities should be able to request additional information from entities carrying out interest representation activities carried out on behalf of such third countries in order to exercise greater scrutiny.

(52) To ensure a proportionate oversight of this Directive, supervisory authorities should be able to ask an entity carrying out interest representation activities on behalf of third country entities to provide the records necessary to investigate possible non-compliance with the registration requirement set out in this Directive. For that purpose, supervisory authorities should be able to act on their own motion or on the basis of a report by a whistleblower or the supervisory authority of another Member State.

(53) Supervisory authorities should cooperate both at national and at Union level. Such cooperation should facilitate the swift, secure exchange of information. For the purpose of exercising their supervisory tasks, supervisory authorities should be able to request, from the supervisory authority in the Member State of registration, information provided in the registration, including that which is not public, and in specific cases the records kept by the entity, as well as analyses carried out. Supervisory authorities and the Commission should cooperate to ensure the implementation of the Directive. To better understand the size and the distribution of the overall interest representation activities that are carried out on behalf of third countries in the Union. The Commission should be able to request, from supervisory authorities, aggregate data based on the information provided by entities carrying out interest representation carried out on behalf of third country entities in their registration. In order to comprehensively monitor the modalities and the features of the interest representation activities carried out on behalf of third countries that are carried out in the Union, such aggregate data may include information that is not publicly available in the registers including personal data to the extent that is necessary to ensure an effective monitoring.

(54) To further limit administrative burden, administrative cooperation and exchanges of information between the national authorities, as well as the supervisory authorities and the Commission takes place through the Internal Market Information System ('IMI system') established by Regulation (EU) 1024/2012 of the European Parliament and of the Council[7] for administrative cooperation between Member States' competent authorities in Single Market related policy areas. The interoperability of the IMI system and the national registers should be ensured in line with the European Interoperability Framework.

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[7] Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1, ELI: http://data.europa.eu/eli/reg/2012/1024/oj).

(55) For the purposes of assisting the Commission in its task to ensure effective cooperation among competent national authorities, and the complete and effective implementation of this Directive, an advisory group should be established. The advisory group should include a representative from the supervisory authorities of each Member State. The advisory group should advise on the implementation of the Directive, including on the requirement to avoid that adverse consequences arise from the mere fact that an entity is registered pursuant to the requirements laid down in this Directive. It should adopt opinions, recommendations or reports that should be made public by the competent national authorities designated by Member States. In order to ensure legal certainty for entities that may fall in the scope of the Directive, the advisory group should, in particular, advise the Commission on possible guidance on the scope of the Directive, the notion of third country entity, and activities whose object or effect of which is to circumvent obligations in this Directive. Cooperation should be ensured as appropriate with the EU network against corruption.

(56) Whistleblowers can bring new information to the attention of supervisory authorities that can help them detect infringements of this Directive, including attempts to circumvent its obligations. In order to ensure that whistleblowers are able to alert the supervisory authorities to actual or potential infringements of this Directive and to protect the whistleblowers from retaliation, Directive (EU) 2019/1937 of the European Parliament and of the Council[8] should be applicable to the reporting of breaches of this Directive and to the protection of persons reporting such breaches.

(57) Reporting of breaches by whistleblowers can be key to prevent, deter, or detect breaches of rules in the area of transparency and supervision of the provision of services provided in the internal market with relevance to public decision-making, such as interest representation services. Given the public interest in shielding public decision-making from such breaches, and the possible harm to citizens' trust in democratic institutions that can be caused by such breaches, and in view of the fact that the provisions of this Directive do not fall within the policy areas set out in Article 2(1)(a) of Directive (EU) 2019/1937, it is necessary to adapt those areas. Article 2 and the Annex to Directive (EU) 2019/1937 should therefore be amended accordingly.

(58) The participation, knowingly and intentionally, in activities the object or effect of which is to circumvent obligations in this Directive, notably registration requirements, should be prohibited. Such activities include covert remuneration for a representation service, the setting up of companies with a view to obfuscating links to third country governments, or the artificial distribution of activities across multiple entities with a view to falling short of the thresholds established by this Directive.

(59) In order to deter non-compliance with the requirements of this Directive and to sanction the same, Member States should ensure that any infringements of the obligations laid down in this Directive are accompanied by effective, proportionate and dissuasive administrative fines. Sanctions should not be criminal in nature. Sanctions should take into account the nature, recurrence and duration of the infringement in view of the public interest at stake, the scope and kind of activities carried out, and the economic capacity of the entity carrying out interest representation activities. Sanctions should in each individual case be effective, proportionate and

[8] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17, ELI: http://data.europa.eu/eli/dir/2019/1937/oj).

dissuasive, with due respect for fundamental rights including freedom of expression, association, academic freedom and freedom of scientific research, safeguards and access to effective remedies, including the right to be heard. They should follow a prior early warning issued by a supervisory authority, except when such infringement amounts to a violation of the prohibition of circumvention.

(60) In order to amend the thresholds for requesting further information, to modify the list of information to be provided when submitting a request for registration, and to modify the list of information to be included in the reports published by Member States, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[9]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(61) In order to ensure the effective monitoring of the application of this Directive, the Commission should report on its implementation at regular intervals, where relevant in connection with reports on other relevant Union legislation. In accordance with paragraphs 22 and 23 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, the Commission should evaluate this Directive in order to assess its effects and the need for any further action.

(62) Since the objectives of this Directive, namely the contribution to the proper functioning of the internal market for interest representation activities, cannot be sufficiently achieved by the Member States and can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(63) In particular, a Union-level system supports competent national authorities in their oversight functions and other stakeholders to exercise their role in the democratic process and increases the overall resilience of democracies in the Union against interference by third countries. There is an added value from addressing the transparency of interest representation activities carried out on behalf of third countries to influence at Union level, as the likely cross-border nature of such activities requires a coordinated approach across multiple levels and sectors. By collaborating and sharing information, Member States are able to obtain a better understanding of the extent of the phenomenon, which helps to avoid that third countries are able to exploit regulatory differences or loopholes.

(64) When implementing this Directive, Member States should seek to minimise the administrative burden on the entities concerned, and in particular those of micro, small

[9] OJ L 123, 12.5.2016, p. 1, ELI: http://data.europa.eu/eli/agree_interinstit/2016/512/oj

and medium-sized enterprises within the meaning of Article 3 of Directive 2013/34/EU of the European Parliament and of the Council[10].

(65) Regulations (EU) 2016/679[11] and (EU) 2018/1725[12] of the European Parliament and of the Council apply to the processing of personal data carried out in the context of this Directive, including the processing of personal data to maintain the national register or registers on entities carrying out interest representation activities on behalf of third country entities, to access personal data in such national register or registers and to exchange personal data in the context of administrative cooperation and mutual assistance between Member States under this Directive, including the use of IMI, and the keeping of records in accordance with this Directive's record-keeping obligations. Any processing of personal data for such purposes should amongst others comply with the principles of data minimisation, data accuracy and storage limitation and fulfil the requirements of data integrity and confidentiality. Member States should establish the measures ensuring lawful and secure processing as regards the processing of personal data contained in their national register or registers, in accordance with applicable legislation on the protection of personal data.

(66) This Directive does not affect in any way the application of Union restrictive measures adopted pursuant to Article 29 TEU and Article 215 TFEU. In particular, it does not affect the prohibition to make available, directly or indirectly, funds or economic resources to or for the benefit of natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them which are listed in Union restrictive measures.

(67) This Directive should not affect the prerogatives of the Commission to initiate and conduct investigations of distortive foreign subsidies within the meaning of Regulation (EU) 2022/2560 of the European Parliament and of the Council[13].

(68) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[14], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition

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10 Directive (EU) 2013/34 of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 17, ELI: http://data.europa.eu/eli/dir/2013/34/oj).

11 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/679/oj).

12 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1725/oj).

13 Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market (OJ L 330, 23.12.2022, p. 1, ELI: http://data.europa.eu/eli/reg/2022/2560/oj).

14 OJ C 369, 17.12.2011, p. 14.

instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(69) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on XXXX[15],

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I – GENERAL PROVISIONS

Article 1
Object and purpose

This Directive lays down harmonised requirements in relation to economic activities of interest representation carried out on behalf of a third country entity, with a view to improving the functioning of the internal market by achieving a common level of transparency across the Union.

The purpose of this Directive is to achieve that transparency in such a manner as to avoid creating a climate of distrust apt to deter natural or legal persons from Member States or third countries from engaging with or providing financial support to entities carrying out interest representation on behalf of a third country entity.

Article 2
Definitions

For the purpose of this Directive, the following definitions apply:

(1) '**interest representation activity**' means an activity conducted with the objective of influencing the development, formulation or implementation of policy or legislation, or public decision-making processes, in the Union, which could in particular be performed through organising or participating in meetings, conferences or events, contributing to or participating in consultations or parliamentary hearings, organising communication or advertising campaigns, organising networks and grassroots initiatives, preparation of policy and position papers, legislative amendments, opinion polls, surveys or open letters, or activities in the context of research and education, where they are specifically carried out with that objective;

(2) '**interest representation service**' means an interest representation activity normally provided for remuneration, as referred to in Article 57 of the Treaty on the functioning of the European Union;

(3) '**interest representation service provider**' means a natural or legal person that provides an interest representation service;

(4) 'third country entity' means:

(a) the central government and public authorities at all other levels of a third country, with the exception of members of the European Economic Area;

(b) a public or private entity whose actions can be attributed to an entity referred to in point (a), taking into account all relevant circumstances;

[15] XXXX.

(5) **'ancillary activity'** means an activity that supports the provision of an interest representation activity but has no direct influence on its content;

(6) '**annual amount**' means:

(a) the total annual remuneration received from a third country entity for the provision of an interest representation service, consisting, where the remuneration is non-pecuniary, of its estimated value; or

(b) where no remuneration is received, the estimate of the annual costs related to the interest representation activity carried out;

taking into account the interest representation activity as a whole, including, when carried out by a service provider on the basis of contractual arrangements, costs for subcontractors and ancillary activities;

(7) '**subcontractor**' means an interest representation service provider with whom a main contractor, or one of its subcontractors, concludes a contract under which it is agreed that the subcontractor performs some or all parts of an interest representation activity that the main contractor has committed to carry out;

(8) '**registered entities**' means entities registered in a national register as referred to in Article 9 pursuant to Article 10;

(9) '**authority responsible for the national register**' means the public authority or body responsible for maintaining a national register as referred to in Article 9 and processing registrations submitted pursuant to this Directive;

(10) '**supervisory authority**' means the independent public authority responsible for the supervision of the compliance with and enforcement of the obligations laid down in this Directive;

(11) '**public official**' means:

(a) a Union official or an official of a Member State;

(b) any other person assigned and exercising a public service function in a Member State;

(12) '**Union official**' means a person who is:

(a) an official or other servant within the meaning of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68[16];

(b) seconded to the Union by a Member State or by any public or private body, who carries out functions equivalent to those performed by Union officials or other servants;

Members of an institution, body, office or agency of the Union and the staff of such bodies shall be assimilated to Union officials, in as much as the Staff Regulations do not apply to them.

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16 Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1, ELI: http://data.europa.eu/eli/reg/1968/259(1)/oj).

(13) ‘**official of a Member State**’ means any person holding an executive, administrative, or judicial office at national, regional or local level, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority and any person holding a legislative office at national, regional or local level.

Article 3
Scope

1. This Directive applies to entities, irrespective of their place of establishment, carrying out the following activities:

   (a) an interest representation service provided to a third country entity;

   (b) an interest representation activity carried out by a third country entity referred to in Article 2(4), point (b), that is linked to or substitutes activities of an economic nature and is thus comparable to an interest representation service as referred to in point (a) of this paragraph.

2. Notwithstanding paragraph 1, this Directive shall not apply to the following activities:

   (a) activities carried out directly by a third country entity referred to in Article 2(4), point (a), that are connected with the exercise of official authority, including activities related to the exercise of diplomatic or consular relations between States or international organisations;

   (b) the provision of legal and other professional advice in the following cases:

      (i) advice to a third country entity to help it ensure that its activities comply with existing legal requirements;

      (ii) representation of third country entities in the context of a conciliation or mediation procedure aimed at preventing a dispute from being brought before, or adjudicated on by, a judicial or administrative body;

      (iii) representation of third country entities in legal proceedings;

   (c) ancillary activities.

Article 4
Level of harmonisation

Member States shall not maintain or introduce, for interest representation activities falling within the scope of this Directive, provisions diverging from those laid down in this Directive, including more, or less, stringent provisions to ensure a different level of transparency of those activities.

CHAPTER II – TRANSPARENCY AND REGISTRATION

Article 5
Identification of the recipient of the service

Member States shall ensure that interest representation service providers have the possibility to require the entity on whose behalf the service is provided to declare whether it is a third country entity.

Article 6
Subcontracting

1. Member States shall ensure that entities referred to in Article 3(1) include, in their contractual arrangements with subcontractors, the information that the interest representation activity falls within the scope of Article 3(1), as well as an obligation to pass on such information to any further subcontractors. Subcontractors that have been so informed shall not have to comply with the requirements of Article 7, Article 8, Article 10 and Article 11 in respect of the interest representation activity carried out under the contract containing that information.

2. Member States shall ensure that where the subcontractor subcontracts the interest representation service further, it shall inform the main contractor or, where applicable, the subcontractor from which it received the contract to carry out the interest representation activity, of the fact that the interest representation activity has been further subcontracted and ensure that the contractual arrangements include the information that the interest representation activity falls within the scope of Article 3(1).

3. Member States shall ensure that the subcontractor provides the main contractor or, where applicable, the subcontractor with the information necessary to comply with the requirements of Article 10.

Article 7
Record-keeping

1. Member States shall ensure that entities referred to in Article 3(1) keep, for each interest representation activity that falls within the scope of that Article, records of the following:

   (a) the identity or name of the third country entity on whose behalf the activity is carried out, as well as the name of the third country whose interests are represented;

   (b) a description of the purpose of the interest representation activity;

   (c) contracts and key exchanges with the third country entity essential to understand the nature and purpose of the interest representation activity, including, where applicable, the records of the means and extent of any remuneration;

   (d) information or material constituting a key component of the interest representation activity.

2. Member States shall ensure that entities referred to in Article 3(1) keep the records referred to in paragraph 1 for 4 years after the interest representation activity in question has ceased.

3. Member States shall ensure that entities referred to in Article 3(1) draw up, on an annual basis, the following:

   (a) a list of all third country entities on whose behalf they have carried out interest representation activities in the preceding financial year;

   (b) a list of the aggregated annual amount received in respect of the activities that fall within the scope of Article 3(1) in the preceding financial year per third country.

4. Member States shall ensure that entities referred to in Article 3(1) keep records of the information referred to in paragraph 3 for 4 years.

Article 8
Legal representative

1. Member States shall require entities referred to in Article 3(1) that are not established in the Union to designate, in writing, a natural or legal person as their legal representative in one of the Member States where they carry out interest representation activities.

2. Member States shall ensure that the legal representative is responsible for ensuring compliance by the registered entity with its obligations pursuant to this Directive and is the addressee of all communications by competent national authorities with the relevant entity pursuant to Article 15. Any communication to that legal representative shall be deemed to be a communication to the represented entity.

3. Member States shall ensure that the legal representative may be held liable for non-compliance with obligations under this Directive by the entity it represents, without prejudice to the liability and legal actions that could be initiated against that entity. Member States shall ensure that entities referred to in Article 3(1) provide their legal representative with necessary powers and sufficient resources to guarantee efficient and timely cooperation with the Member States' competent authorities, and to ensure the compliance with their decisions.

Article 9
National registers

1. Each Member State shall set up and maintain one or several national registers for the purpose of ensuring transparency of interest representation activities carried out by entities referred to in Article 3(1). Member States may make use of existing national registers where they meet the requirements set out in paragraphs 2, 3 and 4 of this Article and in Article 10, Article 11 and Article 12.

2. The national register or, as relevant, registers shall be maintained by authorities responsible for the national registers. For the processing of personal data, such authorities shall act as controllers within the meaning of Article 4, point (7) of Regulation (EU) 2016/679.

3. Member States shall ensure that the national registers referred to in paragraph 1 are set up and maintained in such a way as to ensure a neutral, factual and objective presentation of the information contained therein.

4. Member States shall ensure that the authorities responsible for the national registers maintain logs of personal data processing operations within the national register. Those logs shall be deleted after a period of 1 year and may be used only for monitoring the lawfulness of access to personal data and for ensuring integrity and security of such data.

Article 10
Registration

1. Member States shall ensure that an entity referred to in Article 3(1) established in their territory registers in a national register at the latest when the interest representation activities are commenced.

   Member States operating multiple national registers shall ensure that the respective scope of each national register is clearly defined, that such registers cover all entities that are required to register pursuant to the first subparagraph of this Article and that entities referred to in Article 3(1) may obtain information regarding which of the national registers they are required to register in.

2. If an entity referred to in Article 3(1) is established in more than one Member State, it shall register in the Member State of its main establishment.

3. If an entity referred to in Article 3(1) is not established in the Union, it shall register in the Member State where its legal representative designated pursuant to Article 8 is established or, in the absence of a place of establishment, has his or her permanent address or usually resides.

4. Member States shall ensure that, for the purpose of registration, an entity is required to submit only the information set out in Annex I.

5. Member States shall ensure that before submitting the information pursuant to paragraph 4, entities are informed that the information will be published in accordance with Article 12 and that they may request not to have the information published in accordance with Article 12(3).

6. Member States shall ensure that registered entities submit the following information:

   (a) within a reasonable period of time, changes or additions to the data provided pursuant to Annex I, point 1, points (a), (b), (f)(i) and (f)(ii);

   (b) annually, changes or additions to the data provided pursuant to paragraph 4 not covered by point (a).

7. Member States shall ensure that registered entities that no longer qualify as entities referred to in Article 3(1) are able to notify that fact to the authority responsible for the relevant national register in which they are registered and ask to be removed from that register. When an entity referred to in Article 3(1) is required, pursuant to paragraphs 2 or 3, to register in a national register other than the one in which it is registered, it shall notify that fact to the authority responsible for the relevant national register and ask to be removed from that register.

   That authority shall process the request within 5 working days and remove the registered entity from the national register if it considers that the entity no longer qualifies as an entity referred to in Article 3(1) or, as the case may be, should no longer be registered in the register for which it is responsible. The decision of the authority responsible for the relevant national register shall be subject to administrative and judicial redress in the Member State of registration.

8. Member States shall ensure that registration, updates, requests to be removed from the register and requests pursuant to Article 12(3) can be made by electronic means and are free of charge.

9. Where necessary to ensure that the information provided for the purposes of registration continues to allow the authorities responsible for the national registers to

correctly and precisely identify the third countries on whose behalf interest representation is being carried out and how much is being spent on those activities, the Commission is empowered to adopt delegated acts in accordance with Article 23 to amend Annex I by modifying the list of information to be provided for the purpose of registration in the light of developments in the market for interest representation services, opinions, recommendations and reports issued by the advisory group established pursuant to Article 19, or, where available, relevant international and European standards and practices. Personal data fields set out in Annex I shall be modified only where necessary to ensure a proper identification of the entities and the interest representation activities referred to in Article 3(1).

Article 11
Registration procedure

1. Member States shall ensure that the authority responsible for the national register ensures that for each registration submitted pursuant to Article 10(4), all the elements set out in Annex I have been provided and do not contain manifest errors.

   A corresponding entry shall be included by the authority responsible in its national register within 5 working days from the submission of the registration unless a request pursuant to paragraph 2 has been made.

2. Where the information provided for the purposes of registration is incomplete or contains manifest errors, the authority responsible for the national register shall ask the entity to complete or rectify its submission. Within 5 working days of receiving a response from the entity in question, the authority responsible for the national register shall either include a corresponding entry in its national register, or refuse to make such an entry and inform the entity in question why the submission remains incomplete or contains manifestly incorrect information.

3. Once an entry is included in the national register, the registered entity shall immediately and at the latest within 5 working days receive a confirmation of registration from the authority responsible for the national register and shall be issued with a unique EIRN, and a digital copy of the information included in the national register. The EIRN shall be in the format set out in Annex II.

4. Member States shall ensure that each new registration is notified by the authority responsible for the national register of the Member State of registration to the national authorities designated pursuant to Article 15(1) of the Member States indicated in the registration pursuant to Annex I, point 2(e) immediately and at the latest within 5 working days from the entry in the national register. Such notification shall also take place where, pursuant to Article 10(6), a registered entity submits a change or an addition to the information referred to in Annex I, point 2(e). The notification shall contain the name of the registered entity, its EIRN and a link to the national registers where the registration took place.

5. Member States shall provide that authorities responsible for maintaining the national registers in the Member State receiving the notification referred to in paragraph 4 include, in the relevant register, the information laid down in that notification immediately and at the latest within 5 working days. Information on the registered entity shall not be made public if, in the relevant national register of the Member State of registration, that information is the object of a derogation from publication in accordance with Article 12(3).

6. Registered entities shall not be subject to any further registration requirements in any other Member State for activities falling within the scope of Article 3(1).

7. Acts taken by the authorities responsible for the national registers pursuant to paragraphs 1 to 5, including refusals to make an entry in the register or to issue an EIRN, shall be subject to administrative and judicial redress. This shall also apply to failures to act in accordance with these paragraphs.

8. Where a supervisory authority has reliable information that an entity failed to register pursuant to paragraphs 1 to 3 of Article 10 in a register for which it has jurisdiction pursuant to Article 15(3), it may ask that entity to provide the information strictly necessary to establish whether the entity falls within the scope of Article 3(1).

9. Where a supervisory authority has reliable information of possible non-compliance by an entity registered in a register for which it has jurisdiction pursuant to Article 15(3) with the obligations provided for in the national provisions adopted pursuant to Article 10, such as providing inaccurate information in the registration, it may ask that entity to provide the information referred to in Article 7 to the extent necessary to investigate the possible non-compliance.

10. The request referred to in paragraphs 8 and 9 shall include the following information:

(a) a statement of the reasons for investigating the possible non-compliance;

(b) the information sought and why it is necessary to investigate the possible non-compliance;

(c) information on the judicial review procedures available.

11. The entity to whom the request is made shall provide, within 10 working days, the information requested pursuant to paragraphs 8 and 9 in a complete and accurate manner.

12. The requests referred to in paragraphs 8 and 9 shall be subject to judicial review procedures in the Member State of the supervisory authority which makes the request.

Article 12
Public access

1. Member States shall make the following information contained in the national register related to a registered entity publicly available:

(a) information provided by the registered entity in accordance with Annex I, point 1, points (a), (e), (f)(i), (f)(ii), (h), (i), (j) and (k) and point 2, points (a)(i), and points (b) to (h);

(b) the EIRN issued pursuant to Article 11(3);

(c) the date of registration;

(d) the date of the last update of the information referred to in point (a) of this paragraph.

The publication of the annual amount provided by the registered entity in accordance with Annex I, point 2, points (c) shall be published according to the grid set out in Annex III.

2. Member States shall ensure that the information referred to in paragraph 1 is presented in a format which is easily accessible and machine readable, clearly visible and user-friendly, including through the use of plain language. The information shall be made available in a searchable manner in at least one official language of the Member State of registration and in an official language of the Union that is broadly understood by the largest possible number of citizens in the Union.

3. Member States shall ensure that entities referred to in Article 3(1) are able to apply for a derogation from the publication referred to in paragraph 1 by duly reasoned request. The supervisory authority shall take a decision limiting partially or fully public access where the requesting entity demonstrates, taking into account the circumstances of the individual case, that to do so is justified on grounds of a legitimate interest, including a serious risk that the publication would expose an individual to a violation of their fundamental rights, in particular as protected under Article 1, Article 2, Article 3, Article 4 or Article 6 of the Charter of Fundamental Rights of the European Union. Otherwise, the supervisory authority shall take a decision rejecting the request.

4. Any decision taken pursuant to paragraph 3 shall be subject to judicial redress in the Member State of registration. Member States shall ensure that any review procedures, including judicial redress, are carried out within a reasonable period of time and that a final decision is taken promptly.

5. Member States shall ensure that, from the moment the request pursuant to paragraph 3 is made until the decision has become final, the information to which the request relates is not made public.

6. Member States shall ensure that where a decision referred to in paragraph 3 has become final, the entry in the national register to which that decision relates indicates, as the case may be, that public access has been partially or fully limited.

Article 13
Publication of aggregated data

1. Starting on 31 March [year after the transposition deadline], and by 31 March of each subsequent year, each Member State shall publish, and transmit to the Commission, a report based on the information provided by the entities registered in their national registers. This report shall contain only:

   (a) aggregated data on the annual amounts per third country in the preceding financial year. That aggregated data should be based on the information provided pursuant to Annex I, point 2, points (b) and (c);

   (b) aggregated data on the annual amounts per category of organisation for each third country in the preceding financial year. That aggregated data should be based on the information provided pursuant to Annex I, point 1, point (h) and point 2, point (b) and (c);

   (c) total number of third country entities that can be attributed to a specific third country. That aggregated data should be based on the information provided pursuant to Annex I, point 2, point (b);

   (d) a list of the third countries that fulfil the criteria set out in Article 16(3), point (b)(ii).

2. On the basis of the data transmitted by the Member States pursuant to paragraph 1, the Commission shall, by 31 May of each year, publish a summary of the data received and list the third countries that fulfil the criteria laid down in Article 16(3), point (b)(i).

3. Where necessary to ensure that the information provided in the reports published by Member States continues to provide the public with aggregate data necessary to understand the scope, scale and means of interest activities carried out by entities falling within the scope of Article 3(1), and to ensure that the list of third countries that fulfil the criteria laid down in Article 16(3), point (b), can be established, the Commission is empowered to adopt delegated acts in accordance with Article 23 to amend paragraph 1 by modifying the list of information to be included in the reports published by Member States in the light of developments in the market for interest representation services, opinions, recommendations, and reports issued by the advisory group established pursuant to Article 19, or, where available, relevant international standards and practices.

Article 14
Information for public officials

1. Member States shall ensure that registered entities provide the EIRN in their contacts with public officials when carrying out the activities referred to in Article 3(1).

2. Member States shall ensure that where registered entities make use of subcontractors, the subcontractors provide the EIRN of the registered entity in their contacts with public officials when carrying out the activities referred to in Article 3(1).

CHAPTER III – SUPERVISION AND ENFORCEMENT

Article 15
Competent national authorities

1. Each Member State shall designate:

   (a) one or more authorities responsible for the national registers;

   (b) one or more supervisory authorities.

2. Each supervisory authority shall have access to the national registers under its responsibility for the purpose of supervising the compliance with and enforcing the obligations set out in this Directive as well as exchanging information with the supervisory authorities in other Member States and the Commission, where authorised to do so under this Directive.

3. Each supervisory authority shall have jurisdiction over the entities referred to in Article 3(1) that are required to register pursuant to Article 10(1), (2) and (3) in the national registers under its responsibility.

4. Where an entity referred to in Article 3(1) has not designated a legal representative in accordance with Article 8(1), any supervisory authority in a Member State where the entity carries out an interest representation activity shall have jurisdiction.

5. Where a Member State designates more than one supervisory authority, it shall ensure that the tasks of each of those authorities are clearly defined and that they

cooperate closely and effectively when performing their tasks. Member States shall identify the supervisory authority to which communications may be addressed for transmission to the appropriate authority within that Member State.

6. Member States shall ensure that the supervisory authority is independent in the exercise of its functions. In particular, Member States shall ensure that the staff in supervisory authorities acting in the exercise of their powers pursuant to this Directive:

   (a) are able to perform their duties independently, free from political and other external influence, and neither seek nor take instructions from government or any other public or private entity;

   (b) refrain from taking any action which is incompatible with the performance of their duties and the exercise of their powers under this Directive.

7. Member States shall ensure that the national authorities designated pursuant to paragraph 1 have all necessary means to carry out the tasks assigned to them under this Directive, including sufficient technical, financial and human resources.

8. Member States shall ensure that, in carrying out the tasks assigned to them under this Directive, the national authorities designated pursuant to paragraph 1 ensure that no adverse consequences, such as stigmatisation, arise from the mere fact that an entity is a registered entity or has been subject to a request pursuant to Article 16(3).

9. Member States shall ensure that the national authorities designated pursuant to paragraph 1 make available to the public information and explanation concerning the application of this Directive, as well as the opinions, recommendations or reports adopted by the advisory group pursuant to Article 19(6).

10. By [one year after the entry into force], Member States shall notify the Commission and the other Member States of the competent national authorities designated pursuant to paragraph 1. The Commission shall publish a list of the competent national authorities.

Article 16
Information requests

1. Member States shall ensure that the power of supervisory authorities to request entities referred to in Article 3(1) to provide information is limited by the conditions laid down in paragraphs 2 to 9 of this Article.

2. A request pursuant to this Article may only be made by the supervisory authority with jurisdiction over the entity in question.

3. Except in cases referred to in Article 11(8) and (9), a request can only be made in the following cases and must be limited to the records kept in accordance with Article 7:

   (a) the registered entity received an annual amount that exceeds EUR 1 000 000 for a single third country entity in the preceding financial year;

   (b) the actions of the third country entity on whose behalf the registered entity is acting are attributable to a third country that has spent, in one of the five preceding financial years, and taking into account all third country entities whose actions can be attributed to this third country, an aggregate annual amount that exceeds either of the following:

      (i) EUR 8 500 000 on interest representation activities in the Union;

(ii) EUR 1 500 000 on interest representation activities in a single Member State;

unless the registered entity falls within the scope of Article 3(1), point (a), and received an aggregate annual amount for all activities falling within the scope of this Directive that is inferior to EUR 25 000 in the preceding financial year.

4. The request referred to in paragraph 3 shall contain the following elements:

(a) a statement indicating which one of the conditions set out in paragraph 3 is fulfilled;

(b) the records requested;

(c) information on the judicial review procedures available.

5. Where a supervisory authority other than the supervisory authority of the Member State of registration considers that any of the conditions set out in paragraph 3 are met, it may ask the supervisory authority of the Member State of registration to request records kept in accordance with Article 7 from the registered entity.

6. Upon receipt of a request pursuant to paragraph 5 and if it considers that the conditions laid down in paragraphs 3 are met, the supervisory authority of the Member State of registration shall make a request in accordance with paragraph 3 and transmit the information received to the requesting supervisory authority. If the supervisory authority of the Member State of registration has, within the previous 12 months, made a request in accordance with paragraph 3 covering the same information from the same registered entity, it shall transmit the information to the requesting supervisory authority without having to make a new request.

If the supervisory authority of the Member State of registration considers that the conditions laid down in paragraph 3 are not met, it shall provide the requesting supervisory authority with a reply explaining the reasons for not requesting or transmitting the information in question.

7. The entity to whom the request is made shall provide, within 10 working days, the complete information requested pursuant to point (b) of paragraph 4 in a clear, coherent and intelligible format.

8. The requests referred to in paragraph 3 shall be subject to judicial review procedures in the Member State of the supervisory authority which makes the request.

9. Where necessary to ensure that supervisory authorities may request records from entities that are particularly likely to influence the development, formulation or implementation of policy or legislation, or public decision-making processes, in the Union or a Member State, the Commission is empowered to adopt delegated acts in accordance with Article 23 to amend the financial thresholds set out in paragraph 3 in the light of developments in the market for interest representation activities, or of opinions, recommendations or reports issued by the advisory group established pursuant to Article 19, or, where available, developments of the relevant international standards and practices.

Article 17
Cross-border cooperation

1. Member States shall ensure that their supervisory authorities cooperate with the supervisory authorities of all other Member States as necessary.

2. Member States shall ensure that where a supervisory authority has reason to suspect that an entity falling within the jurisdiction of a supervisory authority of another Member State does not comply with its obligations under this Directive, it notifies the supervisory authority of that Member State.

3. A notification pursuant to paragraph 2 shall be duly reasoned and proportionate and at least indicate:

   (a) the information allowing the identification of the entity;

   (b) a description of the relevant facts, the relevant provisions of this Directive and the reasons why the notifying authority suspects an infringement of this Directive;

   The notification may include any other information that the notifying authority considers relevant, including, where appropriate, information gathered on its own initiative.

4. Member States shall ensure that where a supervisory authority receives a notification pursuant to paragraph 2, it shall, without undue delay and no later than 1 month following receipt of the notification, communicate its assessment of the suspected infringement to the supervisory authority from whom the notification was received and, where appropriate, provide further information on the investigatory or enforcement measures taken, or envisaged, in accordance with Article 11(8) or (9) and Article 22 in order to ensure compliance with this Directive.

5. Where the supervisory authority of the main establishment does not have sufficient information to act upon a notification referred to in paragraph 2, it may request additional information from the competent authority that made the notification.

6. The administrative cooperation and exchanges of information between the national authorities designated pursuant to Article 15(1), as well as the supervisory authorities and the Commission, pursuant to paragraphs 2, 4 and 5, Article 11(4), Article 16(5) and (6) and Article 18 of this Directive, shall be implemented through the IMI system established by Regulation (EU) No 1024/2012.

Article 18

Cross-border information sharing between supervisory authorities

1. Member States shall ensure that supervisory authorities are competent to request the following information from the supervisory authorities of another Member State, where such information is necessary for the purpose of exercising cross-border cooperation as referred to in Article 17(2):

   (a) information provided by a registered entity in accordance with Article 10(4);

   (b) any analyses carried out by a supervisory authority on the basis of the information referred to in point (a).

2. Member States shall ensure that upon receipt of a request pursuant to paragraph 1, the supervisory authority of the Member State of registration shall transmit the information to the requesting supervisory authority, unless it considers that the requirements of paragraph 1 are not met, in which case it shall provide the requesting supervisory authority with a reply explaining the reasons for not providing the information in question.

3. Member States shall ensure that the supervisory authorities provide the Commission, on its request, with aggregate data based on the information provided by registered entities in accordance with Article 10(4) for the purpose of monitoring the implementation of this Directive, including for the preparation of meetings of the advisory group referred to in Article 19. Such aggregate data may contain personal data only to the extent that is necessary to ensure effective monitoring. Where technically possible, the information shall be transmitted in a machine-readable format.

4. When processing personal data pursuant to paragraphs 1 to 3, the supervisory authorities shall act as controllers within the meaning of Article 4, point 7 of Regulation (EU) 2016/679, and the Commission shall act as a controller within the meaning of Article 3, point 8 of Regulation (EU) 2018/1725 with respect to their own data processing activities.

Article 19
Advisory group

1. An advisory group is established.

2. The advisory group shall assist the Commission in the following tasks:

   (a) facilitate exchanges and sharing of information and best practices as well as advise on possible guidance on the implementation of this Directive in particular regarding Article 2(4), point (b), Article 3(1) and Article 20;

   (b) facilitate exchanges and sharing of information and best practices on the specific needs of micro, small and medium-sized enterprises within the meaning of Article 3 of Directive 2013/34/EU;

   (c) advise on recommended formats for the publication of aggregated data pursuant to Article 13;

   (d) report to the Commission any divergences in the application of this Directive;

   (e) advise on the recommended technical infrastructure of the national registers set up and maintained pursuant to Article 9.

3. Each Member State shall nominate one representative and one alternate representative, who shall represent the supervisory authorities designated pursuant to Article 15.

4. Representatives of the European Parliament, or of the European Free Trade Association States that are contracting parties to the Agreement on the European Economic Area[17], may be invited to attend meetings of the advisory group as observers.

5. The Commission shall chair the advisory group and provide its secretariat. The advisory group shall adopt its rules of procedure.

6. The advisory group shall adopt its opinions, recommendations or reports in the context of its tasks set out in paragraph 2 by a simple majority of its members.

[17] Agreement on the European Economic Area (OJ L 1, 3.1.1994, p. 3, ELI: http://data.europa.eu/eli/agree_internation/1994/1/oj).

Article 20
Prohibition of circumvention

Member States shall ensure that it is prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the obligations set out in this Directive.

Article 21
Reporting of breaches and protection of reporting persons

Member States shall take the necessary measures to ensure that Directive (EU) 2019/1937 applies to the reporting of breaches of this Directive and the protection of persons reporting such breaches.

Article 22
Sanctions

1. Member States shall lay down rules on sanctions, limited to administrative fines, for infringements of national provisions adopted to transpose Article 6, Article 7, Article 8, Article 10, Article 11, Article 14, Article 16 and Article 20 by entities referred to in Article 3(1) or where appropriate, their legal representative. Those rules shall comply with paragraphs 2 to 6.

   Sanctions shall be imposed by the supervisory authority with jurisdiction over the entity concerned or by a judicial authority at the request of that supervisory authority.

2. The maximum amount of the financial sanction referred to paragraph 1 that may be imposed shall be, for undertakings, 1 % of the annual worldwide turnover in the preceding financial year, for other legal entities, 1 % of the annual budget of the entity in accordance with the most recent financial year closed and for natural persons, EUR 1 000.

3. The sanctions shall in each individual case be effective, proportionate and dissuasive, having regard, in particular, to the nature, recurrence and duration of the infringement to which those measures relate, as well as, where relevant, the economic, technical and operational capacity of the entity referred to in Article 3(1) that committed the infringement.

4. Before imposing sanctions, the supervisory authority shall issue a warning or a reprimand to the entity concerned to the effect that it is likely to infringe or has infringed provisions of this Directive, except if such infringement amounts to a violation of Article 20.

5. Member States shall ensure that the exercise by the supervisory authority of its powers pursuant to this Article shall be subject to appropriate safeguards in accordance with Union and Member State legislation, including the right to an effective judicial remedy and to a fair trial.

CHAPTER IV – FINAL PROVISIONS

Article 23
Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 10(9), Article 13(3) and Article 16(9) shall be conferred on the Commission for an indeterminate period from [the date of entry into force of the Directive].

3. The delegation of power referred to in Article 10(9), Article 13(3) and Article 16(9) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify that act simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 10(9), Article 13(3) and Article 16(9) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 24
Amendment to Directive (EU) 2019/1937

Directive (EU) 2019/1937 is amended as follows:

1. in Article 2(1), point (a) the following new point (xi) is added:

   ‘(xi) internal market rules related to transparency and good governance;’;

2. in the Annex, in Part I, the following new point (K) is added:

   ‘K. Point (a)(xi) of Article 2(1) — internal market rules related to transparency and good governance:

   Directive (EU) XXXX/XXXX of the European Parliament and of the Council of XXXX establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937 (OJ reference).’.

Article 25
Reports and review

1. At the latest by *[12 months after the transposition deadline]*, the Commission shall present a report on the implementation of this Directive to the European Parliament, the Council and the European Economic and Social Committee.

2. At the latest by *[4 years after the transposition deadline]*, the Commission shall carry out an evaluation of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.

   That evaluation shall assess the effectiveness and proportionality of the Directive. It shall assess among others the need for changes to the scope and the effectiveness of the safeguards provided in the Directive. It may, where appropriate, be accompanied by relevant legislative proposals.

3. Member States shall provide the Commission with the information necessary for the preparation of the reports referred to in paragraphs 1 and 2.

Article 26
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by *[eighteen months after the entry into force]* at the latest. They shall forthwith communicate to the Commission the text of those provisions.

   When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

3. In the case of those Member States which have not adopted the euro, the amount in national currency equivalent to the amounts set out in this Directive shall be that obtained by applying the exchange rate published in the Official Journal of the European Union as at the date of the entry into force of any Directive setting those amounts.

   For the purposes of conversion into the national currencies of those Member States which have not adopted the euro, the amounts in euro specified in this Directive may be increased or decreased by not more than 5 % in order to produce round sum amounts in the national currencies.

Article 27
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Directive is addressed to the Member States.

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

1.2. Policy area(s) concerned

1.3. The proposal/initiative relates to:

1.4. Objective(s)

1.4.1. General objective(s)

1.4.2. Specific objective(s)

1.4.3. Expected result(s) and impact

1.4.4. Indicators of performance

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention, which is additional to the value that would have been otherwise created by Member States alone.

1.5.3. Lessons learned from similar experiences in the past

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

1.5.5. Assessment of the different available financing options, including scope for redeployment

1.6. Duration and financial impact of the proposal/initiative

1.7. Method(s) of budget implementation planned

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

2.3. Measures to prevent fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for a Directive of the European Parliament and of the Council establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937

1.2. Policy area(s) concerned

Internal market and democracy

1.3. The proposal/initiative relates to:

☒ **a new action**

☐ **a new action following a pilot project/preparatory action**[74]

☐ **the extension of an existing action**

☐ **a merger or redirection of one or more actions towards another/a new action**

1.4. Objective(s)

1.4.1. General objective(s)

The general objective of this proposal is to ensure the proper functioning of the internal market for interest representation activities carried out on behalf of third countries.

1.4.2. Specific objective(s)

Specific objective No 1

To provide for harmonised transparency measures for interest representation carried out on behalf of third countries.

Specific objective No 2

To ensure the effective oversight of the obligations established by the Directive.

Specific objective No 3

To ensure efficient cross-border cooperation among the competent national authorities for the purpose of ensuring the complete and effective implementation of the Directive.

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

A more homogenous policy approach across the Union regarding interest representation activities carried out on behalf of third countries will provide greater clarity and predictability for businesses, citizens, and other stakeholders, and facilitate the functioning of the internal market.

For Member States:

[74] As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

Member State would need to ensure that national transparency registers for interest representation carried out on behalf of third countries exist and cover the activities falling within the scope of the legislation. Member States that currently have no such systems in place would be required to develop and implement a new transparency framework and establish a register. This would include the development, implementation, and regular maintenance of a publicly accessible national register and the setting up of the relevant competent authorities. The remaining Member States would be required to amend existing transparency regimes targeting interest representation in general. The extent of these changes will depend on the specificities of existing regimes across key parameters such as scope, types and nature of existing requirements, and types of monitoring and enforcement mechanisms.

In addition to implementing compliant regulatory regimes and registers, Member States authorities would also participate in a Union-level advisory group and take part in administrative cooperation among competent national authorities. To limit administrative burden, exchanges of information between the national authorities, as well as the authorities and the Commission, would take place through the the Internal Market Information System ('IMI system') for administrative cooperation between Member States' competent authorities in Single Market related policy areas.

The study conducted by the Commission to support the proposal estimated that Member State authorities would incur the costs outlined below.

First, familiarization costs are one-off implementation costs borne in year 1 by authorities across all 27 Member States. The total costs are estimated to range from EUR 1 500 to EUR 4 600 for all Member State authorities.

Second, the costs of ensuring an appropriate register is in place include equipment costs for establishing or amending a register, as well as annual maintenance costs. The study supporting the initiative estimated that maintenance costs could range between EUR 65 000 to EUR 585 000 across the 12 Member State authorities without existing IT tools. Across years 2-10 of the 10-year time horizon, this would equate to approximately EUR 585 000 to EUR 5.27 million. For the 15 Member States with existing registers, the study estimated that updating them to include data fields on the aspects of interest representation related to third countries will not lead to a notable increase in maintenance costs due to the limited number of entities within scope of the intervention. The annual IT maintenance costs for those Member States will therefore be considered as business-as-usual costs.

Third, the cost of ensuring an appropriate management, monitoring and enforcement regime is in place, which could cover the independent supervisory authorities, includes establishing and operating a new regime or amending and operating an existing one. These costs will be recurrent across years 2-10. Estimated Union-wide costs would be between approximately EUR 565 000 to EUR 848 000 per year and between EUR 5.65 to 8.48 million over the 10-year time horizon.

In turn, the implementation of the initiative would lead to several benefits.

First, the primary benefit is increased transparency and understanding of the market for interest representation activities carried out on behalf of third countries. Enhanced mechanisms for sharing information between Member State authorities would also allow for improved visibility and oversight of third country interest representation activities. The proposal could foster trust between different entities and increase public sector trust in the role, intentions and practices of entities that

carry out interest representation activities on behalf of third countries in the internal market.

Second, and beyond these direct benefits, it is anticipated that the existence of a legal regime and related registers for interest representation activities carried out on behalf of third countries could have positive indirect impacts on awareness of the issues related to interest representation carried out on behalf third countries.

However, it is important to highlight that certain challenges would remain, such as monitoring and enforcement challenges due to the risk that rogue operators will not register and will continue to operate in an unethical manner.

For private entities:

First, for entities carrying out interest representation activities, record keeping obligations would consist of an initial judgement concerning all potential engagements for third countries, gathering key information on the third country entity represented, and assessing the different types of risks associated with the prospective engagement. The study conducted for the Commission as well as the consultation process noted that many commercial interest representation service providers already conduct certain activities that could constitute record keeping, but that these activities are often informal in nature. As such, the proposal would require the formalisation of existing record-keeping activities in the context of engagements for third countries.

Second, familiarisation costs with the new framework are also to be expected. Such costs would mainly be one-off and borne in the first year of the entry into application of the framework. There are two levels of familiarisation costs: basic familiarisation costs and extended familiarisation costs. Basic familiarisation costs require a large number of entities to spend a small amount of time reviewing the legislative text and any related guidance. The study conducted for the Commission estimated that such costs across all entities that carry out interest representation on behalf of third countries in the internal market would range from approximately EUR 71.2 million to EUR 213.5 million at around EUR 20-60 per organisation. Extended familiarisation costs require a much smaller number of entities covered by the initiative to spend more time reviewing the legislative text and any related guidance, but also to assess the practical implications, develop compliance strategies and allocate responsibility for compliance-related tasks. Those costs would range from approximately EUR 57 000 to EUR 256 000 at around EUR 80-240 per organisation.

Third, administrative costs would include initial registration costs, initial information update costs, and ongoing information disclosure costs. Concerning initial registration costs, information on the registration obligations and formalities established by this Directive would be available via the Single Digital Gateway which, through the Your Europe web portal, sets up a one-stop shop that provides businesses and citizens with information about rules and procedures in the Single Market, at all levels of government and direct, centralised, and guided access to assistance and problem-solving services as well as to a wide range of fully digitised administrative procedures. In addition, the procedure for registration is fully online and organised in accordance with the ‘once only’ principle to facilitate the reuse of data.

The study supporting the preparation of the proposal provided different cost estimates depending on the size of the entities that will fall under scope. Overall,

these costs are estimated to range from EUR 590 000 to EUR 3.5 million, at approximately EUR 828 – 3 314 per organisation. These costs are then expected to remain constant year after year. Across the 10-year time horizon, this will reach a total cost of approximately EUR 5.9 – 35.4 million. In particular, the study found that micro-small entities will bear the smallest costs. Namely, the study identified that 97.3% of entities falling under the scope of the proposal are micro-small (defined as having less than 10 full-time equivalent personnel (FTEs)), which are expected to incur average costs per entity of EUR 828.

Fourth, for record keeping activities, feedback gathered during the performance of the study suggests that the costs related to these activities could be characterised as business-as-usual costs, thereby adding no incremental costs to the intervention.

Conversely, the proposal will also provide several benefits for entities that carry out interest representation on behalf of third countries in the internal market within scope.

First, this removal of existing fragmentation would facilitate service provision across multiple Member States as only one registration would be necessary. This would significantly simplify the process of entering a new market or working cross-border within the Union for providing interest representation activities.

Second, the proposal would create a level playing field and enhanced legal certainty for interest representation activities for third countries. This would be achieved by requiring all market participants to abide by clear rules for market participation, for example concerning the obligations to register and provide the same information, as well as of conducting harmonised record keeping activities. This would ensure all economic actors are subject to the same rules across the internal market and remove existing fragmentation of rules.

Third, the proposal would help normalise legitimate interest representation activities carried out on behalf of third countries via an enhanced level of transparency and trust in this sector. This would provide answers to important questions such as who is trying to influence political decision-making and on what issues, as well as incentivising ethical behaviour.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

The implementation of this proposal will follow a phased approach. Upon entry into force of this Directive, work will first commence towards the adaptation of IMI system to the needs of the Directive with a view to connecting the competent authorities of the Member States ahead of the expiry of the transposition period.

A provisional implementation timeline can be illustrated as follows:

- 2024 Entry into force of the Directive and adaptation of the IMI system;

- 2025/6 Transposition and application by Member States.

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention, which is additional to the value that would have been otherwise created by Member States alone.

Reasons for action at Union level (ex-ante)
Several Member States have legislated or are about to legislate in the field of transparency of interest representation. As these rules diverge in their scope, content and effect, a patchy framework of national rules is appearing and risks to increase, especially when it comes to interest representation on behalf of third countries. This jeopardises an effective exercise of the freedom to provide services in the Union. Only intervention at Union level can solve this problem, as regulation at national level would be aimed at ensuring transparency of interest representation activities in their own public life, with therefore little concern for the barriers erected to cross-border interest representation activities. National rules would also fail to systematically address actions by third countries that seek to covertly influence decision-making in the Union.

1.5.3. Lessons learned from similar experiences in the past

The evidence base for this proposal is drawn from internal and external research, extensive consultation activities, bilateral meetings with stakeholders, and was supported by an external study. Guidance from international standard setting bodies, including the Council of Europe or the Organisation for Economic Co-operation and Development (OECD) were taken into account. They notably recommended the legal regulation of lobbying activities in the context of public decision-making, as well as transparency and integrity in lobbying and foreign funding, while recalling the importance to respect fundamental rights. The proposal also builds on the terminology and concepts used in the context of the EU Transparency Register.

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

This proposal is part of a package of measures to defend democracy from covert foreign influence announced by President von der Leyen in the 2022 State of the Union address. The package complements actions already taken at Union level under the European Democracy Action Plan. Apart from this initiative, the package includes specific measures on electoral matters ahead of the elections to the European Parliament and measures to foster an enabling civic space and promote inclusive and effective engagement by public authorities with civil society organisations and citizens. All these measures aim to bolster democratic resilience from within. The proposal is part of a set of initiatives that reflect a proactive approach to embedding Union values in European society. Since 2020, the annual Rule of Law Report cycle has explored the laws and institutions at the heart of making democracies work. In addition, the recent anti-corruption initiative seeks to protect democracy as well as society from the corrosive impact of corruption.

1.5.5. Assessment of the different available financing options, including scope for redeployment

The costs necessary to adapt the IMI to allow for the administrative cooperation between the competent national authorities provided for by this proposal will be financed from the Citizens, Equality, Rights and Values (CERV).

1.6. Duration and financial impact of the proposal/initiative

☐ **limited duration**

– ☐ in effect from [DD/MM]YYYY to [DD/MM]YYYY

– ☐ Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

☒ **unlimited duration**

– Implementation with a start-up period from 2024 to 2025/2026,

– followed by full-scale operation.

1.7. Method(s) of budget implementation planned

☒ **Direct management** by the Commission

– ☒ by its departments, including by its staff in the Union delegations;

– ☐ by the executive agencies

☐ **Shared management** with the Member States

☐ **Indirect management** by entrusting budget implementation tasks to:

– ☐ third countries or the bodies they have designated;

– ☐ international organisations and their agencies (to be specified);

– ☐ the EIB and the European Investment Fund;

– ☐ bodies referred to in Articles 70 and 71 of the Financial Regulation;

– ☐ public law bodies;

– ☐ bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;

– ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;

– ☐ bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

– *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

The proposal will make use of the IMI system for the administrative cooperation among the competent authorities of Member States.

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

The implementation of the Directive will be reviewed one year after its transposition deadline. The Commission will report on the findings to the European Parliament and to the Council.

Four years after its transposition deadline, the Commission will carry out an evaluation of the Directive.

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

The administrative cooperation among competent national authorities provided for in the proposal will make use of the already existing IMI system operated by the Commission (DG GROW). For this purpose, the proposed Directive enlarges the scope of the IMI. This requires the deployment of resources to adapt the IMI system to the needs of the proposed Directive.

This proposal does not alter the management mode, funding implementation mechanism, payment modalities or control strategy already in place for the system and employed by the Commission.

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

The main identified risk relates to time and cost overruns due to unforeseen IT implementation issues with regard to the adaptation of the IMI system. This risk is mitigated by the fact that the IMI system is already in place and that the relevant Commission department has previous experience in adapting the system to new business needs.

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

This initiative does not affect the cost-effectiveness of existing Commission controls.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

This legislative financial statement concerns staff expenditure and procurement, and standard rules for this type of expenditures apply.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.[75]	from EFTA countries [76]	from candidate countries and potential candidates [77]	fromother third countries	other assigned revenue
2b	07 06 04: Protection and promotion of Union Values	Diff.	NO	NO	NO	NO

[75] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.
[76] EFTA: European Free Trade Association.
[77] Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

– ☐ The proposal/initiative does not require the use of operational appropriations

– ☒ The proposal/initiative requires the use of operational appropriations, as explained below[78]:

Allocations already available under the financial programmming of the Citizens, Equality, Rights and Values Programme will support this initative.

EUR million (to three decimal places)

Heading of multiannual financial framework	2b	'Resilience and values'

DG JUST			Year **2024**	Year **2025**	Year **2026**	Year **2027**	**TOTAL (*under the current MFF[79])**
☒ Operational appropriations							
07 06 04: Protection and promotion of Union Values	Commitments	(1a)	0.125	0.125	0.025	0.025	**0.3**
	Payments	(2a)	0.125	0.125	0.025	0.025	**0.3**
Appropriations of an administrative nature financed from the envelope of specific programmes[80]							
		(3)					
TOTAL appropriations	Commitments	=1a+1b +3	0.125	0.125	0.025	0.025	**0.3**

78 The proposed actions will be financed within the envelopes allocated to the relevant spending programme for the period 2021-2027 and will not require any additional financial resources from the Union budget.

79 Future financial implications of this initiative for the years post 2027 are without prejudice to the MFF after 2027.

80 Technical and/or administrative assistance and expenditure in support of the implementation of Union programmes and/or actions (former 'BA' lines), indirect research, direct research.

for DG JUST	Payments	=2a+2b +3	0.125	0.125	0.025	0.025	**0.3**

☒ TOTAL operational appropriations	Commitments	(4)	0.125	0.125	0.025	0.025	**0.3**
	Payments	(5)	0.125	0.125	0.025	0.025	**0.3**
○ TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)					
TOTAL appropriations under HEADING 2b of the multiannual financial framework	Commitments	=4+ 6	0.125	0.125	0.025	0.025	**0.3**
	Payments	=5+ 6	0.125	0.125	0.025	0.025	**0.3**

Heading of multiannual financial framework	7	'Administrative expenditure'

EUR million (to three decimal places)

				Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
DG JUST								
☒ Human resources				0.513	0.513	0.513	0.513	**2.052**
☒ Other administrative expenditure						0.05	0.05	**0.1**
TOTAL DG JUST				0.513	0.513	0.563	0.563	**2.152**

TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)	**0.513**	**0.513**	**0.563**	**0.563**	**2.152**

EUR million (to three decimal places)

		Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
TOTAL appropriations under HEADINGS 2b and 7 of the multiannual financial framework	Commitments	**0.638**	**0.638**	**0.588**	**0.588**	**2.452**
	Payments	**0.638**	**0.638**	**0.588**	**0.588**	**2.452**

3.2.2. *Estimated output funded with operational appropriations*

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ⇩			Year **2024**		Year **2025**		Year **2026**		Year **2027**		~~Year **2028**~~		~~Year **2029**~~		~~Year **2030**~~		**TOTAL**	
	OUTPUTS																	
	Type[81]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 3[82]																		
Develop the IMI module	IT system	0.125	1	0.125	1	0.125											1	0.25
Maintain the IMI module	IT system						1	0.025	1	0.025							1	0.05
Subtotal for specific objective No 3			1	0.125	1	0.125	1	0.025	1	0.025							2	0.3
TOTALS			**1**	**0.125**	**1**	**0.125**	**1**	**0.025**	**1**	**0.025**							**2**	**0.3**

[81] Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

[82] As described in point 1.4.2. 'Specific objective(s)…'

3.2.3. Summary of estimated impact on administrative appropriations

– ☐ The proposal/initiative does not require the use of appropriations of an administrative nature

– ☒ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year **2024**	Year **2025**	Year **2026**	Year **2027**	**TOTAL**
HEADING 7 of the multiannual financial framework					
Human resources	0.513	0.513	0.513	0.513	**2.052**
Other administrative expenditure			0.05	0.05	**0.1**
Subtotal HEADING 7 of the multiannual financial framework	**0.513**	**0.513**	**0.563**	**0.563**	**2.152**

Outside HEADING 7[83] of the multiannual financial framework					
Human resources					
Other expenditure of an administrative nature					
Subtotal outside HEADING 7 of the multiannual financial framework					

TOTAL	**0.513**	**0.513**	**0.563**	**0.563**	**2.152**

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

83 Technical and/or administrative assistance and expenditure in support of the implementation of Union programmes and/or actions (former 'BA' lines), indirect research, direct research.

3.2.3.1. Estimated requirements of human resources

– ☐ The proposal/initiative does not require the use of human resources.

– ☒ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

		Year **2024**	Year **2025**	Year **2026**	Year **2027**
20 01 02 01 (Headquarters and Commission's Representation Offices)		3	3	3	3
20 01 02 03 (Delegations)					
01 01 01 01 (Indirect research)					
01 01 01 11 (Direct research)					
Other budget lines (specify)					
20 02 01 (AC, END, INT from the 'global envelope')					
20 02 03 (AC, AL, END, INT and JPD in the delegations)					
XX 01 xx **yy zz** [84]	- at Headquarters				
	- in Delegations				
01 01 01 02 (AC, END, INT - Indirect research)					
01 01 01 12 (AC, END, INT - Direct research)					
Other budget lines (specify)					
TOTAL		**3**	**3**	**3**	**3**

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	3 FTE for the secretariat of the advisory group as well as to assist the IMI team for policy and business contributions both during the implementation fo the project as well as after the IMI module has gone live.
External staff	

[84] Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

3.2.4. Compatibility with the current multiannual financial framework

The proposal/initiative:

– ☒ can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

The Commission will use funds already available under the financial programming of the Citizens, Equality, Rights and Values Programme to support this initative.

– ☐ requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

– ☐ requires a revision of the MFF.

3.2.5. Third-party contributions

The proposal/initiative:

– ☒ does not provide for co-financing by third parties

– ☐ provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year **N**[85]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

[85] Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

3.3. Estimated impact on revenue

– ☒ The proposal/initiative has no financial impact on revenue.

– ☐ The proposal/initiative has the following financial impact:

  – ☐ on own resources

  – ☐ on other revenue

  – please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[86]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article …….								

For assigned revenue, specify the budget expenditure line(s) affected.

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

[86] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.