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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	16889/23 +ADD1, 10266/24
Subject:	Proposal for a Directive on Transparency of Interest Representation on behalf of Third Countries - State of play and guidance for further work

I. INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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II. WORK IN COUNCIL

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

6. Ministers held an orientation debate on the 'Defence of Democracy' package, including the proposed Directive, at the meeting of the General Affairs Council (GAC) on 29 January 2024 on the basis of a Presidency non-paper[10].

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

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

9. On the basis of a note[12] identifying the key areas requiring guidance for further work, the Permanent Representatives Committee held a discussion at its meeting on 29 May 2024, focusing in particular on the scope and objectives, level of harmonisation and registers.

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10 Doc. 5428/24.
11 Doc. 9328/24.
12 Doc. 10266/24.

10. The COREPER discussion provided the groundwork for a policy debate at the meeting of the General Affairs Council (GAC) on 25 June on the basis of a note[13], which included questions to guide the debate. Ministers welcomed the objectives of the directive and agreed to work on the basis of the proposed legal basis. They also called for clear definitions, safeguards against stigmatisation and in protecting fundamental rights. Furthermore, the vast majority called for minimum harmonisation and for flexibility on national registers and to allow Member States to adopt stricter rules and to minimise administrative burdens. Some ministers also called for further analysis on a number of elements of the proposal.

III. STATE OF PLAY

11. The Presidency continued work on the legislative proposal at the GAG level on the basis of the debate in the GAC on 25 June, focusing on existing and planned national registers and rules.

12. To this end, the Presidency shared a detailed questionnaire on national registers to gain a better understanding of Member States' current and planned national rules and practices regarding the registration of lobbying activities and identifying potential similarities and differences amongst them. The replies[14] to this questionnaire were examined and discussed at the meeting of GAG on 21 November.

13. Furthermore, delegations were informed on the existing tools in the field of tackling foreign influence and hybrid threats by the chair of the Horizontal Working Party on Enhancing Resilience and Countering Hybrid Threats (HWP ERCHT) and the European External Action Service (EEAS).

14. Moreover, the Commission also informed delegations about the Technical Support Instrument (TSI) and the Internal Market Information (IMI) system in the context of the proposed Directive.

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13 Doc. 10805/24.
14 Doc. 15070/24.

IV. CONCLUSIONS

15. In view of the above, the Permanent Representatives Committee is invited to hold an exchange of views on the basis of the Presidency discussion paper in the Annex to this note, addressing the questions specified therein.

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ANNEX

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

COREPER meeting on 4 December 2024

Presidency discussion paper

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Background

The Hungarian Presidency prepared a comprehensive questionnaire for Member States with the aim of mapping the existing national regulations and practices regarding the registration of lobbying activities from third countries and the potential similarities or differences among them. All Member States[15] provided a written response to the Presidency Questionnaire.

Key findings

The Presidency Questionnaire found that a vast majority of Member States have longstanding transparency frameworks addressing interest representation, particularly concerning lobbying, but not all of them operate registers for reasons for which the Directive would not necessarily provide an adequate answer either, such as the risk of stigmatization or negative impact on freedoms. Others are working to establish national lobbying regulations, and creating a lobby register or regulation stem from the access to the Resilience and Recovery Fund in certain Member States.

There are general concerns among Member States regarding the compliance of the proposed Directive with the principles of subsidiarity and proportionality, since national regulations would require various degree of amendments to meet the proposed objectives of the Directive and Member States would additionally incur financial and personnel costs related in particular to the operation of registers.

[15] With the exception of the Presidency.

Regarding the deficiencies reported in national regulations, no Member State indicated that an EU level harmonisation would address these. Diverse definitions and scopes for regulating lobbying reflect different national concerns. Some Member States adopt broad definitions, regulating both direct and indirect influence activities, while others present narrower definitions, applying transparency measures more selectively.

As regards personal scope, Member States' existing national legislation currently places transparency requirements on either interest representatives or public officials that are the target of such activities, or in some cases, on both sides. In most cases, the scope of existing national registers is not limited to third country interest representation.

The findings of the Presidency Questionnaire showed that a clear majority of Member States oppose maximum harmonisation and prefer minimum harmonisation instead, or at least sufficient flexibility to account for national circumstances. Only a small minority of the Member States see merit in a higher level of harmonisation.

Some common trends can be identified based on the answers provided by Member States, particularly with regard to the public availability of registers, the provision of financial resources from the state budget, or the rights of competent authorities to conduct investigations. Indeed, most registers are available for the public and are operated primarily online. In most cases, Member States have the register run either by a fully independent body or administrative staff of the Parliament or a government body. In term of sanctions, although most Member States utilise financial sanction for non-compliance, more severe consequences also occur in some cases.

However, the national regulations on many technical issues fall across a wide range, such as the exact status and powers of national authorities, national deadlines of registration and reporting, data retention periods, data verification methods, or the financial and human resources involved in the creation or the operation of the register.

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Only a few Member States showed willingness to expand their registers to cover new actors, but others are strongly opposed due to the unique nature of their systems. Member States expressed concerns about excessive administrative burdens, in particular those who will need to introduce major changes to their existing national rules. The potential negative effect of harmonisation on the effectiveness of existing national systems was also emphasised.

A group of Member States argued that their national systems are not compatible with any other, therefore they see interconnecting registers as unfeasible. A centralised EU register is not desired by most Member States.

Questions for Permanent Representatives

1. **Does the Commission proposal (irrespective of the level of harmonization to be decided) address properly the risks of fragmentation across Member States as identified in the Commission impact assessment?**
2. **Does the Commission proposal strike the right balance between administrative burdens for Member States and the goals it aims to accomplish?**
3. **Do the Member States consider it necessary to prepare a new impact assessment by the Commission or other options (withdrawal, rewording, etc.) might provide a better solution?**

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