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COVER NOTE

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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the document 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 and Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1024/2012 and (EU) 2018/1724 as regards certain requirements laid down by Directive (EU) XXXX/XXXX

Delegations will find attached document SWD(2023) 664 final.

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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

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

and

Proposal for a Regulation of the European Parliament and of the Council

amending Regulations (EU) No 1024/2012 and (EU) 2018/1724 as regards certain requirements laid down by Directive (EU) XXXX/XXXX

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Executive Summary Sheet

Impact assessment on a Proposal for a Directive establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries.

A. Need for action

What is the problem and why is it a problem at EU level?

Governments of third countries increasingly promote their policy objectives and influence decision making processes in the Union via interest representation activities. Currently, interest representation activities carried out on behalf of third countries are regulated together with other interest representation activities. Some Member States are seeking to regulate specifically interest representation on behalf of third countries. The **regulatory framework is highly fragmented** among the 15 Member States that have introduced a transparency register on interest representation activities, and 12 Member States do not regulate this market at all. This fragmentation causes **several obstacles in the internal market** for interest representation activities carried out on behalf of third countries that undermine the proper functioning of the internal market: 1) **uneven playing field** since diverging requirements at Member State level impact different interest representation providers in different ways; 2) **unnecessary costs for entities that wish to operate across borders** in the internal market. As a consequence, there is a **risk of forum shopping and regulatory arbitrage** redirecting interest representation activities to less regulated Member States.

Secondly, the scale of interest representation activities carried out on behalf of third countries in the Member states is largely unknown. Member States do not consistently collect or systematically share information on these activities which leads to **a lack of information about the magnitude, trends, and actors of interest representation carried out on behalf of third countries**. This lack of transparency undermines democratic processes and impacts Union citizens' trust in the integrity of public decision-making process as citizens are concerned about the impacts of foreign government meddling with decision-making processes in the Union.

What should be achieved?

General objectives are to: (1) ensure the proper functioning of the internal market for interest representation activities carried out on behalf of third countries, and (2) contribute to the transparency, integrity of, and public trust in, Union and Member State decision making processes, with regards to the influence of third countries. Specific objectives are to: (a) facilitate cross-border interest representation activities carried out on behalf of third countries when done transparently, and (b) improve knowledge about the magnitude, trends and actors of interest representation carried out on behalf of third countries.

What is the value added of action at the EU level (subsidiarity)?

Member States' rules on transparency of interest representation diverge in their scope, content and effect. The current situation undermines the internal market, especially when it comes to interest representation activities carried out on behalf of third countries. Only intervention at Union level can solve the problems identified, as regulation at national level already results in the creation of obstacles to cross-border interest representation activities in the internal market.

The issue is best addressed at Union level in order to provide harmonised transparency measures that allow to create 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. In contrast, the effects of any action taken under national law would be limited to a single Member State and risks being circumvented or be difficult to oversee in relation to entities carrying out interest representation on behalf of third countries from

other Member States. This would not address the EU-wide problems identified and would exacerbate the obstacles within the internal market caused by fragmentation. 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.

Furthermore, interest representation activities carried out on behalf of third countries is a transnational issue with cross-border implications. Influencing policy decisions and political processes in a Member State can have an impact beyond that Member State's borders, in another Member State or at the Union level. 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. Union action will thus contribute to improving the knowledge at Union level on the magnitude, trends and actors of interest representation activities carried out on behalf of third countries.

B. Solutions

What are the various options to achieve the objectives? Is there a preferred option or not? If not, why?

There are **three** policy options:

PO1: Non-legislative intervention recommending to Member States a set of measures to be applied to interest representation activities carried out on behalf of third countries.

PO2.1: Legislative intervention with targeted requirements to harmonise transparency requirements for interest representation activities carried out on behalf of third countries on the basis of Article 114 TFEU. This option would address interest representation activities carried out on behalf of governments and affiliated entities from all third countries. It would establish specific safeguards in order to address potential risks for actors like Civil Society Organisations (CSOs) and it would impose targeted requirements on entities (record-keeping, registration of information, transparency obligations applicable to interactions with public officials, sanctions).

PO2.2: Legislative intervention with extended requirements. This latter option would build upon PO2.1, but it would go beyond the targeted requirements by imposing extended requirements on entities, notably by introducing a prior authorisation mechanism in order to engage in interest representation activities on behalf of third countries.

The preferred policy option is **PO2.1**.

What are different stakeholders' views? Who supports which option?

- There is a general demand for Union action regarding interest representation activities carried out on behalf of third countries.
- Only 5 Member States out of 15 participating in a questionnaire, 1 CSO out of 11 and none of the 3 industry associations prefer PO1. 6 CSOs have expressed concerns that such recommendation could be misused.
- Harmonised transparency requirements, notably under PO2.1, are the preferred option for 9 Member States, all 3 industry associations, and 2 CSOs.
- Extended requirements including a prior authorisation/licensing system as proposed under PO2.2 are only supported by 4 Member States and 1 CSO. 6 Member States, 5 CSOs and 1 industry representatives have expressed opposition to such a mechanism.
- Stakeholders support the idea to establish specific safeguards in order to address potential

risks for the protection of fundamental rights. Only 4 CSOs argue in favour of exempting some entities from transparency requirements.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise of main ones)?

Option 2.1, found to perform best across comparison criteria, is expected to have a positive effect over the baseline on the internal market by:

- increasing the legal certainty and providing a level playing field necessary to remove the obstacles identified in the internal market;
- limiting the costs on economic actors linked to multiple registration in different Member States and facilitating interest representation activities across borders;
- providing sufficient information to improve knowledge about the magnitude, trends and costs of interest representation carried out on behalf of third countries;
- increase transparency, integrity of, and public trust in, Union and Member State decision making processes, with regards to the influence of third countries while being less intrusive in terms of impacts on fundamental rights, in particular with regards to the freedom of association and the freedom of the arts and sciences, compared to other policy options;
- facilitating cross-border cooperation between national authorities.

What are the costs of the preferred option (if any, otherwise of main ones)?

Economic actors – compliance costs to implement obligations on transparency. These will include one-off costs for the familiarisation with the new regulatory framework and registration costs, as well as recurrent costs linked to record-keeping and maintaining up-to-date information in the register. But overall costs should be lower than in the baseline, as reduced fragmentation yields efficiency gains.

Public authorities – one-off familiarisation costs for all Member States, costs to establish new registers and establish new or amend existing regimes in the 12 Member States that do not currently have registers in place, costs to amend existing regimes and registers for the 15 Members States that have a transparency register, and recurrent costs for all Member States to maintain the registers as well as appropriate management, monitoring and enforcement mechanisms. These costs are expected to be partially offset against the efficiency savings expected from the harmonised obligations and streamlined and strengthened oversight process.

What are the impacts on SMEs and competitiveness?

Legislative measures will reduce legal uncertainty and fragmentation and avoid that companies have to register multiple times. Hence, the new requirements will help SMEs scale up their operations and stimulate the development of new services offered at Union level. Proportionate transparency requirements will not have a negative impact on the capacity to innovate and compliance costs are expected to be compensated by the application of more consistent rules across the EU.

Will there be significant impacts on national budgets and administrations?

Increased one-off costs for training staff and establishing new registers for the 12 Member States that do not currently have one and amending the existing ones in the 15 other Member States, and recurrent costs for maintenance of the IT tool for the register and monitoring compliance with the transparency requirements for all Member States should be offset to some extent by efficiency savings from harmonised obligations and the introduction of a governance cooperation mechanism at Union level which could be supported by existing IT tools. Net saving is unlikely.

Will there be other significant impacts?
The increased transparency of interest representation activities on behalf of third countries will strongly improve the knowledge about the magnitude, trends, and actors of interest representation activities helping to strengthen the quality of information available on this subject, and thereby enrich the political debate and inform future policy making. Regulatory coordination among competent authorities will be improved and covert interest representation on behalf of third countries will be prevented. The proposal would positively contribute to the right of individuals to receive and impart information and ideas without interference by public authority and to the freedom to conduct business. Transparency requirements might have a limited impact on the right to freedom of associations, the right to freedom of expression and the freedom of the arts and the sciences, but the preferred policy option 2.1 foresees suitable safeguards including against stigmatisation and is less intrusive than PO2.2. There might be limited geopolitical implications, notably the risk of third countries using the Union's policy as a pretext to adopt further-reaching laws on foreign interference. These geopolitical implications can be mitigated by communication and diplomatic efforts.
Proportionality?
The measures proposed by the preferred option are proportionate to the objectives defined. Restrictions of fundamental rights, in particular with regards to the freedom of association and the freedom of the arts and sciences, are proportionate and limited to the minimum necessary.
D. Follow up
When will the policy be reviewed?
A report on the implementation of the legislative measures contained in the preferred option will take place at the latest by 12 months after the transposition deadline if a Directive is chosen. The Commission will also carry out an evaluation report of those legislative measures at the latest by 4 years after the implementation deadline.