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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	13 December 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SEC(2023) 637
Subject:	REGULATORY SCRUTINY BOARD OPINION 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 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 SEC(2023) 637.

Encl.: SEC(2023) 637

EUROPEAN COMMISSION

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SEC(2023) 637

REGULATORY SCRUTINY BOARD OPINION

Transparency of interest representation activities on behalf of third countries

{COM(2023)636-637}

{SWD(2023)663-664}

EUROPEAN COMMISSION
REGULATORY SCRUTINY BOARD

Brussels,
RSB

Opinion

Title: Impact assessment / Transparency of interest representation activities on behalf of third countries

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

The issue of influence by third countries in the European democratic space and elections has long been on the EU agenda. In terms of third country interest representation, there is currently regulatory fragmentation with more than half of the Member States regulating the activity, with different scope, diverging obligations, supervision structures and sanctions. As a result, service providers face uneven compliance costs and barriers to operate across borders, which in turn may lead to forum shopping and regulatory arbitrage.

This initiative aims to ensure the proper functioning of the interest representation services market within the EU and to regulate the transparency of third country interest representation.

(B) Summary of findings

The Board notes the additional information provided and commitments to make changes to the report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

(1) The report does not provide a clear narrative explaining that the initiative focuses on transparency and proper functioning of interest representation services on behalf of third countries in the EU internal market.

(2) The report does not sufficiently elaborate mitigation measures regarding potential circumvention of the transparency requirements of interest representation.

This opinion concerns a draft impact assessment which may differ from the final version.

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(C) What to improve

(1) The report should provide a coherent and unambiguous narrative for this initiative focusing on legal interest representation services on behalf of third countries in the internal market of EU. The assessment should more precisely identify the gaps this initiative intends to fill and how it articulates with the wider set of initiatives on the defence of democracy. The report should provide a clear scope for the EU action, especially in terms of activities and organisations to be regulated. It should make it clear that the initiative covers legal activities.

(2) The analysis should bring out more clearly the key policy choices of the policy options. The report should better explain how the various measures would work in practice. The assessment should better articulate the mitigation measures regarding potential issues of 'stigmatisation' of legitimate representation activities. It should elaborate in more detail on measures to avoid potential circumvention of the transparency rules for third country interest representation taking into account that "core funding" of relevant actors is not per se in scope of this initiative.

(3) The impacts of the different policy options should be adequately differentiated, in particular as regards a realistic evaluation of the degree of take up of the various policy measures in case of a recommendation. The report should better explain how the potential sanctions would work and how effective they could be.

(4) The report should describe in greater detail the considered governance structure, and how it would work to ensure appropriate implementation and enforcement. It should explain what new elements and structures would be developed and who would be responsible for, e.g., IT tools (including registers), governance structure, supervisory bodies, annual reports, etc. It should further clarify how the national supervisory authorities would operate, and how cooperation among Member States would be structured. Finally, it should better explain the role of the Commission in this governance structure.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Impact Assessment report accompanying the document Proposal for a Directive of the European Parliament and the Council establishing harmonised requirements in the internal market on transparency of interest representation activities carried out on behalf of third countries
Reference number	PLAN/2023/8687
Submitted to RSB on	11 October 2023
Date of RSB meeting	15 November 2023

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	**Amount**	**Comments**
Direct benefits		
Benefits for Member State authorities.	Economic benefits: • Increased knowledge and understanding of the market for interest representation activities carried out on behalf of third countries due to increased transparency. Social benefits: • Increased knowledge of the magnitude, trends and actors of interest representation activities carried out on behalf of third countries. • The establishment of a governance structure at EU level facilitates cooperation between Member States and improve coordination in addressing certain problems related to interest representation.	Benefits are provided in a qualitative way, not in a quantitative way.
Benefits for private entities.	Economic benefits: • Create a level playing field and enhance legal certainty for interest representation activities carried out on behalf of third countries; • Facilitate service provision across multiple Member States as only 1 registration would be necessary; • Help normalising, legitimising and destigmatising interest representation via an enhanced level of transparency and trust in the sector.	• For each Member State (outside the Member State of main establishment where a registration is currently required) in which an entity carries out interest representation on behalf of third countries, that entity would save between approximatively EUR 828 and EUR 3 314 per year. • As the scale of the entities potentially providing cross-border activities is unknown, it is not possible to provide the total number of savings.
Benefits for society at large.	Social benefits: • enable citizens and public officials to easily recognise influence campaigns by third countries	Benefits are provided in a qualitative way, not in a quantitative way.

	thereby contributing to the integrity of, and public trust in, EU and Member State decision making processes • support scrutiny from interested actors (including CSOs, political actors, researchers, elections observes or journalist) to monitor interest representation activities carried out on behalf of third countries. • The strengthening of the quality of information available would help enrich the political debate	
Indirect benefits		
n/a	n/a	n/a
Administrative cost savings related to the 'one in, one out' approach*		
Recurrent (direct/indirect)	n/a	n/a
One-off	n/a	n/a

II. Overview of costs – Preferred option							
		Citizens/Consumers		**Businesses**		**Administrations**	
		One-off	**Recurrent**	**One-off**	**Recurrent**	**One-off**	**Recurrent**
Preferred policy option	Direct adjustment costs	n/a	n/a	EUR 71.2 million to EUR 213.5 basic familiarisation costs EUR 57,000 to EUR 256,000 extended familiarisation costs	n/a	EUR 1,500 – 4,600 familiarisation costs for national authorities	EUR 60,000 to EUR 540,000 maintenance costs (12 MS authorities without existing IT tools) Business-as-usual costs (15 MS with existing IT tools)
	Direct administrative costs	n/a	n/a	n/a	EUR 615,000 to EUR 921,000 registratio	n/a	n/a

					n and informatio n disclosure costs per year		
	Direct regulatory fees and charges	n/a	n/a	n/a	n/a	n/a	n/a
	Direct enforcement costs	n/a	n/a	n/a	n/a	n/a	EUR 565,000 to EUR 848,000
	Indirect costs	n/a	n/a	n/a	n/a	n/a	n/a
Costs related to the 'one in, one out' approach							
Total	Direct and indirect adjustment costs	n/a	n/a	EUR 71.2 million to EUR 213.8 million total familiarisati on costs	n/a		
	Administrative costs (for offsetting)	n/a	n/a	n/a	EUR 615,000 to EUR 921,000 registratio n and informatio n disclosure costs (average EUR 768,000)		

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