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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	'Defence of European Democracy' legislative package - Policy debate

1. On 12 December 2023, the Commission adopted the 'Defence of Democracy' package. It consists of:
 - i. A Commission communication on Defence of Democracy¹.
 - ii. A proposal for a new Directive on Transparency of Interest Representation for third countries² (hereinafter referred to as 'the proposed Directive').
 - iii. A proposal for a Regulation amending Regulations (EU) 1024/2012 and (EU) 2018/1724³ accompanying the proposed Directive.
 - iv. An impact assessment⁴ accompanying both legislative proposals in points (ii) and (iii).

¹ Doc. 16935/23 + ADD 1.

² Doc. 16889/23 + ADD 1 + ADD 2.

³ Doc. 17076/23.

- 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.
 - vi. A Commission recommendation on promoting the engagement and effective participation of citizens and civil society organisations in public policy-making processes.
2. 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 recommendations at the meeting of GAG on 11 January.
 3. At the meeting of GAG on 23 January, a preliminary discussion on the proposed Directive will be held in a 'Question & Answers' format where delegations will have the opportunity to ask questions to, and seek clarifications from, the Commission.
 4. To guide the examination of the package and, in particular, the detailed examination of the proposed Directive, a policy debate will be held at the meeting of the General Affairs Council on 29 January. To guide the policy debate, the Presidency prepared a non-paper, including questions.
 5. The Committee of Permanent Representatives is invited to take note of the abovementioned non-paper and the questions therein, as set out in the Annex to this note, and to forward them to the Council.

⁴ Doc. 16889/23 + ADD 3 + ADD 4; 17076/23 ADD 1 + ADD 2.

PRESIDENCY NON-PAPER**I. INTRODUCTION**

The overarching communication on the Defence of Democracy package has a two-fold goal: on the one hand to introduce the legislative proposals and the two recommendations, and on the other to review the progress made since 2020 on the European Democracy Action Plan.

In taking stock of the implementation of the European Democracy Action Plan⁵, the Communication looks into the three pillars of the action plan: 1) protecting election integrity and promoting democratic participation, 2) strengthening media freedom and pluralism, and 3) countering disinformation and foreign information manipulation and interference; and lists the achievements under each of these headings.

In addition, the communication looks into the recent efforts towards European democratic resilience, by fostering inclusive civic engagement and participation, and identifying the EU funding opportunities available for civil society organisations to build their capacity and to implement projects that help foster EU values.

⁵ Doc. 13678/20.

II. PROPOSAL FOR A DIRECTIVE ON TRANSPARENCY OF INTEREST REPRESENTATION ON BEHALF OF THIRD COUNTRIES

The proposed Directive 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 (“the proposed Directive”) has two general objectives: on the one hand to ensure the proper functioning of the EU market for interest representation activities on behalf of third countries and at the same time to contribute to the transparency, integrity of, and public trust in, EU and Member State decision-making processes regarding the influence of third countries. These are to be achieved respectively by facilitating cross-border interest representation activities carried out on behalf of third countries when done transparently, and improving the knowledge about the magnitude, trends and actors of interest representation carried out on behalf of third countries.

The proposed Directive would require Member States to set up and maintain national registers for the purpose of ensuring transparency of interest representation activities carried out by third-country entities, as well as to designate authorities responsible for these registers. In addition, the proposed Directive would require Member States to designate independent supervisory authorities having the responsibility to supervise the compliance with and the enforcement of the obligations set out in the proposed Directive, as well as to exchange information with the supervisory authorities in other Member States, where authorised to do so under the proposed Directive.

The proposed Directive would be applicable to entities carrying out interest representation on behalf of third countries as a service or similar activities and would impose obligations of record-keeping and registration in national registers as well as to disclose registration when approaching public officials. More concretely, the Directive aims to cover activities conducted with the objective of influencing the development, formulation or implementation of policy or legislation, or public decision-making processes in the EU. Amongst others, ancillary activities, professional legal advice, diplomatic relations, and contributions to core funding are excluded in principle, when they are unrelated to an interest representation activity. The proposed Directive defines the notion of a “third country” as public authorities at all levels outside the European Economic Area as well as all entities whose actions can be attributed to such a public authority.

The proposed Directive requires full harmonisation, meaning that Member States would not be able to maintain or introduce more or less stringent transparency requirements for the activities falling within the scope of the directive, nor different (administrative) sanctions in cases of non-compliance.

The proposed Directive puts forward a standardised set of data that is to be collected as well as requirements for a specific set of data that is to be made publicly available, either individually or on an aggregate level. By means of delegated acts, the Commission could amend the data to be collected, or the information to be made public at an aggregate level.

Finally, the proposed Directive would set in place a system of safeguards for registered entities, including the establishment of independent supervisory authorities, but also possible harmonised sanctions limited to administrative sanctions in cases of non-compliance. The Independent Supervisory Authorities would be able to ask for the records kept by entities either in cases of suspected non-compliance⁶ or when entities have a potentially significant impact on public life and debate (through a risk-based approach by means of financial thresholds). The Independent Supervisory Authorities would also be responsible for cross-border cooperation and information sharing, and would be able to impose administrative sanctions in case of non-compliance.

⁶ The proposed Directive would amend Directive (EU) 2019/1937 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.

III. QUESTIONS FOR MINISTERS

1. What are your views on the key elements of the proposed Directive, in particular on the scope, in terms of activities and third country entities to be covered?
 2. What impacts do you foresee on the existing transparency registers in your Member State or at Union level? In particular, how do you consider the proposed Directive's provisions that would bar Member States from maintaining or introducing more or less stringent transparency requirements for the activities falling within the scope of the directive?
 3. While considering all the initiatives since 2020, and their state of implementation, are there any further measures at EU level that you would consider to better protect our democracies, strengthen the resilience of our electoral processes and foster citizens participation in policy making?
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