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COVER NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Defence of Democracy package Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Defence of Democracy 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 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 - Opinion of the European Economic and Social Committee

Delegations will find in Annex the above-mentioned opinion of the European Economic and Social Committee. Other language versions are available on the following website:

https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/defence-democracy-package

European Economic and Social Committee

OPINION

European Economic and Social Committee

Defence of Democracy package

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Defence of Democracy
(COM(2023) 630 final)

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
(COM(2023) 636 final)

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
(COM(2023) 637 final)

SOC/773

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Referral	European Parliament, 25/1/2024 Council of the European Union, 24/1/2024
Legal basis	Article 114 and 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Employment, Social Affairs and Citizenship
Adopted in section	12/4/2924
Adopted at plenary session	24/4/2024
Plenary session No	587
Outcome of vote (for/against/abstentions)	213/1/7

1. Conclusions and recommendations

1.1 Liberal democracy in Europe is under attack, both from abroad and from within in the European Union (EU). Considerable progress has been made over the last years to make European democracy resilient to these threats, however, much more needs to be done to protect the EU, its democracy and, more specifically, the upcoming European elections[1].

1.2 Organised civil society, citizens and social partners play a crucial role in protecting and ensuring European democracy. Their participation in politics at the European and national levels therefore needs to be further developed with actions that go beyond the Commission proposals, as recommended in this opinion.

1.3 This is precisely why it is regrettable that the Defence of Democracy package has been proposed much too late to ensure proper implementation before the European elections in 2024 and does not take on board the EESC's suggestions concerning the European Democracy Action Plan[2].

1.4 Foreign interference in the EU's democratic processes is a viable threat to European democracy and needs to be contained. The EESC therefore fully supports the objectives of the proposed directive, but strongly disagrees with the proposed means. In order to avoid market distortions and regulatory fragmentation, it calls for a comprehensive EU-level approach that does not bear additional costs or risks, and does not stigmatise interest representation service providers, shrink civic spaces in the EU, reduce the scope of existing transparency registers at national level, or undermine the credibility of the EU as an international actor.

1.5 Such a comprehensive EU-level approach to contain foreign interference in the EU's democratic processes needs to be clear and easily applicable for all actors subject to the legislation, including natural persons, small NGOs and companies. Most notably, the legislation needs to clearly define the terms used, especially 'interest representation activity', provide clear criteria to assess which foreign entities are subject to the legislation, cover all subcontractors in the EU and close existing loopholes with regard to specific forms of funding.

1.6 The EESC does not see sufficient progress towards strengthening the European dimension in European elections, and therefore calls for making the electoral process fully accessible for all EU citizens with disabilities, and more inclusive and resilient, by harmonising the electoral process in all Member States. As a first step, this could be achieved by adopting the recent reforms of the European electoral law, investing more in political education and raising awareness for the next European elections and facilitating the political integration of all people living in the EU.

1.7 The EESC calls for strengthening participative democracy and innovative forms of civic engagement - which are complementary to representative democracy - at European and national levels. Such new opportunities for political participation need to be easily understandable and

1 When mentioning 'democracy', the EESC always means 'liberal democracy'.

2 OJ C 341, 24.8.2021, p. 56.

inclusive, and must not exclude citizens, especially the most disadvantaged groups, by establishing unnecessary thresholds. They must also be transparent with regard to their potential impact on EU legislation and their limits in exerting influence. The proposed general frameworks for effective participation at national level, and the proposal to turn the website *Have your say* into a one-stop-shop for citizen engagement, are proposals that would promote progress. However, further steps are needed, such as a reform of the European Citizens' Initiative (ECI) and an EU-level framework for effective participation.

1.8 The best way to defend democracy is to protect fundamental values and include disadvantaged groups.

2. General comments

2.1 Covert foreign interference is a growing threat to democratic processes in the European Union and liberal democracy as such, due to geopolitical tensions and multiple crises.

2.2 The EESC welcomes the progress made under the European Democracy Action Plan to make European democracy more resilient, and underlines the key role of civil society in ensuring the functioning of democracies and making them resilient. However, it notes that key suggestions from the EESC opinion on the European Democracy Action Plan have not yet been put into practice, and calls for them to be implemented swiftly.

2.3 The EESC welcomes the concrete efforts made to improve the involvement of citizens and civil society organisations (CSOs). However, it reiterates its call to further develop an EU-level framework for deliberative formats and a strategy for dialogue with organised civil society (resulting in an action plan), and to strengthen social dialogue[3].

2.4 Democratic backsliding has also taken root in the EU. The threat to European democracies comes not just from abroad but is also endemic within the Union, and requires a comprehensive EU-level approach to protect European democracies against internal and external threats.

2.5 The EU has made good progress in improving democracy at the supranational level. However, efforts need to be urgently stepped up. Concerns were raised during the Conference on the Future of Europe (CoFoE) and need to be addressed ahead of a possible EU enlargement.

2.6 The European elections in 2024 will be a litmus test for the resilience of European democracy. The EESC calls on all national and European actors to preserve the democratic legitimacy of all institutions and to defend the principle that democracy and fundamental rights are interdependent foundations of the EU and its Member States.

3 OJ C, 2024/2481, 23.4.2024, para 1.5, ELI: EUR-Lex - 52023AE3875 - EN - EUR-Lex.

3. Comments on the directive establishing harmonised requirements of interest representation carried out on behalf of third countries

3.1 The EESC fully supports only the proposed legislation's goal to make interest representation on behalf of third countries in the EU transparent, but not the proposed directive to achieve it. It therefore calls for a more overarching approach to address the urgent challenge of foreign interference.

3.2 Currently, 15 EU Member States have national registers for interest representation service providers, while other Member States are working on new legislation. The EESC is, therefore, concerned that this regulatory fragmentation and the proposed legislation could create new distortions and result in additional costs for interest representation service providers.

3.3 The EESC underlines the need to fight corruption to encounter illegal foreign interference und calls for a stronger European Public Prosecutor's Office and European Anti-Fraud Office (OLAF) to prevent foreign corruption among European decision-makers and those involved in preparing decisions.

3.4 The EESC is also concerned that the proposed directive's provisions on harmonisation within its current scope may reduce the scope of existing national transparency registers by limiting them to representation services carried out on behalf of a third country. They currently cover all interest representation services within the internal market.

3.5 The EESC shares the critique voiced by national governments in the EU, and by key civil society players such as Civil Society Europe, that the proposed legislation may stigmatise service providers carrying out interest representation on behalf of third countries, which bears the risk of shrinking civic space in the EU and undermining the credibility of the EU as an international actor promoting European values.

3.6 The EESC is also deeply concerned that the proposed legislation may adversely impact organisations and have a chilling effect on honest players and their right to attract funding, as part of freedom of association.

3.7 Therefore, the EESC calls upon the European Commission to draft a new legislative proposal entailing a comprehensive EU-level approach that forestalls regulatory fragmentation and eliminates distortions in the internal market, but avoids stigmatisation and additional costs and risks for interest representation service providers, including companies and NGOs active in different EU Member States.

3.8 The EESC believes that a legislation for common transparency and accountability standards for interest representation would be complementary to the Directive on combating corruption[4]. Transparency and accountability standards for interest representation could be helpful in better distinguishing between licit activity and illicit influence, and in identifying cases of conflicts of interest.

4 OJ C, 2024/886, 6.2.2024, para 5.2, ELI: EUR-Lex - 52023AE2769 - EN - EUR-Lex.

3.9 Such an approach would serve the objectives set out in the proposed directive while minimising the risk of stigmatising actors carrying out interest representation on behalf of third countries, or it could also serve as an excuse for some third countries to adopt more restrictive foreign influence acts that may also restrict civil society action there.

3.10 The definition of 'interest representation activity' remains vague. While certain activities (e.g. those related to agenda-setting) are not explicitly mentioned, it remains unclear whether or not other activities, such as applied research (which aids policy recommendations), are covered. Such a lack of clarity in the definitions throughout the document also creates uncertainties in other areas, such as activities related to civil dialogue.

3.11 If the Commission intends to continue the work on the proposed directive instead of drafting a new legislative proposal as requested by the Committee, then the EESC calls on legislators to provide a clearer definition of 'interest representation activity' to allow natural persons and smaller legal entities to assess, without burdensome legal consultations, whether or not their activities are subject to the legislation.

3.12 The EESC demands clear criteria to enable interest representation service providers and their subcontractors to easily assess whether the actions of a public or private entity referred to under Article 2(4)b can be attributed to an entity referred to under Article 2(4)a.

3.13 The EESC believes it needs to be made clearer that natural persons and all legal entities alike are subject to the legislation.

3.14 The EESC considers that it is a dangerous loophole that the legislation does not cover institutional support and project funding for organisations, even when such funds are actually used for interest representation activities. Closing the loophole requires a solution which does not overburden civil society with administrative obligations.

3.15 The EESC welcomes the fact that the information that will be published in the register concerning the main contracting interest representation service providers includes full details of all subcontractors providing representation services, including 'a description of the interest representation activity and its estimated duration'.

3.16 The deadline to remove providers of interest representation services for third countries from the register within five working days following the notification that they no longer qualify as entities according to Article 3(1) severely undermines the possibility of ex-post public scrutiny of interest representation activities. The EESC therefore proposes storing information on such entities in the register for a minimum of four years following the request, clearly displaying the date when the last activity under the scope of the regulation ended.

4. Comments on the recommendation on inclusive and resilient electoral processes

4.1 The EESC criticises the publication of the recommendation just six months ahead of the next European elections. It is too late to allow all its addressees to comply with the given recommendations.

4.2 It therefore calls upon the next European Parliament and the Council to undertake a more encompassing initiative to further harmonise the procedures for European elections in all Member States and continue the initiative to improve the electoral rights of mobile EU citizens well in advance of the 2029 European elections, considering the recommendation, the upcoming Commission report on the 2024 European elections and the EU citizens report 2026.

4.3 The EESC finds it regrettable that, since the adoption of the information report on *The real right of persons with disabilities to vote in European Parliament elections*[5] in March 2019 and the opinion on *The need to guarantee real rights for persons with disabilities to vote in European Parliament elections*[6] in December 2020, there has been no significant improvement in the ability of persons with disabilities to vote in the European Parliament elections. Owing to legal or technical barriers, thousands of people in all EU Member States still have no real opportunity to vote. The EESC reiterates its call to the European Parliament, the European Council and Member States 'to urgently amend the 1976 Electoral Act, [...] which would make it possible to implement standards throughout the EU that would guarantee real voting rights for persons with disabilities'.

4.4 The EESC acknowledges the fact that more Member States have lowered the voting age to 16. In this connection, it calls on all Member States to harmonise the voting age in European elections to ensure equal youth participation at EU level.

4.5 The EESC underlines the utmost importance of political education and digital literacy for all people in the EU, and reiterates its proposal for a European agency to bolster the media skills of EU citizens through educational programmes[7].

4.6 It points out the fact that fair elections are not guaranteed in all Member States anymore[8] and, therefore, calls upon all national governments to also comply with the standards of No 11(b) of the recommendation. It also calls on the Commission to assess their compliance in its upcoming report on the European elections 2024.

4.7 The EESC is of the opinion that as national authorities are in charge of organising European elections, training election observers should be a common task at both national and European levels. This ensures a higher degree of independence of the observers and also EU-wide standards for the assessment.

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5 EESC information report on The real right of persons with disabilities to vote in European Parliament elections.

6 OJ C 56, 16.2.2021, p. 36.

7 OJ C 517, 22.12.2021, p. 9.

8 OSCE, Office for Democratic Institutions and Human Rights: Hungary. Parliamentary Elections and Referendum, 3 April 2022. ODIHR Election Observation Mission. Final Report, Warsaw, 29 July 2023.

4.8 While underlining the need to protect the informational environment around elections, the EESC sees a danger that some governments may use this as a pretext to manipulate the public debates and limit the fair competition of all democratic parties. Therefore, it underlines the utmost importance of media freedom, media diversity and civil society in scrutinising the informational environment and fair electoral competition, and reiterates its calls on all democratic actors to further improve the situation in the EU[9].

4.9 It recommends that funding, as described in No 28, from third-country nationals or legal entities which are not registered in a Member State be limited to a maximum amount per year, and subject to full transparency.

4.10 The EESC commits itself and all its members to raise awareness for the next European elections and increase the turnout, with a special focus on first-time voters and groups underrepresented in political participation.

4.11 It recommends that the logos of the parties at European level be displayed on the ballot papers and political parties are encouraged to show the logos on all their advertisement materials.

4.12 To strengthen the European dimension of European elections, the EESC supports the reform of the European electoral law as adopted by the European Parliament, and calls upon the Council and all Member States to adopt the reforms.

5. Comments on the recommendation on promoting the engagement and effective participation of citizens and civil society organisations

5.1 The EESC welcomes efforts to improve citizens' participation, but reiterates that their representation through CSOs is of crucial importance for enhancing democracy.

5.2 The EESC reiterates its view that 'grassroots movements and people with lived experience of poverty must be at the centre of a democratic case for human rights. There is no better way to defend human rights, particularly social rights, than having the voices of the people most affected by inequality, poverty and social exclusion heard in public spaces and policy debates'[10].

5.3 It reiterates that representative democracy and electoral processes remain the backbone of EU democracy and participative democracy and that innovative forms of civic engagement are complementary means to hold elected representatives accountable.

5.4 It welcomes the recommendation for Member States to establish tailored national frameworks for participation of citizens and civil society organisations, which should cover the whole cycle of policy-making from agenda-setting to the evaluation of existing laws and policy initiatives.

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9 OJ C 517, 22.12.2021, p. 9.

10 OJ C 100, 16.3.2023, p. 25.

5.5 It regrets that the Communication on the European Democracy Action Plan does not include measures to develop further participation of citizens and civil society at EU level, considering the results of the workshops organised as a follow up to the 2022 report on the implementation of the Charter of Fundamental Rights and thoroughly assessing the adequacy of existing mechanisms including the ECI.

5.6 It emphasises that in some Member States the addressees of the recommendation are a major threat to public civic spaces and equal participation in policy-making; some governments have used direct democracy to undermine European democracy. Therefore, the Commission has to continue its activities to directly empower citizens, in particular as part of their collective engagement through CSOs and social movements to stand up for democracy and to protect civic spaces.

5.7 It considers non-discriminatory access to participation, with a special emphasis on the rights of young citizens, disabled citizens and minorities to be crucial. To encourage broad participation, opportunities for engagement have to be as simple as possible and may not include thresholds preventing citizens from engaging.

5.8 It shares the concerns about some organisations trying to undermine democracy and limit public spaces and calls for measures under the national frameworks to exclude organisations that actively fight against democracy and European values from participating in policy-making.

5.9 It calls for clear definitions of the objectives of all instruments under the national frameworks and the respective feedback mechanisms. The instruments' potential impact on policy-making has to be transparent, otherwise citizens will further lose their trust in democracy if public authorities' responses to contributions do not live up to the expectations of citizens and CSOs.

5.10 It invites the Commission and Member States to also strengthen the dialogue with organised civil society and the role of civil society in EU policy-making in addition to deliberative forums.

5.11 It welcomes the Commission's objective of developing the *Have your say* website into a one-stop-shop for online citizen engagement, and calls on the Member States to establish corresponding platforms under their national frameworks covering on- and offline opportunities to participate.

5.12 The EESC calls on the European Commission to reform the regulation on the ECI to lower the minimum age to sign an ECI to 16 years in all Member States, and extend the signature collection period. In the wake of Brexit, it also supports a reform of the EU Treaties to lower the signature threshold, which is currently one million signatures.

5.13 As long as transparency registers are not mandatory in all Member States, it recommends establishing a transparency register in all Member States on a voluntary basis to ensure and promote transparent and ethical interest representation, which is key to effective participation of CSOs and other stakeholders.

Brussels, 24 April 2024.

The president of the European Economic and Social Committee
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