

Key recommendations
Press conference on the EU's 'Defence of Democracy Package'

27 November 2023 – 12:30-14:00hrs 📍 De Meeûssquare 5/6, 1000 Brussels



In light of the European Commission's proposed Defence of Democracy (DoD) Package, Civil Society Europe, the European Partnership for Democracy and Transparency International EU held a press briefing on 27 November 2023 to: 1) present the state of play regarding the EU's foreign influence legislation, 2) consider the effects that such a law would have, and 3) propose concrete alternatives to the legislation. This document summarises the key arguments presented during the briefing. It builds on the ongoing work on democracy, transparency and civic space, including work on the proposed DoD Package since the end of 2022.

Legal Framework

- **Legal Basis:** The impact assessment doesn't adequately justify the Commission's emphasis on foreign funding, casting doubt on its legitimacy and necessity. Furthermore, the proposal, notably, because of its emphasis on foreign funded entities, may create unintended barriers, undermining its core objective. This includes potentially restricting the free movement of capital, the establishment and obstructing the market for interest representation services, and contradicting its legal base: Article 114 of the Treaty on the Functioning of the European Union.
- **Possible EU Law Violations:** The proposal may breach EU primary law, affecting both economic freedoms like capital and establishment, and fundamental rights such as assembly, expression, personal data protection, and privacy. For instance, it could limit people's and organisations' abilities to gather, express opinions, or engage in advocacy. Additionally, it imposes discriminatory capital restrictions, targeting foreign-supported groups, and introduces added costs and administrative burdens that could hinder establishment freedoms. In addition, the public access to the data contained in the register with limited exceptions, or imitations to access to funding, would constitute a serious interference with articles 7, 8 and 12 of the Charter, as already established by ECJ case law ([C-78/18](#) – Commission v Hungary; Joined Cases [C-37/20](#), [C-601/20](#)).
- **Assessing Risks:** The Package lacks justification and proportionality and should have been based on a thorough fundamental rights impact- and risk assessment to identify the type of organisations (profit and non-profit) that could be a vector of malign foreign interference, instead of collecting the data through the creation of a register.
- **Third-Country Influence:** The proposed Package, in its current form, is not effective in countering malign interference from third countries and neglects threats originating from within the Union itself. The legal instrument in its current form does not do justice to the specific threats of malign foreign interference that it is intended to combat.

Fundamental Rights Considerations

- **EU and International Human Rights Compliance:** Within the context of the Charter of Fundamental Rights and international human rights compliance, the European Union must actively promote the rights supporting healthy democracies, ensuring measures are necessary and proportionate, particularly in legislative proposals addressing foreign interference.

- **Vague Definitions:** All foreign influence legislations, as explained in ‘The Good Lobby’ report mentioned below, have proven to be problematic because of definitions that are too wide, which can lead to compliance challenges and regulatory loopholes.
- **Weaponisation:** EU Member States, particularly those grappling with rule of law concerns, could potentially exploit the Package’s Directive to stifle and censor civil society, creating a chilling effect and stigmatisation.

Global Implications of the Proposed Directive

- **Global Impact:** The proposed Directive carries the risk of undermining the EU's own external efforts to strengthen civil society in third countries, as it mirrors foreign agent laws that the EU has actively opposed elsewhere. Third countries have already started using the EU’s legislative initiative to justify their own measures against foreign interference.

Proposed Alternative

- **'Interest Representatives Act':** We propose replacing the current Directive with an EU Interest Representatives Act to comprehensively address third-country malign interference. This Act would cover all interest service representatives in the Union, addressing internal and external funding. It aims to enhance transparency, accountability, and integrity, by establishing a horizontal and fair framework. Member States’ existing registries should be harmonised or improved, not dismantled.

Further References

- Alberto Alemanno and Felix Sames, “[How to evaluate a Foreign Influence Legislation](#)”, June 2023
- Civil Society Europe, “[EU Foreign Interference Law: Is Civil Society at Risk? Why we are against an EU FARA law](#)”, 03 May 2023