

How to Evaluate a Foreign Influence Legislation?

A Comparative Analysis

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THE *good* LOBBY

The authors thank Emilia Korkea-aho for her contributions and comments

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Executive summary

This study provides the first systematic analysis of foreign influence legislation across OECD countries. It covers past (e.g. Hungary's LexNGO), present (e.g. US FARA, Australia FITS, Israel Foreign NGO law) and proposed laws (e.g. Canada, UK), but excludes from its focus general transparency legislation (such as freedom of information, or lobbying regulations) applicable to both domestic and foreign actors. After presenting and discussing the main foreign influence legislation, the study attempts at systematising them, with a comparative analysis, through the following three dimensions: 1) declared aims, 2) scope, both in terms of entities and activities covered, and 3) legal requirements. The following section identifies and discusses the major critical issues associated with foreign influence legislation. These range from the use of ill-defined language, limited and unpredictable enforcement, to their negative democratic implications. Extant literature shows how these issues can in turn have far-reaching consequences, including restrictions on fundamental rights like freedom of assembly and expression, as well as stigmatising legitimate civil society actors funded from abroad. The last section of the study offers a checklist of key considerations that may guide the critical evaluation of not only the future EU legislation but potentially other future foreign influence legislation.

Comparative table of Major Foreign Influence Legislation

Foreign influence legislation	Aim	Scope (entities)	Scope (activities)	Requirements	Critical issues
Active legislation in OECD countries					
US - Foreign Agents Registration Act (FARA)	Promote transparency in foreign influence within the US by enabling the government and public to identify the sources of information from foreign agents	Individuals acting on behalf of foreign principals (governments, political parties, companies, civil society organisations or individuals)	<ol style="list-style-type: none"> (1) Political activities or those designed to influence the US government or public regarding domestic or foreign policy; (2) perception management efforts or public relations; (3) publicity agent; (4) fundraising or disbursement of funds; (5) lobbying Congress or the Executive Branch. <p>Exceptions: certain commercial activities</p>	<ul style="list-style-type: none"> - Make periodic public disclosures of their relationships with the foreign principal and of activities, receipts and disbursements in support of those activities. - Sanctions: potential for fines (up to \$10,000) or imprisonment (up to 5 years) 	<ul style="list-style-type: none"> - There has been a significant increase in the number of enforcement cases post-2016 election, demonstrating unpredictable enforcement. - There are concerns that FARA is being weaponised to be used against NGOs and media.
Australia - Foreign Influence Transparency Scheme (FITS)	To improve the transparency of activities undertaken on behalf of foreign principals	Any individual acting on behalf of a foreign principal (government, political organisation, government-related entity or individual) for the purposes of political	<ol style="list-style-type: none"> (1) Parliamentary or general political lobbying; (2) communications activities; (3) disbursement activities (e.g., the payment of money or things of value). 	<ul style="list-style-type: none"> - Reporting of registrable activities. - Enhanced obligations during election periods. - Sanctions: Monetary 	<ul style="list-style-type: none"> - Since coming into force there has been a low number of registration and prosecutions. - The government is considering the possible tightening

		<p>or governmental influence.</p> <p>Exceptions: business and NGOs (if they don't have links to the government)</p>		<p>finest to a maximum of five years imprisonment</p>	<p>of exemptions for charities which may cause extra regulatory burdens.</p> <ul style="list-style-type: none"> - There are concerns about the possibility of weaponising FITS to create stigmas around the labelling of actors as foreign-related..
<p>Israel - 2016 Transparency Requirements for Parties Supported by Foreign State Entities</p>	<p>To deal with the phenomenon of NGOs who represent in Israel, in a non-transparent manner, the outside interests of foreign states, while pretending to be a domestic organisation concerned with the interests of the Israeli public</p>	<p>NGOs registered in Israel that receive 50% or more of their funding from foreign government entities.</p>	<p>All activities of these NGOs</p>	<ul style="list-style-type: none"> - Report that it is a foreign-funded organisation. - Disclose that it is foreign-funded in any material it published and in communications to the government. - 'Prominently' disclose that it is foreign-funded in any publicly-available publication intended to further its cause. - Sanctions: NGOs that will violate the law will be fined NIS 29,200 (approximately) 	<ul style="list-style-type: none"> - The law has been used mainly to target human rights NGOs working in Israel and occupied territories. - There have been issues related to stigma attached to the label of being 'foreign-funded'. - Criticisms have been issued on the law being too weak and not enforced.

				7,200 EUR)	
Active Proposals in OECD countries					
Canada - Foreign Influence Transparency Registry	To bolster defences against malign foreign influence , by providing more transparency. As well as bridging the current gaps in Canada's Lobbying Act when it comes to targeting foreign influence.	Individuals or entities acting on behalf of a foreign principal	Activities for the purpose of changing, shaping, or altering in any way, Government of Canada policies, outcomes or processes, or public opinion	- To be determined	- To be determined
UK - Foreign Influence Registration Scheme (FIRS) (February 2023 version)	Strengthens the resilience of the UK political system against covert foreign influence and provides greater assurance around the activities of certain foreign powers or entities that are a national security risk.	Two tiers: <i>Political influence tier</i> - Registration of arrangements to carry out political influence activities in the UK at the direction of a foreign power . <i>Enhanced tier</i> - A foreign power, part of a foreign power, or an entity subject to foreign power control, where the Secretary of State considers it necessary to protect the safety or interests of the UK .	<i>Political influencing tier: political influence activities are</i> for the purpose of influencing UK public life which include: (1) communications to senior decision-makers, election candidates, MPs and senior civil servants. (2) Certain communications to the public where the source of the influence is not already clear, (3) and disbursement of money, goods or services to UK individuals for a political purpose. <i>Enhanced tier:</i>	- Registrations will be made through an online portal. - Failure to register when required to do so will be a criminal offence. - There are also criminal offences associated with carrying out activities which are pursuant to arrangements which have not been registered.	- There are concerns with the overly wide scope of those under the Enhanced tier, where any activity is subject to registration. - The wide scope of what is considered as political influence activities is also a point of concern.

			<p>(1) any activities within the UK at the direction of a specified power or entity:</p> <p>(2) activities carried out in the UK by specified foreign power-controlled entities.</p>		
Active legislations in non-OECD countries					
<p>Russia - 2022 Law On Control Over Activities of Entities/Persons Under Foreign Influence (RFAL)</p>	<p>To protect the interests and security of the Russian Federation, its sovereignty and territorial integrity, and the rights and freedoms of its citizens</p>	<p>A person who received support from foreign states or is under the foreign influence</p>	<p>(1) Political activities in Russia,</p> <p>(2) purposefully gathering information on military, military-technical activities of the Russian Federation</p> <p>(3) or disseminating messages and materials for unlimited number of people</p>	<ul style="list-style-type: none"> - Extensive reporting requirements - Prohibition from a wide range of activities. - Labelling of all created materials with a 'foreign agent' label. - Anyone who has worked with or received funding from a 'foreign agent' will be marked as 'affiliated with a foreign agent' 	<ul style="list-style-type: none"> - The broad definition of 'foreign agent' can be used to target almost anyone. In regards to this, numerous organisations have to shut down due to being labelled as a 'foreign agent'. - The act of being labelled a 'foreign agent' carries with it an intense stigma and leads to intimidation, harassment, and the reduction in funding.

Non-Active legislations in OECD countries					
<p>Hungary - 2017 Law on Transparency of Organizations Receiving Foreign Funding (Repealed in 2021)</p>	<p>Transparency and traceability of movements of capital intended for organisations which participate in public life.</p>	<p>Civil society actors who receive donations coming from outside the country over the threshold of about €22,000.</p>	<p>All Activities of these CSOs</p>	<ul style="list-style-type: none"> - Register as organisations 'receiving support from abroad'. - To annually report about their foreign funding. - To indicate the label 'organisation receiving foreign support' on their website and publications. 	<ul style="list-style-type: none"> - There were concerns with the labelling requirements under the legislation and stigma around it. - In 2020, the law was deemed by the EU Court of Justice as incompatible with EU law and the Charter of Fundamental Rights. Leading to the law being repealed in 2021.

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1. Introduction

Demand for an EU regulatory intervention governing influencing activities by third countries has been growing over time. This is part of a growing trend aimed at excluding or at least limiting foreign influence over domestic political processes across the world. While the long-standing electoral and other foreign interference efforts by Russia within the EU originally prompted such a demand for the adoption of foreign influence legislation (hereinafter FIL),¹ the recent ‘Qatargate’ scandal made that even more politically salient and relevant within public opinion. That has led the European Commission to consider enacting its first dedicated foreign influence regime (hereinafter, EU FIL) within and across the Union. Inspired by the US Foreign Agents Registration Act (FARA) and other similar regulatory frameworks such as the Australia’s Foreign Influence Transparency Scheme Act (FITS), the EU FIL is set to regulate the lobbying activities of foreign actors towards individual EU member states. This framework might entail the introduction of regulatory requirements, including the establishment of national dedicated lobbying registers in each individual Member States, for actors and/or activities related to foreign nations (or for those acting on their behalf such as providers of consultancy services); and possibly additional regulatory requirements. As such, it is set to complement the existing EU general transparency regime applicable to both domestic and third countries’ lobbying targeting the EU. This is essentially offered by the EU Transparency Register which has existed since 2012 and remains voluntary in nature.

Part of European civil society welcomed the enactment of an EU FIL, having advocated for greater transparency of foreign influence in the EU². Others instead fear that FIL may have unintended consequences, such as being used to silence Civil Society Organisations (hereinafter CSOs), as it has occurred in a variety of countries globally. Another cross-cutting concern within EU civil society is that such a regime will be

¹ European Parliament, ‘Report on Foreign Interference in All Democratic Processes in the European Union, Including Disinformation’ (2022) 2020/2268(INI).

² ‘Qatargate | Corporate Europe Observatory’ <<https://corporateeurope.org/en/2023/01/qatargate>> accessed 1 March 2023.

legally difficult to adopt and might distract from efforts to improve current transparency legislation.³ Moreover as epitomised by the Russian and Hungarian examples, laws that seemingly purport to prohibit the creation or dissemination of foreign interference have in fact a drastic impact on the legitimate activities of civil society actors acting both locally and transnationally.

Against this backdrop, the EU initiative can be seen as part of a broader regulatory shift that no longer addresses foreign lobbying as a matter of mere corruption but of national security. This is especially relevant in the context of ‘strategic corruption’⁴ used by countries like China and Russia to shape policy outcomes and the political environment in their target countries. Although the EU has long championed global openness, recent geopolitical events such as Russia's attack on Ukraine or Russian political interferences on national electoral processes have prompted a reevaluation of this stance. This has led to increased attention to the risks of foreign lobbying, sparking efforts to enhance transparency and visibility of foreign lobbying activities within government and political processes.⁵ As a result, not only the European Union but also some of its member states are moving swiftly towards the enactment of dedicated FIL, drawing on the experiences of other jurisdictions to develop their own measures to address foreign influence.⁶ This study offers a background analysis aimed at enabling an informed reading of any future FIL, including the European regulatory regime to come.

³ Timo Lange, ‘EU-Korruptionsskandal: Wie Reagierten Die Institutionen?’ (*LobbyControl*, 14 April 2023) <<https://www.lobbycontrol.de/lobbyismus-in-der-eu/eu-korruptionsskandal-wie-reagierten-die-institutionen-107930/>> accessed 15 April 2023.

⁴ Philip Zelikow and others, ‘The Rise of Strategic Corruption’ [2020] *Foreign Affairs* <https://www.foreignaffairs.com/articles/united-states/2020-06-09/rise-strategic-corruption?utm_medium=promo_email&utm_source=lo_flows&utm_campaign=registered_user_welcome&utm_term=email_1&utm_content=20230428>

⁵ Emilia Korkea-aho, ‘The End of An Era for Foreign Lobbying? The Emergence of Foreign Transparency Laws in Washington, Canberra and Brussels.’ *Journal of Common Market Studies*.

⁶ Piotr Buras, ‘How the Fight against Russian Agents in Poland Could Destroy Democracy’ (*ECFR*, 6 June 2023) <<https://ecfr.eu/article/how-the-fight-against-russian-agents-in-poland-could-destroy-democracy/>> accessed 10 June 2023.

1.1 Study question

The main questions addressed in this study is the following: Is it legally feasible and constitutionally sound, based on lessons learned from experiences in OECD countries, to design effective but democratically safe FIL? As the EU moves ahead with its plans, what risks does it need to be particularly aware of? By looking at these questions, the study aims to provide clear insights into the challenges and implications of introducing FIL.

The study proceeds as follows:

After clarifying the geographic scope covered by its analysis and the methodology employed, it offers an overview of the main foreign influence legislation enacted across OECD countries and Russia (section 1).

To facilitate a comparative analysis of past, present and prospective FIL, section 2 focuses on the following key dimension of these laws:

- 1) their declared aims;
- 2) their scope in terms of individuals/entities and activities covered;
- 3) their legally mandated requirements.

The following section (section 3) identifies and discusses the major critical issues associated with FIL. These range from the use of ill defined language, limited and unpredictable enforcement, to their negative democratic implications. Extant literature suggests that these issues can in turn have far-reaching consequences, including restrictions on fundamental rights like freedom of assembly and expression, as well as stigmatising legitimate civil society actors funded from abroad. As such, this section intends to facilitate our understanding of this rather unknown and obscure legal framework.

The last section of the study offers a checklist of key considerations, intended to guide not only the critical evaluation of the forthcoming EU proposal, but also any future FIL.

The study's declared aim is to offer a significant contribution to the discourse on FIL. The findings will be especially useful for policy-makers, civil society organisations, and researchers who are navigating this complex and rapidly-moving field. By equipping stakeholders with nuanced understanding of this growing yet obscure phenomenon and sharing actionable recommendations, the study aspires to enable the European audience to autonomously assess the risks and opportunities raised by the introduction of an EU FIL regime. In so doing, it intends to promote – wherever possible – an approach that balances the necessity of FIL with the imperative to safeguard democratic processes and civil rights. As anticipated, this objective can't be taken as a given based on the track-record of existing FIL.

1.2 Methodology

This study relies on a combination of desk research and semi-structured interviews with academics and practitioners active in this space. First, it involves a detailed literature review of academic publications from legal, political science, political theory, and international relations fields. The literature review expands into broader desk research covering conventional media coverage, unconventional sources such as blogs, and policy papers by reputable institutions and think tanks. Secondly, it incorporates semi-structured interviews with key academics and practitioners in the field. These interviews provide first-hand insights and in-depth understanding of the topics, complementing and enriching the findings of the desk research. The interviewees are selected for their expertise and significant roles in their respective fields.

1.3 Scope of the study

The study specifically focuses on OECD countries' legislation that specifically targets foreign influence. As such it deliberately excludes from its scope general transparency legislation, such as freedom of information (FOI) or lobbying regulations, which typically apply to both domestic and foreign influence and/or actors. Moreover, it encompasses both existing and proposed laws and also considers those that have been previously repealed (e.g. Hungary's Transparency of Organizations Receiving Foreign Funding, also known as LexNGO). The only non-OECD country's legislation considered is that of Russia, due to its far-reaching implications for NGOs operating on the Russian territory, as well as the Russian government's assertion that it drew inspiration from the US FARA legislation.

In practice, the study covers the following foreign influence legislation and legislative proposals:

- 1) The US Foreign Agents Registration Act (hereinafter FARA),
- 2) The Australian Foreign Influence Transparency Scheme (hereinafter FITS), and
- 3) The Israeli Transparency Requirements for Parties Supported by Foreign State Entities Law.

Additionally, it also discusses the following two pending proposals in OECD countries:

- 4) The Canadian Foreign Influence Transparency Scheme. This proposal has recently been under a public consultation (March to May 2023) which aimed at exploring potential measures targeting foreign influence.
- 5) The United Kingdom Foreign Influence Registration Scheme (hereinafter FIRS), which after significant pushback and concerns regarding the scope and burden of the original proposal, - in an amended version in February 2023.⁷

⁷New Zealand is considering the adoption of new foreign interference regulations including the introduction of relevant crimes. Unlike Australia, New Zealand does not have a register for foreign agents, but it has legislation concerning foreign interference, including offences for misuse of classified information, blackmail, bribery, and espionage, and legislation on foreign investment and export controls, as well as a ban on foreign donations in elections, see <https://www.stuff.co.nz/national/politics/131547189/government-considering-new-spying-crimes-to-prosecute-foreign-agents>.

The only EU member state that adopted a foreign influence legislation in 2017, similar to the one adopted in Russia, is Hungary⁸. However, the law was ultimately struck down for being discriminatory and unjustified after the European Commission brought the case before the Court of Justice, and it was ultimately repealed in 2021.⁹

Russia's 2022 Foreign Agent Law or RFAL 'concerning the control over the activities of persons under foreign influence' is also worth scrutinising to gain a full understanding of the existing regulatory regime governing foreign influence. This law amended the previously adopted 2012 law which Russia originally presented as the equivalent of the US FARA.¹⁰ Russian law in turn influenced the adoption of other FIL in China, Egypt and Ethiopia.¹¹

⁸ 'Hungary: Bill Seeks to Stifle Independent Groups' (*Human Rights Watch*, 12 June 2017) <<https://www.hrw.org/news/2017/06/12/hungary-bill-seeks-stifle-independent-groups>> accessed 11 April 2023.

⁹ Vlad Makszimov, 'Hungary Repeals NGO Law but Civil Rights Group Deem Replacement Is Unconstitutional' (*www.euractiv.com*, 19 May 2021) <https://www.euractiv.com/section/politics/short_news/hungary-repeals-ngo-law-but-civil-rights-group-deem-replacement-is-unconstitutional/> accessed 4 April 2023.

¹⁰ Samantha Laufer, 'A Difference in Approach: Comparing the US Foreign Agents Registration Act with Other Laws Targeting Internationally Funded Civil Society' (2017) 19 *International Journal of Not-for-Profit Law* 5, 1.

¹¹ Jeff Vize, 'FARA's Double Life Abroad' (*ICNL*, 27 May 2021) <<https://www.icnl.org/post/analysis/faras-double-life-abroad>> accessed 6 February 2023.

2. Comparative analysis

This section provides a detailed and critical analysis of the main FIL enacted across OECD countries and Russia. It does so by unpacking and legally comparing these laws based on the following key dimensions:

- 1) declared aim(s)
- 2) scope, in terms of individuals/entities and activities covered;
- 3) and the legal requirements imposed.

2.1 Declared aims

FIL's most common declared aims are:

- to promote transparency, both on activities and funding (especially of NGOs);
- to safeguard the democratic processes; and
- to respond to political activities by actors on behalf of foreign states.

Here is a comparative analysis of the declared aims pursued by various FIL:

Table 1 Comparison of declared aims of Foreign Influence Legislation	
Foreign influence legislation	Declared Aims
Active legislation in OECD countries	
US	Promote transparency in foreign influence within the US by enabling the government and public to identify the sources of information from foreign agent
Australia	To improve the transparency of activities undertaken on behalf of foreign principals
Israel	To deal with the phenomenon of NGOs who represent in Israel, in a non-transparent manner, the outside interests of foreign states, while pretending to be a domestic organisation concerned with the interests of the Israeli public
Active Proposals in OECD countries	
Canada	To bolster defences against malign foreign influence , by providing more transparency. As well as bridging the current gaps in Canada's Lobbying Act when it comes to targeting foreign influence.

UK	Strengthens the resilience of the UK political system against covert foreign influence and provides greater assurance around the activities of certain foreign powers or entities that are a national security risk.
Active legislations in non-OECD countries	
Russia	To protect the interests and security of the Russian Federation , its sovereignty and territorial integrity, and the rights and freedoms of its citizens
Non-Active legislations in OECD countries	
Hungary (Repealed in 2021)	Transparency and traceability of movements of capital intended for organisations which participate in public life.

The adoption in 1938 of US Foreign Agents Registration Act (hereinafter FARA) marked the first ever adoption of modern foreign influence legislation.¹² This was enacted with the declared aim to monitor and counter Nazi propaganda. Today, FARA’s declared goals are: (i) to promote transparency in foreign influence within the US, (ii) enable the government and public to identify sources of information from foreign agents and (iii) evaluate their impact on public opinion, policy, and laws.¹³ Given its historical antecedent, FARA has been offering the major source of inspiration for all countries keen on developing their own FIL.

A more recent model of FIL, comes from Australia's FITS, which has a narrower scope compared to that of FARA. By pursuing the aim to improve transparency, it set up a scheme for the registration of individuals who undertake certain activities on behalf of foreign governments and other foreign principals.¹⁴ Other countries take this a step further by adopting a national security component, such as the proposed Canadian scheme which requires consideration of a foreign influence transparency register to bolster defences against malign foreign influence.¹⁵ Similarly, the UK FIRS aims to

¹² Jacqueline Van De Velde, ‘The Foreign Agent Problem: An International Legal Solution to Domestic Restrictions on Non-Governmental Organizations’ (2018) 40 *Cardozo L. Rev.* 687.

¹³ ‘Foreign Agents Registration Act | Frequently Asked Questions’ (U.S. Department of Justice, 21 August 2017) <<https://www.justice.gov/nsd-fara/frequently-asked-questions>> accessed 16 March 2023.

¹⁴ Foreign Influence Transparency Scheme Act 2018 2019 s 3.

¹⁵ Timothy Cullen and O’Brien, Stevie, ‘Canada Will Introduce A Foreign Influence Transparency Registry - Government of Canada Opens Consultations on the Registry Thru May 9, 2023’ (McMillan LLP, 11 March 2023)

<<https://mcmillan.ca/insights/canada-will-introduce-a-foreign-influence-transparency-registry-government-of-canada-opens-consultations-on-the-registry-thru-may-9-2023/>> accessed 3 April 2023.

strengthen the resilience of its political system against covert foreign influence and provide greater assurance around the activities of certain foreign powers or entities that pose a national security risk.¹⁶ Russia's latest FIL aims to protect the interests and security of the Russian Federation, its sovereignty and territorial integrity, and the rights and freedoms of its citizens.¹⁷

Finally, another group of FIL pursues the explicit aim of enhancing the transparency of NGOs. Thus, Israel's law is meant to address 'the phenomenon of NGOs who represent in Israel, in a non-transparent manner, the outside interests of foreign states, while pretending to be a domestic organisation concerned with the interests of the Israeli public.'¹⁸ Hungary's repealed law also pursued a similar declared goal, that of ensuring greater transparency of civil society organisations in response to threats from foreign interest groups.¹⁹ The focus of these laws' lies on enhancing the transparency of funding.

Overall, except for foreign influence legislation that specifically targets NGOs, transparency laws' declared aim appears legitimate. This is true insofar as they generally pursue the goals of protecting transparency, safeguarding national political processes or promoting national interests. It appears increasingly relevant for countries with foreign influence frameworks in place to be able to signal that they are actively responding to activities by foreign activities. Yet, as will be illustrated below, these legitimate aims tend to be formulated in extremely broad, often vague, terms, including the use of ill-defined terms like 'malign foreign influence' or covert foreign influence.²⁰ Vaguely worded legislation lends itself to subjective interpretations and

¹⁶ UK Home Office, 'Policy Paper - Foreign Influence Registration Scheme Factsheet' (GOV.UK, 28 March 2023)

<<https://www.gov.uk/government/publications/national-security-bill-factsheets/foreign-influence-registration-scheme-factsheet>> accessed 4 April 2023.

¹⁷ 'New Law on Activities of Foreign Agents' (The State Duma, 29 June 2022) <<http://duma.gov.ru/en/news/54760/>> accessed 30 March 2023.

¹⁸ 'Knesset Passes NGO Transparency Law' <https://main.knesset.gov.il:443/EN/News/PressReleases/Pages/Pr12164_pg.aspx> accessed 3 April 2023.

¹⁹ Venice Commission, 'Opinion on the Draft Law on the Transparency of Organisations Receiving Support from Abroad' (Council of Europe 2017) Opinion 889/ 2017 <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)015-e)>.

²⁰ Emilia Korkea-aho, 'The End of An Era for Foreign Lobbying? The Emergence of Foreign Transparency Laws in Washington, Canberra and Brussels.' *Journal of Common Market Studies*.

regulatory discretion. As such it risks being used to justify actions that ultimately hamper civil liberties in the name of protecting freedom or national security. Furthermore, these laws' declared aims may sometimes reveal differences from their actual impacts on the ground.

2.2 Scope in terms of entities and activities covered

The scope of FIL varies among jurisdictions and may be framed by defining either to whom it applies or to what activities.

2.2.1 Entities

Table 2 Comparison of scope of entities of Foreign Influence Legislation	
Foreign influence legislation	Scope (Entities)
Active legislation in OECD countries	
US	Individuals acting on behalf of foreign principals (governments, political parties, companies, civil society organisations or individuals)
Australia	Any individual acting on behalf of a foreign principal (government, political organisation, government-related entity or individual) for the purposes of political or governmental influence. Exceptions: business and NGOs (if they don't have links to the government)
Israel	NGOs registered in Israel that receive 50% or more of their funding from foreign government entities.
Active Proposals in OECD countries	
Canada	Individuals or entities acting on behalf of a foreign principal
UK	Two tiers: <i>Political influence tier</i> - Registration of arrangements to carry out political influence activities in the UK at the direction of a foreign power. <i>Enhanced tier</i> - A foreign power, part of a foreign power, or an entity subject to foreign power control, where the Secretary of State considers it necessary to protect the safety or interests of the UK.
Active legislations in non-OECD countries	

Russia	A person who received support from foreign states or is under the foreign influence
Non-Active legislations in OECD countries	
Hungary (Repealed in 2021)	Civil society actors who receive donations coming from outside the country over the threshold of about €22,000.

Generally, FIL covers actors who act on behalf of a foreign principal ('foreign agent', hence the laws are sometimes referred to as 'foreign agents laws'). Yet the exact criteria defining the nature and relationship with such a non-domestic actor vary significantly across jurisdictions.

Some FIL provide a definition of a 'foreign principal'. That is generally referred to as the foreign political entity that is giving orders or controlling the actor ('foreign agent') in question. For instance, FARA defines foreign principals as foreign governments, foreign political parties, entities organised under the laws of a foreign country, or having their principal place of business in a foreign country, and individuals outside the United States who are not U.S. citizens domiciled in the United States.^{21,22} Similarly, Australia's Foreign Influence Transparency Scheme Act (FITS) has four major categories: foreign governments, foreign government-related entities (FGRE), foreign political organisations, and foreign government-related individuals (FGRI).²³ Canada defines 'foreign principal' as an entity that is owned or directed, in law or in practice, by a foreign government.²⁴

Australian FITS' definition of 'foreign principal' appears narrower, as it excludes foreign businesses and NGOs that have no links to foreign governments.²⁵ Neither of

²¹ Foreign Agents Registration Act (FARA) 1938 s 611.

²² Whitney K Novak, 'Foreign Agents Registration Act (FARA): A Legal Overview' (Congressional Research Service 2023) IF11439 <<https://crsreports.congress.gov/product/pdf/IF/IF11439>>.

²³ Foreign Influence Transparency Scheme Act 2018 s 10.

²⁴ Public Safety Canada, 'Enhancing Foreign Influence Transparency: Exploring Measures to Strengthen Canada's Approach' (10 March 2023) <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2023-nhncng-frgn-nfluence/index-en.aspx>> accessed 20 March 2023.

²⁵ Emilia Korkea-aho, 'The End of An Era for Foreign Lobbying? The Emergence of Foreign Transparency Laws in Washington, Canberra and Brussels.' [2023] Journal of Common Market Studies.

these two categories is covered by FITS, unless they are related to foreign governments.

Some observers welcome this as a more proportionate approach than the one adopted by US FARA. They argue that insofar as the most significant risks to democratic politics requiring registration stem from actors with connections to high-level foreign politics, and not to all those one may classify as ‘foreign’²⁶, this narrower, more targeted approach excluding both NGOs and foreign businesses should be preferred.

Yet, two categories of entities created under FITS have also been criticised. Firstly, FGRI covers individuals who are ‘accustomed, or under an obligation (whether formal or informal)’ to act in accordance with the ‘wishes’ of a foreign government. This could for example cover politically active Australians who have previously interacted with a foreign principle over a specific issue.²⁷ Similarly, an entity can be deemed an FGRE if the directors are ‘accustomed, or under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of the foreign principal.’²⁸ The issue with these definitions is that it is difficult to determine what is meant by ‘acting under the obligation (formal/informal) to act in accordance with the wishes of a foreign principle.’ Moreover, such complexity ultimately puts those who do not have large resources at a disadvantage, as they might be subject to additional compliance burdens in determining their status.²⁹

More importantly, FARA and FITS also consider the relationship between the foreign principal and the actor as an additional criterion in the application of the legislation.

In FARA’s terminology, an agent of a foreign principal (also known as a foreign agent), is any person who acts as an agent, representative, employee, or servant, or otherwise acts at the order, request, or under the direction or control of a ‘foreign principal’.³⁰ However, FARA has been criticised to be excessively broad on this, such that even a

²⁶ Yee-Fuing Ng and Chris Draffen, ‘Foreign Agent Registration Schemes in Australia and the United States: The Scope, Risks and Limitations of Transparency’ (2020) 43 *The University of New South Wales Law Journal* 1101, 1113.

²⁷ Andrew Chubb, ‘III. Risks of Reaction: Australia’s Experience with Aggregation’ (2021) 98 *Whitehall Papers* 54.

²⁸ Ng and Draffen (n 26) 1113.

²⁹ *ibid* 1115.

³⁰ ‘Foreign Agents Registration Act | Frequently Asked Questions’ (n 13).

casual relationship in which a foreign principal makes a simple ‘request’ of an entity could be construed as that entity acting as an ‘agent’.³¹

Australia’s FITS defines the relationship between the actor and the foreign principal by considering that an individual is undertaking registerable activities by the following relationship³²: (1) under an arrangement with the foreign principal; (2) in the service of the foreign principal; (3) on the order or at the request of the foreign principal; or (4) under the direction of the foreign principal. Additionally, an important limitation of FITS is that both the individual and the foreign principal have a knowledge requirement for the legislation to apply. This means that both sides must have been aware or anticipated that the individual could potentially engage in an activity that would require registration.³³ This makes the application and enforcement of legislation difficult, as the burden of proof falls on the authority to demonstrate that the knowledge requirement has been satisfied for both parties.

When it comes to defining its scope of application, the legislation proposed in the UK follows yet another approach. Under the current proposal, the Foreign Influence Registration Scheme (FIRS) covers entities that have arrangements to carry out political influence activities in the UK at the direction of a foreign power.³⁴ The ‘direction of a foreign power’ criterion can be satisfied only when comes from³⁵:

- 1) The sovereign or other head of a foreign State in their public capacity;
- 2) A foreign government, or part of a foreign government;
- 3) An agency or authority of a foreign government, or of part of a foreign government;

³¹ Jeff Vize, ‘The Danger of the Foreign Agents Registration Act to Civil Society at Home and Abroad’ (ICNL, 25 March 2021) <<https://www.icnl.org/post/analysis/the-danger-of-the-foreign-agents-registration-act-fara-to-civil-society-at-home-and-abroad>> accessed 27 March 2023.

³² Foreign Influence Transparency Scheme Act 2018 s 11.

³³ Ng and Draffen (n 26) 1117.

³⁴ UK Home Office, ‘Policy Paper - Foreign Influence Registration Scheme Factsheet’ (GOV.UK, 28 March 2023)

<<https://www.gov.uk/government/publications/national-security-bill-factsheets/foreign-influence-registration-scheme-factsheet>> accessed 4 April 2023.

³⁵ Paul Butcher, Ali MacGregor and Palmer James, ‘UK Government Gives Ground on Controversial Foreign Influence Registration Scheme’ (Herbert Smith Freehills | Global law firm, 2 March 2023) <<https://www.herbertsmithfreehills.com/insight/uk-government-gives-ground-on-controversial-foreign-influence-registration-scheme>> accessed 4 April 2023.

- 4) An authority responsible for administering the affairs of an area within a foreign country or territory, or individual exercising the functions of such an authority.

In contrast, Russian FIL, specifically the 2022 law ‘concerning the control over the activities of persons under foreign influence’, focuses on the ‘political activities’ of a foreign agent.³⁶ According to the RFAL, a foreign agent is someone who receives support from foreign states or is under foreign influence and is involved in political activities in Russia, intentionally gathering information on military or military-technical activities of the Russian Federation or disseminating messages and materials to an unlimited number of people.³⁷ The RFAL defines foreign influence as the provision of support from a foreign source to an individual and/or the influencing of an individual through coercion, persuasion, or other means. The term ‘support’ is understood broadly, encompassing organisational, methodological, scientific, technical, or other forms of assistance provided by a foreign source.³⁸ The scope of the RFAL is ultimately determined by the Russian administration's discretion.

Finally, there are FIL which exclusively apply, and therefore expressly apply, to NGOs. This is the case of Israel, where the law applies to all NGOs that receive 50% or more of their funding from foreign government entities.³⁹ Similarly, the now-repealed law in Hungary applied to any NGO that received more than 7.2 million HUF (approximately 24,000 Euros) annually from foreign donors.⁴⁰ These laws show that the foreign element is established solely through the funding sources of the targeted NGOs.

In essence, the definition and scope of ‘foreign principal’ under FIL varies greatly. Broad definitions under US’s FARA and Australia’s FITS include foreign governments,

³⁶ ‘New Law on Activities of Foreign Agents’ (The State Duma, 29 June 2022) <<http://duma.gov.ru/en/news/54760/>> accessed 30 March 2023.

³⁷ *ibid.*

³⁸ ‘A New “Foreign Agents” Law Comes Into Effect’ (*ИноТекa*, 12 July 2022) <<https://inoteka.io/ino/2022/12/07/new-foreign-agents-law-comes-effect>> accessed 30 March 2023.

³⁹ ‘Israeli Knesset Approves Controversial Law Targeting Foreign-Government Funding for NGOs’ (*International Federation for Human Rights*) <<https://www.fidh.org/en/issues/human-rights-defenders/israeli-knesset-approves-controversial-law-targeting-foreign>> accessed 3 April 2023.

⁴⁰ Yasmeen Serhan, ‘Hungary’s Anti-Foreign NGO Law’ (*The Atlantic*, 13 June 2017) <<https://www.theatlantic.com/news/archive/2017/06/hungarys-anti-foreign-ngo-law/530121/>> accessed 11 April 2023.

political parties, and entities under foreign laws. However, FITS excludes businesses and NGOs without government links. The relationship between a foreign principal and agent is another important factor, with regulations like FARA and FITS putting specific emphasis on this. Meanwhile, jurisdictions like the UK focus on activities under foreign direction within their boundaries, while Russia targets entities engaged in political activities under foreign influence. Finally, Israel and Hungary specifically address NGOs, identifying the foreign element through their funding sources.

2.2.2 Activities

When it comes to the covered activities, this also varies among the various jurisdictions.

Table 3 Comparison of scope of activities of Foreign Influence Legislation

Foreign influence legislation	Scope (Activities)
Active legislation in OECD countries	
US	(1) Political activities or those designed to influence the US government or public regarding domestic or foreign policy; (2) perception management efforts or public relations; (3) publicity agent; (4) fundraising or disbursement of funds; (5) lobbying Congress or the Executive Branch. Exceptions: certain commercial activities
Australia	(1) Parliamentary or general political lobbying ; (2) communications activities; (3) disbursement activities(e.g., the payment of money or things of value).
Israel	All activities of these NGOs that receive 50% or more of their funding from foreign government entities.
Active Proposals in OECD countries	
Canada	Activities for the purpose of changing, shaping, or altering in any way, Government of Canada policies, outcomes or processes, or public opinion
UK	<i>Political influencing tier:</i> political influence activities are for the purpose of influencing UK public life which include: (1) communications to senior decision-makers, election candidates, MPs and senior civil servants. (2) Certain communications to the public where the source of the influence is not already clear, (3) and disbursement of money, goods or services to UK individuals for a political purpose.

	<p><i>Enhanced tier:</i></p> <p>(1) any activities within the UK at the direction of a specified power or entity;</p> <p>(2) activities carried out in the UK by specified foreign power-controlled entities.</p>
<p>Active legislations in non-OECD countries</p>	
<p>Russia</p>	<p>(1) Political activities in Russia,</p> <p>(2) purposefully gathering information on military, military-technical activities of the Russian Federation</p> <p>(3) or disseminating messages and materials for unlimited number of people</p>
<p>Non-Active legislations in OECD countries</p>	
<p>Hungary (Repealed in 2021)</p>	<p>All Activities of civil society actors who receive donations coming from outside the country over the threshold of about €22,000.</p>

US’s FARA and Australia’s FITS both aim to regulate foreign influence through a set of clearly defined activities, including political activities and representation of foreign interests. FITS also defines lobbying as representing the interests of any person in any government or political process or attempting to influence decisions or the outcome of that process.⁴¹ However, FITS differentiates itself by demanding a political element for all activities, aiming to address criticisms of FARA's overly broad nature.⁴² This variation between the two begs the question: does the inclusion of a 'political element' in all activities render the legislation more effective, or does it create room for ambiguities?

In contrast, Canada's upcoming legislation focuses its scope on activities that shape government policy and public opinion.⁴³ It could be argued that Canada's emphasis on 'public opinion' may present a higher threat to civil liberties compared to the more specifically delineated 'political activities' in FARA and FITS.

The UK presents a unique two-tier system, which segregates activities into 'Political Influence Tier' and 'Enhanced Tier'.⁴⁴ This bifurcation indicates a graded approach towards foreign influence, yet it also raises questions regarding the potential misuse

⁴¹ Korkea-aho (n 25).

⁴² Ng and Draffen (n 26) 1119.

⁴³ Canada (n 24).

⁴⁴ UK Home Office (n 34).

of the broadly defined 'Enhanced Tier'. Specific activities covered under this tier, include any activities within the UK at the direction of a specified power or entity.

Russia's RFAL covers an expansive scope of activities, even including participation in public events, which could arguably extend the legislation's reach to infringe upon citizens' rights to free assembly and association.⁴⁵

Lastly, Israel's and Hungary's legislations take a different route by targeting NGOs directly, covering all their activities without specifying any particular ones. This raises concerns over the potential to stifle civil society organisations and inhibit their crucial role in democratic processes.

In summary, the scope of covered activities under FIL diverges widely. FARA and FITS include political activities and representation of foreign interests within the US and Australia, respectively, with FITS demanding a political element for all activities. Canada plans to address activities aimed at influencing its government's policies, outcomes, or public opinion. The UK's proposal splits into two tiers, targeting political influence activities and those necessary to protect national safety or interests. Russia's RFAL encompasses a broad range of political activities, even simple participation in public events. Legislation targeting NGOs, such as in Israel and Hungary, covers all activities of foreign-funded NGOs without specifying certain ones.

2.2.3 Exemptions

In many FIL, exceptions from their scope of application are often present and may have to do with both the actors and activities (e.g. diplomatic activities under Australia FITS and religious NGOs under Hungary NGOlex). The exemptions granted under US FARA, Australia FITS, and UK FIRS apply to diplomatic, commercial, religious, humanitarian and academic activities.^{46,47,48} Diplomatic exemptions are important to study when assessing the EU's plans for FIL. For instance, the FARA does not cover diplomatic exchanges but focuses on those instances where foreign principals hire local intermediaries (such as US lobbying and consultancy firms) to lobby US

⁴⁵ 'A New "Foreign Agents" Law Comes Into Effect' (n 38).

⁴⁶ Foreign Agents Registration Act (FARA) s 613.

⁴⁷ Foreign Influence Transparency Scheme Act 2018 s 15.

⁴⁸ UK Home Office (n 34).

officials on their behalf.⁴⁹ The UK's FIRS also exempts information that is subject to legal professional privilege or would involve the disclosure of confidential journalistic material or sources.⁵⁰

In Russia, exemptions are provided for public authorities, state companies, state corporations, and their controlled persons. Religious organisations, political parties, associations of employers, chambers of commerce and industry, and Members of international organisations who come to Russia to perform their official duties may also be exempt.⁵¹

However, FIL targeting NGOs often have limited exemptions. In Hungary, religious, sports, and national minority organisations are exempt⁵² while Israel exempts specific organisations such as the World Zionist Organization, the Jewish Agency for Israel, the United Israel Appeal, the Jewish National Fund, and their subsidiaries.⁵³

Despite the existence of exemptions, they are often restricted to specific entities, resulting in most of the civil society falling within the scope of these foreign influence legislations. In some cases, the exemptions provided reveal the government's focus on specific entities, as illustrated by Israel and Hungary's exemptions.

⁴⁹ Nick Robinson, 'Foreign Agents in an Interconnected World: FARA and the Weaponization of Transparency' (2019) 69 *Duke Law Journal* 1075.

⁵⁰ UK Home Office (n 34).

⁵¹ 'New Law on Activities of Foreign Agents' (n 36).

⁵² 'Hungary: LexNGO Finally Repealed but a New Threat Is on the Horizon' (*Amnesty International*, 18 May 2021)

<<https://www.amnesty.org/en/latest/press-release/2021/05/hungary-lexngo-finally-repealed-but-a-new-threat-is-on-the-horizon/>> accessed 4 April 2023.

⁵³ Adalah, "'Foreign Government Funding Law' - Law on Disclosure Requirements for Recipients of Support from a Foreign State Entity' (2011) <<https://www.adalah.org/en/law/view/497>> accessed 18 April 2023.

2.3 Legal requirements

FIL typically requires the introduction of and imposition of a variety of regulatory requirements, such as reporting, labelling, and the restriction of certain activities.

In addition to the introduction of a set of specific requirements, FIL typically imposes sanctions for non-compliance with the very same obligations.

Table 4 Comparison of legal requirements of Foreign Influence Legislation	
Foreign influence legislation	Requirements
Active legislation in OECD countries	
US	<ul style="list-style-type: none"> - Make periodic public disclosures of their relationships with the foreign principal and of activities, receipts and disbursements in support of those activities. - Sanctions: potential for fines (up to \$10,000) or imprisonment (up to 5 years)
Australia	<ul style="list-style-type: none"> - Reporting of registrable activities. - Enhanced obligations during election periods. - Sanctions: Monetary fines to a maximum of five years imprisonment
Israel	<ul style="list-style-type: none"> - Report that it is a foreign-funded organisation. - Disclose that it is foreign-funded in any material it published and in communications to the government. - 'Prominently' disclose that it is foreign-funded in any publicly-available publication intended to further its cause. - Sanctions: NGOs that will violate the law will be fined NIS 29,200 (approximately 7,200 EUR)
Active Proposals in OECD countries	
Canada	<ul style="list-style-type: none"> - To be determined
UK	<ul style="list-style-type: none"> - Registrations will be made through an online portal. - Failure to register when required to do so will be a criminal offence. - There are also criminal offences associated with carrying out activities which are pursuant to arrangements which have not been registered.
Active legislations in non-OECD countries	

Russia	<ul style="list-style-type: none"> - Extensive reporting requirements - Prohibition from a wide range of activities. - Labelling of all created materials with a ‘foreign agent’ label. - Anyone who has worked with or received funding from a ‘foreign agent’ will be marked as ‘affiliated with a foreign agent’
Non-Active legislations in OECD countries	
Hungary (Repealed in 2021)	<ul style="list-style-type: none"> - Register as organisations ‘receiving support from abroad.’ - To annually report about their foreign funding. - To indicate the label ‘organisation receiving foreign support’ on their website and publications

2.3.1 Reporting

The most common requirement introduced by FIL consists of reporting obligations. Thus, for instance, under US’ FARA, any individual or entity that qualifies as a ‘foreign agent’ must file a very detailed registration with the Department of Justice, within 10 days of first acting as a foreign agent.⁵⁴ This registration needs to be updated every six months, by also including the list of activities performed and compensation received. The registration statement includes various details such as personal and business addresses, the nature of the registrant's business, a complete list of employees and their work, and a detailed statement of spending connected with activities for the foreign principal.⁵⁵

Australia’s FITS also includes similar registration obligations. Those who are subject to its provisions must register within 14 days and do so for each foreign principal in whose registrable activities are being undertaken.⁵⁶ Further to this, registrants must also notify the authorities of any inaccurate or misleading information and any disbursement activity undertaken for political influence.⁵⁷ During electoral periods, registrants must notify whether previously provided information is correct and

⁵⁴ Novak (n 22).

⁵⁵ Jacob R Straus, ‘Foreign Agents Registration Act (FARA): Background and Issues for Congress’ (Congressional Research Service 2023) R46435 <<https://crsreports.congress.gov/product/pdf/R/R46435>>.

⁵⁶ Foreign Influence Transparency Scheme Act 2018 s 15.

⁵⁷ Ng and Draffen (n 26) 1131.

disclose any lobbying or other activities for political influence exercised during that period, indicating how central electoral politics and elections are to the notion of foreign influence⁵⁸

In Russia, individuals intending to act as ‘foreign agents’ must notify the Ministry of Justice to be listed on the foreign agent register.⁵⁹ They must submit annual reports on their projects, biannual reports on their activities, projects, structure, and participants, and personal composition of governing bodies and staff, and quarterly reports on their bank accounts used for activities.

In the UK, the proposal determines that it is up to registrants to declare their activities through an online portal, with some information to be made publicly available. The information required includes a description of the activities, nature, purpose, and sought outcomes, start and end dates, frequency, and details of individuals or entities carrying out the activities, as well as the specified entity or foreign power directing the activities.⁶⁰

Israel requires NGOs meeting its foreign funding threshold to report that they are foreign-funded to the State Registrar, which publishes a list of such organisations on its website.⁶¹ Hungary’s repealed law required NGOs receiving support from abroad to register with public authorities as ‘organisations in receipt of support from abroad’, indicating donors’ names and the exact amount donated when it reaches or exceeds 500,000 HUF.⁶²

In summary, reporting requirements under FIL can vary from extensive registration requirements, updates on activities and compensation, and reporting on bank accounts and projects. Some countries propose online portals for registration, while others require NGOs to report foreign funding and publish lists of such organisations.

⁵⁸ *ibid.*

⁵⁹ Anna Pavlova, “‘Foreign Agents’ Everywhere. New Rules for Labelling Persons and Organisations Enacted in Russia” (*Mediazona*, 12 February 2022) <<https://en.zona.media/article/2022/12/02/foreign>> accessed 30 March 2023.

⁶⁰ UK Home Office (n 34).

⁶¹ ‘Background to Israel’s Anti-NGO Law’ (*New Israel Fund Australia*) <https://www.nif.org.au/background_to_israels_anti_ngo_law> accessed 3 April 2023.

⁶² Petra Bárd, ‘The Hungarian “Lex NGO” before the CJEU: Calling an Abuse of State Power by its Name’ [2020] *Verfassungsblog* <<https://verfassungsblog.de/the-hungarian-lex-ngo-before-the-cjeu-calling-an-abuse-of-state-power-by-its-name/>> accessed 12 April 2023.

Both in the US and Australia, and including the UK proposal, the register information is publicly available and can be searched online. The stronger the national security element (for instance in the UK FIRS and in Canada’s plans) the greater the incentive to classify the information confidential so that no access is granted to the journalist or the general public.

2.3.2 Labelling

Another significant requirement imposed by FIL is that of labelling. Essentially, it applies to entities that interact with the public or government officials, who must clearly disclose that they are acting on behalf of a foreign principal or are foreign-funded.

Under the US’s FARA any ‘informational materials’ provided to the public must be accompanied by a ‘conspicuous’ statement indicating that they are acting on behalf of a foreign principal.⁶³ Similarly, Australia’s FITS mandates that any communication to the public must disclose that the information or material is produced, communicated, or disseminated on behalf of a foreign principal, and is a registrable activity under FITS.⁶⁴

However, Russian legislation takes it one step further and requires entities to label themselves as ‘foreign agents’ and label all the materials they create.⁶⁵ Additionally, Israel mandates that organisations must ‘prominently’ disclose their foreign funding in any publicly available publication intended to further their cause, in reports, letters to elected officials or state employees, and when their representatives register to take part in parliamentary discussions.⁶⁶ In Hungary, NGOs must indicate on their websites and in their publications that they are an ‘organisation in receipt of support from abroad’.⁶⁷

⁶³ Foreign Agents Registration Act (FARA) s 614.

⁶⁴ Attorney-General’s Department, ‘Foreign Influence Transparency Scheme - Factsheet 10’ (Australian Government 2019) <<https://www.ag.gov.au/sites/default/files/2020-03/disclosures-in-communications-activities.pdf>>.

⁶⁵ ‘New Law on Activities of Foreign Agents’ (n 36).

⁶⁶ ‘Background to Israel’s Anti-NGO Law’ (n 61).

⁶⁷ Bárd (n 62).

More concerningly, in Russia anyone who has worked with a ‘foreign agent’ or received funding from one will also be included in a new Justice Ministry list of people and groups ‘affiliated with foreign agents’.⁶⁸

2.3.3 Restricted activities

A less common requirement introduced by FIL consists of restriction of certain activities.

Thus for instance, the Russian foreign agent law prohibits ‘foreign agent’ from engaging into educational activities in relation to minors or pedagogical activities in the state and municipal educational organisations, creating information products for minors, participating in government and municipal procurements of goods, works and services, receiving state financial support, managing facilities of significant objects of critical information infrastructure and activities to ensure its security, participating as experts in the conduct of the state environmental expertise, being state or municipal servants, being members of election commissions or organising public events. They are also prohibited from investing in strategic enterprises in Russia, using the simplified taxation system, and making donations to the election funds of candidates and political parties.⁶⁹

2.3.4 Sanctions

In addition to the introduction of a set of specific requirements, FIL typically imposes sanctions for non-compliance with the very same obligations. These range from fines to imprisonment. Under FARA, failure to fulfil obligations and requirements can result in fines of up to \$10,000 or imprisonment for up to 5 years.⁷⁰ FITS establishes criminal offences for violating its stipulated duties, with penalties varying from monetary fines to a maximum of five years imprisonment.⁷¹ In Israel, NGOs that violate the law can be fined NIS 29,200.⁷²

⁶⁸ The Moscow Times, ‘Putin Signs Expanded “Foreign Agents” Law’ (*The Moscow Times*, 14 July 2022) <<https://www.themoscowtimes.com/2022/07/14/putin-signs-expanded-foreign-agents-law-a78298>> accessed 3 April 2023.

⁶⁹ ‘New Law on Activities of Foreign Agents’ (n 36).

⁷⁰ Straus (n 55).

⁷¹ Korkea-aho (n 25).

⁷² ‘Knesset Passes NGO Transparency Law’ <https://main.knesset.gov.il:443/EN/News/PressReleases/Pages/Pr12164_pg.aspx> accessed 3 April 2023.

The sanctions (especially imprisonment) provided for in the FARA and FITS look unproportionate for transparency laws and for failing disclosure obligations. However, it is good to keep in mind that the US Lobbying Disclosure Act (LDA) also includes harsh sanctions, yet they are rarely enforced to the maximum.

Russia adopted a new law in 2022, and specific sanctions have yet to be determined. However, previous legislation indicates that sanctions can be extensive. Non-governmental organisations that fail to register as 'foreign agents' risk suspension for up to six months by a simple decision of the authorities, without a court order. Leaders who fail to comply with the law face up to four years in prison and fines of up to 300,000 Russian Rubles. Organisations can be fined up to 1 million Russian Rubles.⁷³ Additionally, the Russian government has dissolved entities that do not comply with their previous foreign agent law.⁷⁴

⁷³ 'Russia's Foreign Agent Law: Violating Human Rights and Attacking Civil Society' (Norwegian Helsinki Committee 2014) <https://www.nhc.no/content/uploads/2018/08/NHC_PolicyPaper_6_2014_Russiasforeignagentlaw.pdf>.

⁷⁴ 'Russia: Closure of Human Rights Group Highlights Accelerating Attacks on Civil Society' (Amnesty International, 29 December 2021) <<https://www.amnesty.org/en/latest/news/2021/12/russia-closure-of-human-rights-group-highlights-accelerating-attacks-on-civil-society/>> accessed 19 April 2023.

3. Critical issues

FIL raise multiple critical issues, by typically carrying a variety of negative impacts, be they deliberate or not. These critical aspects have been documented in the literature and surveyed over time and appear inherent to the nature of these regulatory interventions. They can be summarised under the following three labels:

3.1 Ill defined language;

3.2 Limited and unpredictable enforcement; and

3.3 Negative Democratic implications.

Table 5 Comparison of Critical issues of Foreign Influence Legislation	
Foreign influence legislation	Critical issues
Active legislation in OECD countries	
US	<ul style="list-style-type: none"> - There has been a significant increase in the number of enforcement cases post-2016 election, demonstrating unpredictable enforcement. - There are concerns that FARA is being weaponised to be used against NGOs and media.
Australia	<ul style="list-style-type: none"> - Since coming into force there has been a low number of registration and prosecutions. - The government is considering the possible tightening of exemptions for charities which may cause extra regulatory burdens. - There are concerns about the possibility of weaponising FITS to create stigmas around the labelling of actors as foreign-related.
Israel	<ul style="list-style-type: none"> - The law has been used mainly to target human rights NGOs working in Israel and occupied territories. - There have been issues related to stigma attached to the label of being 'foreign-funded'. - Criticisms have been issued on the law being too weak and not enforced.
Active Proposals in OECD countries	
Canada	<ul style="list-style-type: none"> - As no complete legislative proposal has been released, the critical issues are still to be determined.

UK	<ul style="list-style-type: none"> - There are concerns with the overly wide scope of those under the Enhanced tier, where any activity is subject to registration. - The wide scope of what is considered as political influence activities is also a point of concern.
Active legislations in non-OECD countries	
Russia	<ul style="list-style-type: none"> - The broad definition of ‘foreign agent’ can be used to target almost anyone. In regards to this, numerous organisations have to shut down due to being labelled as a ‘foreign agent’. - The act of being labelled a ‘foreign agent’ carries with it an intense stigma and leads to intimidation, harassment, and the reduction in funding.
Non-Active legislations in OECD countries	
Hungary (Repealed in 2021)	<ul style="list-style-type: none"> - There were concerns with the labelling requirements under the legislation and stigma around it. - In 2020, the law was deemed by the EU Court of Justice as incompatible with EU law and the Charter of Fundamental Rights. Leading to the law being repealed in 2021.

3.1 Ill-Defined Language

Historically FIL have been drafted with limited clarity and granularity thus leaving great discretion to the interpreter. In particular, Due to the typically ill-defined key terms defining their application, FIL typically entrust broad discretion to the authorities. This may in turn translate into an undue burden on organisations and individuals, as they grapple with determining whether their activities necessitate registration.⁷⁵

3.1.1 Regulatory Burden and its Costly Impact

FIL tend to introduce a variety of regulatory requirements, from disclosure to registration, that cause significant burden on the actors covered. Usually those who do not have large resources are at a disadvantage, due to being subject to additional compliance burden and additional costs in determining their status.⁷⁶ In the course of following the regulatory requirements of FIL, broad definitions increase the risk of misinterpretation and misapplication increases, potentially infringing on legitimate

⁷⁵ Butcher, MacGregor and Palmer James (n 35).

⁷⁶ Ng and Draffen (n 26) 1115.

activities and interests in.⁷⁷ This for example has led to some UK businesses calling for a ‘whitelist’ of countries whose businesses will not have to register, in order to bring some more certainty under the UK FIRS’ ‘enhanced tier’.⁷⁸

Regulatory burdens further impact entities through stringent reporting requirements. While Australia's FITS offers lighter obligations than the US's FARA in some respects, such as annual versus bi-annual renewals, and lacks registration fees, concerns remain.⁷⁹ Some actors have posed concerns when FITS was in its draft stage, mentioning that additional regulatory burden will impose significant costs, especially towards charities.⁸⁰ While charities were exempted in the final law, currently the Australian Attorney-General office is pushing for the tightening of exemptions given under FITS, especially towards charities of fear of Chinese influence.⁸¹

3.1.2 Conflict of Laws: Compliance Challenges and Regulatory Loopholes

Another major concern generally associated with FIL revolves around their relationship with other existing laws. The potential for conflict of law is a significant concern when implementing FIL. Such conflicts can occur when multiple laws regulate the same issue, which can lead to compliance challenges. The interaction between foreign influence legislation and existing lobbying laws in force in the same country can prove problematic. This instance can be the case for EU member states countries with well established general transparency laws, notably lobbying regulations, such as it is the case in Finland, Ireland, and France.

⁷⁷ Butcher, MacGregor and Palmer James (n 35).

⁷⁸ Matt Honeycombe-Foster, ‘Business Backlash Forces UK Rethink on Foreign Lobbying Clampdown’ *POLITICO* (11 January 2023) <<https://www.politico.eu/article/business-backlash-forces-uk-home-office-rethink-foreign-lobbying-clampdown/>> accessed 3 February 2023.

⁷⁹ Ng and Draffen (n 26).

⁸⁰ Not-for-profit Law, ‘Foreign Influence Transparency Scheme Bill 2017’ (15 February 2018) <<https://justiceconnect.org.au/wp-content/uploads/2020/12/Not-for-profit-Law-Submission-to-the-Foreign-Influence-Transparency-Scheme-Bill-February-2018.pdf>>.

⁸¹ Authority of the House of Representatives, ‘Parliamentary Joint Committee on Intelligence and Security - Review of the Foreign Influence Transparency Scheme Act 2018’ (2023) Proof Committee Hansard <https://parlinfo.aph.gov.au/parlInfo/download/committees/commjnt/26399/toc_pdf/Intelligence%20and%20Security%20Joint%20Committee_2023_02_21.pdf;fileType=application%2Fpdf#search=%22committees/commjnt/26399/0000%22>.

In the US, lobbying is governed by two main regimes, FARA on the one hand and the Lobbying Disclosure Act (hereinafter LDA) on the other. Essentially, the LDA covers domestic lobbying activities and requires less details to be disclosed as opposed to FARA.⁸² In relation to this, FARA provides an exemption to foreign agents who are acting for foreign principles that are not foreign government or political parties and are registered under the LDA.⁸³ The issue is that according to the US's Department of Justice (DOJ), foreign governments are increasingly using state-owned enterprises for a mix of commercial and geo-political strategic purposes, making it difficult to distinguish foreign agents representing commercial interests and those who are acting on behalf of foreign governments.⁸⁴ This has led to the DOJ and members of the US Congress to call for this exemption to be eliminated in order for this regulatory loophole to be closed.⁸⁵

Therefore, the above example demonstrates that coordination and relationship between laws may be unclear or inconsistent, leading to regulatory loopholes or gaps. The ensuing ambiguity may in turn cause hurdles in determining the applicability of existing FIL. This is true for their scope (i.e. who should FIL apply to?) as well as to the extent to which their obligations should apply (i.e. how entities should register, disclose, or report their activities?). This may result in ineffective regulation and enforcement due to a lack of coordination and clarity.

3.1.3 *Burdens and Unintended Consequences of Ambiguity*

Finally, the ambiguity and broad discretion inherent to FIL risk imposing undue burdens on stakeholders, intensifying compliance costs, and potentially infringing on legitimate activities. For example, there are concerns about the extensive range of activities classified as political influence activities under the UK's FIRS, leading to a higher risk of misinterpretation and misapplication increases, potentially infringing

⁸² Lydia Dennett, 'Closing the Loophole on Foreign Influence' (*Project On Government Oversight*, 13 April 2018) <<https://www.pogo.org/analysis/2018/04/closing-loophole-on-foreign-influence>> accessed 15 March 2023.

⁸³ 'Foreign Agents Registration Act | Frequently Asked Questions' (n 13).

⁸⁴ 'Department of Justice Reveals Support for Eliminating the LDA Exemption to FARA and Other FARA Reforms'

<<https://www.cov.com/en/news-and-insights/insights/2022/12/department-of-justice-reveals-support-for-eliminating-the-lda-exemption-to-fara-and-other-fara-reforms>> accessed 15 June 2023.

⁸⁵ *ibid.*

on legitimate activities and interests.⁸⁶ The social and economic impact of these legislations, including stigmatisation as a ‘foreign agent’ and the deterrence of foreign investments or research collaboration, coupled with the potential for conflicts of law, could potentially cause unintended harm to civil society and other parties.

3.2 Limited and unpredictable enforcement

Enforcement of FIL is often challenging and limited in many cases. This in many situations has to do with the vague and imprecise language used in FIL. Resulting in uneven enforcement practices and gaps in holding foreign actors accountable for their activities, undermining the effectiveness of foreign influence legislation.

3.2.1 Variations in Enforcement: The U.S. and Australian Experiences

There exist several documented instances of variation in FIL enforcement across jurisdictions. Between 1966 to 2015, the Department of Justice only brought seven criminal FARA cases.⁸⁷ However, since the 2016 US elections, this number has now skyrocketed to more FARA prosecutions in the last several years than they had pursued in the preceding half-century.⁸⁸ Today there is a serious risk that FARA might be used for political purposes, especially with the current trend of increased enforcement.⁸⁹

The Australian FITS has also suffered from a low number of registrations and prosecutions, with some criticising that it fails to take a targeted approach to threats from different jurisdictions.⁹⁰ Furthermore, it has caused internal consternations after former Prime Minister Tony Abbott was asked to join the register, with respect to his participation at the inaugural Australian Conservative Political Action Conference, an organisation founded by the American Conservative Union and linked to the US

⁸⁶ Butcher, MacGregor and Palmer James (n 35).

⁸⁷ Novak (n 22).

⁸⁸ ‘Scrutiny of Foreign Influence of Environmental Groups Raises FARA Issues for Companies and Non-Profits’ (Covington) <<https://www.cov.com/en/news-and-insights/insights/2020/11/scrutiny-of-foreign-influence-of-environmental-groups-raises-fara-issues-for-companies-and-non-profits>> accessed 27 March 2023.

⁸⁹ Monica Romero, ‘How Far Will FARA Go? The Foreign Agents Registration Act and the Criminalization of Global Human Rights Advocacy’ (2021) 96 Washington Law Review 695.

⁹⁰ Special Committee on Foreign Interference in all Democratic Processes in the European Union, including Disinformation (INGE 2), ‘Mission Report Following the Canberra and Melbourne (Australia) from 20 to 22 September 2022 -’ (European Parliament 2022) PE736.546v03-00 <https://www.europarl.europa.eu/doceo/document/ING2-CR-736546_EN.pdf>.

Republican Party, in August 2019. Abbott refused to register, leading the Attorney-General to announce that he ‘expect(s) (the Department) to demonstrate a focus on the most serious instances of noncompliance’.⁹¹ However, it has been noted by the Australian Attorney-General Department that a behavioural change has happened, where some have tailored their activities and arrangements toward FITS’s obligations, with the goal of making their relations with a foreign principal more transparent.⁹²

3.2.2 Impact and Implications of Enforcement Practices

In the end, FIL's application can vary greatly, impacting their efficacy and creating uncertainty. The discretionary, often intermittent, enforcement of FIL entails several negative consequences. Thus for instance, FARA prosecutions have surged post-2016 elections after decades of limited use, raising concerns about its potential political weaponization. Australia's FITS, has led to internal constrenations when it comes to enforcing it against its own former politicians. Israel has faced criticism for lax enforcement of its FIL, citing that many foreign-funded NGOs are not following through on their obligations.⁹³ While Russia frequently applies its laws primarily to target and suppress critics of governmental policies, leading to the shutdown of several civil society and media groups.⁹⁴

3.3 Negative democratic implications

The enactment of FIL is typically justified by concerns that go deep into our democratic existence. Setting up a register of foreign agents is founded in the concern that decisions regarding the direction of one’s nation should be driven by those who will ultimately be affected by those decisions: citizens and residents. The

⁹¹ Yee-Fui Ng, ‘Regulating the Influencers: The Evolution of Lobbying Regulation in Australia’ (2020) 41 *Adelaide Law Review*, The 507, 541.

⁹² Kate Jones, ‘Legal Loopholes and the Risk of Foreign Interference’ (European Parliament 2023) PE 702.575

<[https://www.europarl.europa.eu/RegData/etudes/IDAN/2023/702575/EXPO_IDA\(2023\)702575_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2023/702575/EXPO_IDA(2023)702575_EN.pdf)>.

⁹³ ‘Leftist NGOs Fail to Report Foreign Funding, Knesset Research Center Finds’ (www.israelhayom.com, 29 October 2020) <<https://www.israelhayom.com/2020/10/29/leftist-ngos-fail-to-report-foreign-funding-knesset-research-center-finds/>> accessed 3 April 2023.

⁹⁴ RFE/RL’s Russian Service, ‘Putin Signs Off On Harsher “Foreign Agent” Law’ *Radio Free Europe/Radio Liberty* (14 July 2022).

language often employed is that of preserving a country's self-determination and national sovereignty.⁹⁵ This aim, which is common across OECD jurisdiction, sets FIL apart from conventional general transparency laws, including domestic lobbying laws. The latter are usually driven by the aim of preventing corruption and undue influence of public officials and elected policy-makers. While the latter aims are part of FIL's declared objectives too, the preservation of national sovereignty is the key democratic concern.

3.3.1 Risk of weaponisation

Legislation such as FARA in the US and RFAL in Russia have been employed to probe or stigmatise specific groups, contributing to disparities in enforcement. This application further exacerbates gaps in accountability and undermines the credibility of foreign influence legislation.

For example, Republican lawmakers in the US raised concerns about potential efforts by environmental groups to 'diminish American energy independence', which led to the FARA unit at the US Department of Justice to investigate these groups.⁹⁶ As a result of this investigation, some of these groups registered themselves as foreign agents. Additionally, due to FARA, Russian-backed television network RT was forced to register as a foreign agent, and there are now calls to label other media organisations, such as Qatar-based Al Jazeera, Chinese CCTV, and Politico, as foreign agents.⁹⁷ The issue with this is that journalists in these cases would have to disclose their activities, potentially exposing their sources.⁹⁸ Furthermore, there are fears that officials in the US who were unhappy with a specific piece that these journalists produced can use FARA as retribution.⁹⁹

In Australia, there are fears that the government could potentially weaponise FITS to create a stigma around the labelling of actors as foreign-related, as the government

⁹⁵ Ng (n 91). p. 538 referring to Joint Standing Committee on Electoral Matters, Parliament of Australia, Second Interim Report on the Inquiry into the Conduct of the 2016 Federal Election: Foreign Donations (Interim Report No 2, March 2017) ix

⁹⁶ 'Scrutiny of Foreign Influence of Environmental Groups Raises FARA Issues for Companies and Non-Profits' (n 88).

⁹⁷ Alexandra Ellerbeck and Avi Asher-Schapiro, 'Everything to Know about FARA, and Why It Shouldn't Be Used against the Press' (*Columbia Journalism Review*) <<https://www.cjr.org/analysis/fara-press.php>> accessed 27 March 2023.

⁹⁸ *ibid.*

⁹⁹ *ibid.*

issuance of a ‘Transparency Notice’ can declare an entity as ‘foreign-related’.¹⁰⁰ In Hungary, the labelling of an organisation as ‘foreign-funded’ was seen as a way for the Hungarian government to discrediting the work of NGOs.¹⁰¹

3.3.2 Consequences for Diaspora Groups and Civil Society

Evidence suggests that FIL can be used to target specific groups. This is why Canadian Prime Minister, Justin Trudeau, has also urged caution in the development of its own foreign influence registry, in order to ensure that it doesn't target certain diaspora groups.¹⁰² The impact of FITS on the exercise of political rights of diaspora groups, in particular of ethnic Chinese, have been discussed in Australia, too.¹⁰³

Russia’s original 2012 RFAL targeted NGOs and rights groups but expanded to include media organisations, individual journalists, YouTube vloggers, and others who receive money from outside of Russia.¹⁰⁴ However, the new 2022 RFAL expands the definition of a foreign agent to almost any individual or entity, regardless of nationality or location, who engages in civic activism or even expresses opinions about Russian policies or officials' conduct.¹⁰⁵

The 2022 RFAL is likely to have comparable or even more detrimental effects than those of the 2012 legislation due to the ambiguous clauses that enable discretionary and harsh enforcement. Advocates for human rights and political activists were targets of the 2012 RFAL, leading to the compulsory registration of hundreds of organisations. Over 30 organisations have had to cease operations, while numerous others have had to modify their activities.¹⁰⁶ The designation of ‘foreign agent’ is

¹⁰⁰ Ng and Draffen (n 26) 1132.

¹⁰¹ ‘Hungary: NGO Law a Vicious and Calculated Assault on Civil Society’ (*Amnesty International*, 13 June 2017)

<<https://www.amnesty.org/en/latest/news/2017/06/hungary-ngo-law-a-vicious-and-calculated-assault-on-civil-society-2/>> accessed 12 April 2023.

¹⁰² Lee Berthiaume · The Canadian Press · ‘Trudeau Urges Caution to Ensure Foreign Influence Registry Doesn’t Target Diasporas | CBC News’ (CBC, 17 April 2023) <<https://www.cbc.ca/news/politics/trudeau-caution-foreign-influence-registry-1.6813048>> accessed 25 April 2023.

¹⁰³ Andrew Chubb (n 27).

¹⁰⁴ Nadia Beard, “‘Attack On Free Speech’: Controversial “Foreign Agent” Law Debated In Georgia’ *Radio Free Europe/Radio Liberty* (07:05:34Z) <<https://www.rferl.org/a/georgia-debates-foreign-agent-law/32285148.html>> accessed 30 March 2023.

¹⁰⁵ ‘Russia: New Restrictions for “Foreign Agents”’ (*Human Rights Watch*, 1 December 2022) <<https://www.hrw.org/news/2022/12/01/russia-new-restrictions-foreign-agents>> accessed 3 April 2023.

¹⁰⁶ Vize (n 31).

associated with a negative stigma, and organisations identified as such often lose crucial private and public collaborators they previously worked with and may experience extreme harassment.¹⁰⁷ Furthermore, under the updated 2022 RFAL, an organisation must verify that none of its donations has any connection with ‘foreign influence,’ even indirectly, to avoid the ‘foreign agent’ label.¹⁰⁸

In the US, FARA has been used to investigate environmental groups and certain media organisations, potentially jeopardising journalistic freedom. Australia's FITS could be used to create stigma around foreign-related entities, and there are concerns it could negatively impact diaspora groups. Similar worries exist for Canada's proposed legislation. CSOs affected by Israel's FIL are mostly human rights organisations located in Israel, occupied East Jerusalem, and the occupied Syrian Golan, and are worried that having to label themselves as a recipient of foreign funding will affect their monitoring and advocacy efforts.¹⁰⁹ Russia's RFAL, revised in 2022, expanded the definition of a foreign agent to almost any individual or entity, leading to the stifling of civic activism. This has resulted in compulsory registration, shutdowns, activity modifications, and loss of crucial collaboration for targeted organisations, thus creating a pervasive climate of fear and caution.

3.3.3 Effectiveness in upholding democratic integrity

The rationale behind the enactment of FIL is that by shedding light on financial flows coming from ‘third countries’ directed at influencing domestic decision-making it is possible to preserve national sovereignty, thus guaranteeing a healthier and more robust democracy. Yet there is little evidence from the jurisdictions where we have FIL in place, that such an outcome may be reached as intended.

¹⁰⁷ Martin Russell, “‘Foreign Agents’ and ‘Undesirables’: Russian Civil Society in Danger of Extinction?” (European Parliamentary Research Service) Briefing PE 729.297 <[https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2022\)729297](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2022)729297)> accessed 30 March 2023.

¹⁰⁸ ‘Russia: New Restrictions for “Foreign Agents”’ (n 105).

¹⁰⁹ FIDH-International Federation for Human Rights and OMCT-World Organisation Against Torture, ‘FIDH and OMCT in the Framework of the Observatory for the Protection of Human Rights Defenders - Submission to the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression Ahead of Her Upcoming Report to the Human Rights Council on Disinformation and Freedom of Opinion and Expression’, (15 February 2021) <<https://www.ohchr.org/sites/default/files/Documents/Issues/Expression/disinformation/2-Civil-society-organisations/Observatory-for-Human-Rights-Defenders.pdf>>.OMCT

Hypothetically, FIL could fortify democracies, for example, by safeguarding elections from hostile interference.¹¹⁰ However, the question remains whether such laws, which could limit the political rights of ‘foreign’ speakers, are constitutionally justifiable. In Australia while FITSA does not ostensibly ‘target any particular country, nationality or diaspora community’,¹¹¹ the Australian government appears to have had particular actors in mind when formulating the Act.¹¹² The problem of ‘unmentioned intended targets’ may exacerbate in the case of EU, because the Union has little insight (or control) into how the laws are implemented and operationalised in Member States and what are particular communities that become ‘targeted’ in Member States, apart from those intended but not mentioned by the EU.

One must also keep in mind that the openness of the EU policy process towards third countries – something that the Commission now clearly wishes to roll back¹¹³ – is a democratic choice made by the Union, its Member States and respective peoples. Therefore, any effort at restricting such a great level of openness should be carefully considered.

The EU defends foreign influence legislation by the need to encourage ‘inclusive engagement and participation in European democracies’.¹¹⁴ None of the legislative instruments studied in this report is adopted in a bid to protect active civil society.

¹¹⁰ It needs to be kept in mind that for instance in Australia FITSA was only one legislative instrument of many. Australia also adopted the National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018 (Cth); Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018 (Cth).

¹¹¹ ‘Revised Explanatory Memorandum - Foreign Influence Transparency Scheme Bill 2017’ (Parliament of Australia 2018) <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Ffr6018_ems_deec7318-8967-469e-8a97-3786453cbd90%22>.

¹¹² Ng (n 91) 541.

¹¹³ ‘EU Influence: Putting out FARA Fires – Tour de Revolving Doors – WhoisWho Sniping’ (POLITICO, 25 May 2023) <<https://www.politico.eu/newsletter/politico-eu-influence/putting-out-fara-fires-tour-de-revolving-doors-whoiswho-sniping-2/>> accessed 12 June 2023.

¹¹⁴ *ibid.*

4. How to Evaluate a Foreign Influence Legislation? A Checklist

As the European Union is moving towards the enactment of its first foreign influence legislation, this study strived to provide a comprehensive and systematic evaluation of this typology of legislative interventions. Its immediate goal is to pre-emptively identify, based on available literature, FIL's potential pitfalls and unintended consequences. The diverse experiences gained among OECD countries, as examined throughout this study, underscore the complexity of designing and implementing a FIL that is effective in enhancing transparency of foreign influence on domestic processes while also safeguarding democratic freedoms.

It is against this backdrop that this study identifies and offers ten key considerations that may guide the critical evaluation of not only the future EU legislation but potentially other future FIL. Here's a checklist enabling anyone to review and assess any existing or proposed FIL:

1. **Objective:** What is the declared aim pursued by the law? Is it about governing 'foreign interference' or any form of 'foreign influence'?
2. **Scope:** Given its declared goal, to whom the law applies? Is the focus on actors, their activities or both? How are the latter defined? Can the actors and activities be clearly identified or does the FIL leave an excessive margin of manoeuvre to the interpreter?
3. **Targeted party:** Is the legislation exclusively applicable to CSOs? or any other specific category of actors or activities? Can these groups be clearly identified? Does the law specifically pinpoint sources of international funding in order to call out foreign funded CSOs?
4. **Exemptions:** Does the legislation offer exclusions for certain actors and/or activities? Are those clearly defined or at least definable? Do the exemptions cover activities typically carried out by CSOs? If so, is the concept of 'political activities' expanded to such an extent that it renders these exemptions ineffective?

5. Conflict of Law: How does the proposed legislation interact with existing transparency laws, including lobbying regulations, in the same country? In the case of the EU, does the FIL create a fully harmonised regulatory framework, or does it lead to minimal harmonisation, and therefore the potential for inconsistencies, loopholes, or regulatory gaps?
6. Proportionality: Does the proposed legislation effectively balance transparency of foreign influence with protection of civil liberties? Does it adequately address foreign interference at the EU level, given the interconnected nature of EU and member state politics?
7. Enforcement: Is the language of the legislation precise enough to enable predictable enforcement? Does it provide for sanctions or penalties that can deter non-compliance? How much margin of discretion is left to the enforcing authority?
8. Due process: Does the law allow for the possibility to appeal any sanction, be administrative or criminal in nature?
9. Targeted Enforcement: Does the legislation risk being used to probe or stigmatise specific groups, leading to uneven enforcement? Does it exacerbate accountability gaps?
10. Socio-economic Impact: What are the potential social and economic costs of compliance with the legislation? Could it place a burdensome administrative load on actors, deter foreign investment or collaboration, or stigmatise actors as 'foreign agents'?

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