

Brussels, 25 January 2024

Open letter: EU co-legislators must block the covert foreign interference law

Dear Members of the European Parliament,

Dear Belgian Presidency of the Council of the European Union and fellow Permanent Representatives of the Member States,

We write to reinforce our concerns regarding the planned directive on covert foreign interference, as part of the Defence of Democracy package announced on 12 December 2023.

We are particularly concerned with the Proposal for a directive establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries.

Our concern is that such a directive will impact in particular NGOs, and among them a wider range of civil society organisations, as well as private and public institutions, such as universities and research centres. The missions of such civil society organisations are often of universal appeal, and universities are by nature globally connected. Therefore, they may attract non-EU support and funding. Nonetheless, this does not make their activities a representation of foreign interests.

The planned proposal raises several key concerns:

- The proposal will be inefficient and potentially counterproductive - NGOs or institutions which receive international funding would be suspected of representing foreign interests. Such a register could become an instrument for stigmatising organisations and institutions and for repressing free and open debate, quite similar to “foreign agent” rules commonly used by undemocratic regimes.
- Fundamental rights - the proposal risks undermining the core fundamental rights principles of necessity and proportionality. The broad definitions, and potentially wide catchment, mean the proposal fails to target the stated aim of countering malign foreign interference. It also draws an unnecessary and discriminatory distinction between foreign funding and funding from within the Union. This will also have an impact on the freedom of the arts and science.

- Global foreign policy – the proposal risks undermining the EU’s own efforts to strengthen democratic freedoms across the globe. Over the past decade the EU has rightly raised concerns about ‘transparency laws’ in other regions that are a disguised way to limit civic space. Over recent months, certain countries have already used the proposed directive on covert foreign interference to justify their own foreign interference laws. The proposal also risks being met with retaliation towards EU-based organisations operating in other countries.
- Legality – the proposal risks contradicting the planned legal basis under Article 114 of the Treaty on the Functioning of the European Union, potentially obstructing the free movement of capital. In addition, and of particular concern to civil society, it risks violating EU law as confirmed in the case of the European Commission v. Hungary. This judgement affirmed that transparency restrictions on foreign funding must not have a deterrent effect on civil society and should not be seen as intrinsically suspect.

Those seeking to exert covert influence may find loopholes and ways to circumvent the legislation, thus those most impacted may be legitimate, open and transparent civil society organisations. By only capturing foreign funding, the proposal could lead to unintended consequences for civil society, such as stigmatisation and harassment of being “foreign agents”. The negative impacts of similar legislation on civil society have been well-documented¹, including in countries such as the United States and the United Kingdom, as well as Hungary², leading to a weakening of civil society. The directive could restrict Art. 13 of the Charter of Fundamental Rights if its transparency obligations inhibit access to the funding of a research institution. The safeguards included in the proposal do not protect civil society and academia from these adverse consequences.

The unintended consequences of this proposal could harm the exact actors who play a key role in upholding the rule of law and contributing to vibrant and healthy democracies, as well as curbing disinformation. It’s also important to recognise that threats to our democracy come from both internal and external threats, notably through political party financing, which is not addressed in this proposal. Tackling malign foreign interference in isolation will not be effective. Rather, it will have negative repercussions on Europe’s role in protecting civil society and democracy in the world.

Specifically for universities, the issue of foreign interference and research security is a long-standing subject of constructive discussion between stakeholders, member states and the European Commission. Policies stemming from this field could inspire measures that further protect European democracy, particularly those which focus on

¹ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/337/82/PDF/G2233782.pdf?OpenElement>

² <https://www.thegoodlobby.eu/wp-content/uploads/2023/11/TGL-Study-How-to-Evaluate-a-Foreign-Influence-Legislation-A-Comparative-Analysis.pdf>; https://www.thegoodlobby.eu/wp-content/uploads/2023/11/Press_Conference_Handout_Nov_2023.pdf

identifying and managing risks, self-governance and dialogue as truly democratic and efficient elements.

We call on EU member states and the European Parliament to block the foreign interference law as part of the Defence of Democracy package, while maintaining other important elements such as the planned recommendation on participation of civil society and citizens in public policy making. Following a more comprehensive and inclusive consultation, the next Commission could consider legislation that will strengthen and align existing Transparency Registers, addressing both internal and external funding.

We remain at your disposal for further information.

Sincerely yours,



[Civil Society Europe](#) is the Coordination of civil society organisations at EU level. Our mission is to contribute to the recognition of the role of independent and plural CSOs in building and nurturing a democratic society based on fundamental rights. Civil Society Europe is currently composed of 22 platforms and networks which are among the most representative CSOs operating at EU level in a wide variety of areas.



[The European University Association \(EUA\)](#) represents more than 850 universities and national rectors' conferences in 49 European countries. EUA plays a crucial role in the Bologna Process and in influencing EU policies on higher education, research and innovation. Through continuous interaction with a range of other European and international organisations, EUA ensures that the independent voice of European universities is heard.