



EU's “Defence of Democracy” Package – new lobbying disclosure requirements to come?

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On 12 December 2023, the European Commission adopted its “Defence of Democracy Package”, particularly in view of the upcoming elections for the European Parliament in 2024. This package includes a proposal for a new EU directive, introducing for the first time EU-wide harmonised transparency and accountability standards for lobbying activities carried out on behalf of third countries. EU Member States with already established lobbying registers will likely be required to amend their rules, other EU Member States will have to set-up lobbying registers for the first time. Stakeholders in the political sphere will have to consider the rules closely to ensure compliance and their ability to continue interacting with political and governmental actors.

The current state of play

The current legal framework governing lobbying activities and related transparency requirements in the EU is highly fragmented.

At the EU level, an initially voluntary registration system for lobbyists seeking to influence the decision-making processes of the European Parliament and

the EU Commission was replaced by a mandatory transparency register covering interest representation vis-à-vis all EU institutions that entered into force in 2021. The publicly available EU Transparency Register¹ contains detailed information, among others, on the lobbyist, its areas of interest and its financial resources related to the lobbying activities.

¹ Available here: <https://ec.europa.eu/transparencyregister/public/homePage.do>

In addition, several EU Member States, including Belgium², France³ and Germany⁴, have already enacted national regulations on lobbying that require interest representatives carrying out lobbying activities vis-à-vis national officials to comply with certain ethical and transparency standards and to disclose various information in the respective national lobbying registers. However, the national rules differ considerably both in terms of the activities and the officials covered and the extent and granularity of information to be disclosed in the register. In particular, none of the national lobbying acts specifically addresses the risks associated with covert interest representation activities carried out on behalf of third countries.

The context of the proposal

The proposed directive may be seen as part of a broader and multilayered EU strategy to defend and foster democracy within the EU.

The EU Commission's proposal⁵ is a puzzle piece of its "*Defence of Democracy Package*".⁶ This was initially announced in the 2022 State of the Union Address by EU Commission's President *von der Leyen* and based on the European Democracy Action Plan.⁷ It is primarily designed to protect the EU democratic sphere from covert foreign influence and to strengthen trust by defending the European democratic system from outside interests. The proposed directive on lobbying registration requirements is accompanied, inter alia, by recommendations aiming at the strengthening of electoral processes in the EU⁸ by proposing measures to minimize risks of interference from third countries through funding of political parties and candidates.

As such, the proposal also complements several recent proposals, including the proposed Regulation on the transparency and targeting of political advertising⁹.

Scope of the proposal

The requirements in the proposed directive cover economic activities of interest representation carried out on behalf of third country entities, which means (i) the central government and public authorities at all levels of a country outside the EU and the EEA (**Foreign Public Authority**) and (ii) public or private entities whose actions can be attributed to any Foreign Public Authority (**Foreign Entities**, together with Foreign Public Authorities **Third Country Entities**).

More specifically, the directive applies to all entities – irrespective of their place of establishment (i.e. inside or outside the EU) – that provide interest representation services to a Third Country Entity. In particular, lobbying firms acting on behalf of Third Country Entities will therefore typically fall within the scope of the directive. Likewise, interest representation activities carried out by a Third Country Entity are covered, provided that they are linked to, or substitute, activities of an economic nature and are thus comparable to an interest representation service (together "**Covered Entities**").

The proposal explicitly exempts activities carried out directly by a Foreign Public Authority that relate to the exercise of official authority, including activities related to the exercise of diplomatic or consular relations between States or international organizations. Comparable exemptions can also be found in national lobbying regulations. Further, certain legal and

² Information here: https://www.dekamer.be/kvvcr/pdf_sections/publications/reglement/reglementNL.pdf. There is a proposal pending to amend the Rules of Procedure of the Chamber of Representatives, in order to ensure full transparency with regard to the lobby register of the Chamber. Please find more information [here](#).

³ Information here: <https://www.hatvp.fr/le-repertoire/>

⁴ Information here: <https://www.lobbyregister.bundestag.de/informationen-und-hilfe/information-in-english-876238>; on latest developments cf. our alert: <https://www.allenoverly.com/en-gb/germany/news-and-insights/publications/germany-tightens-federal-lobbying-act>

⁵ Proposal for a Directive of the European Parliament and of the Council establishing harmonized requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937 (2023/0463 (COD)).

⁶ More background information can be found here: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6453

⁷ See here the initial Communication from the EU Commission dated 3 December 2020. A Q&A sheet on the European democracy action plan is available [here](#).

⁸ Recommendation on inclusive and resilient electoral processes in the Union and enhancing the European nature and efficient conduct of the elections to the European Parliament, available [here](#). See also the Recommendation on the participation of citizens and civil society organisations in public policy-making, available [here](#).

⁹ For the current status of the negotiations, see [here](#).

other professional services as well as ancillary activities may be exempted from the scope.

Activities qualify as “interest representation activity” if they are conducted with the objective of influencing the development, formulation or implementation of policy or legislation, or public decision-making processes, in the EU (**Interest Representation**). The proposal provides a couple of examples and indicates that such activities caught under the directive could, *inter alia*, be performed through organizing or participating in meetings, organizing communication or advertising campaigns and preparation of policy and position papers. At first glance, the scope of relevant activities falling under the proposed directive seems to be rather congruent with those activities that are subjected to registration requirements at the level of the Member States that have in place lobbying laws and registers. It is noteworthy that, unlike national rules, the proposal does not contain specific thresholds that trigger a registration requirement (e.g. a certain number of contacts to officials).

Key content of the proposal

Covered Entities are required to keep, for each Interest Representation, records of a large set of information for a period of four (4) years after the Interest Representation has ceased. Such information includes, among others, (i) the identity and name of the Third Country Entity on whose behalf the activity is carried out, and the name of the third country whose interests are represented, (ii) a description of the purpose of the Interest Representation, as well as (iii) exchanges with the Third Country Entity essential to understand the nature and purpose of the Interest Representation including, where applicable, the records of the means and extent of any remuneration. Further, Covered Entities must draw up, on an annual basis, and keep for a period of four (4) years, (i) a list of all Third Country Entities on whose behalf they have carried out Interest Representation in the preceding financial year and (ii) a list of the aggregated annual amount received in respect of Interest Representation for Third Country Entities.

As soon as the Interest Representation is commenced, Covered Entities have to register in a national register set up by the Member State where they

are established or, in case the Covered Entity is not established in the EU, where their legal representative – who is to be designated in one of the Member States where the non-EU based Covered Entity carries out Interest Representation – is established or has his permanent address. For the registration, the Covered Entities must disclose information specified in Annex I to the proposed directive. Most information disclosed in the register entry will principally be made publicly available by the competent national authority, but Covered Entities may request to partially or fully limit the publication on the basis of certain legitimate interests to be assessed in the individual case.

All registrants are issued with a unique EIRN that they must provide in their contacts with Union officials, officials of a Member State or any other person assigned and exercising a public service function in a Member State (**Public Officials**).

Non-compliance with the requirements of the proposed directive will be subject to administrative fines to be imposed by the competent national authorities and may amount up to 1 % of an undertaking’s annual worldwide turnover.

The proposal is similar, although narrower, than the Foreign Agents Registration Act in the United States, which requires registration for a broad swath of political and lobbying activities in the United States on behalf of a foreign interest (governments and corporations alike). The U.S. has also long prohibited foreign funding in elections in the U.S. Both laws have seen a significant uptick in criminal enforcement in recent years.

Outlook

The EU Commission’s proposal is the first step of a lengthy legislative process that includes the EU co-legislators (Council and Parliament). However, as the elections for the new EU Parliament will be held in June 2024, the legislators may try to speed up the legislative procedure and advance the proposal before the elections. Allen & Overy will continue to monitor the legislative process closely to be prepared for any new transparency rules applicable to lobbying activities and national implementation of EU laws.

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