

Foreign Interests and Transparency Standards:

Assessing the Prospects for Reforms in the European Union

EUROPEAN DEMOCRACY: THE REQUIRED INSTITUTIONAL REFORMS

FOREIGN INTERESTS AND TRANSPARENCY STANDARDS: ASSESSING THE PROSPECTS FOR REFORMS IN THE EUROPEAN UNION

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EXECUTIVE SUMMARY

On 1 June 2023, Věra Jourová, Commission Vice President for Values and Transparency, announced a delay in the release of the Defence of Democracy package, following responses from European civil society networks. Their concern was particularly directed at a proposed directive on transparency standards for interest representation directed or financed from states outside the EU. The need to address the practices and impact of foreign influence, nevertheless, remains a policy priority for the Commission. However, important gaps in the research, time, and legal foundation for the reform constrain the implementation of any future proposal. This paper aims to inform readers in the EU policy space on ways to bridge these gaps. Therefore, the paper provides an overview of the policy developments and a discussion of academic research on foreign influence. Thereafter, the paper analyses the prospects, and impacts of reforms that protect EU values, citizens' rights, and civil society.

Social Media summary

The EU needs transparency standards that uncover foreign influence and protect civil society.

Keywords

#EuropeanUnion #ForeignInfluence #Interference #Transparency #Ethics

Short bio

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TABLE OF CONTENTS

Introduction	7
The Context for the Commission's Proposal	9
Policy Rationale	9
Civil Society Responses	11
Commission Postponement	12
The State of the Art on Foreign Influence	13
Foreign Interference and Influence	13
Foreign Principals and Agents	14
National Policy Responses	15
Restrictions on Foreign Influence	16
Transparency Registers	17
Ethics Standards	18
An Analysis of the Prospects for Reforms	18
Constraints on Policy Implementation	19
Impact Assessment	19
European Elections	19
European Treaties	20
Potential for Misuse and Minimisation	20
An Argument for Integrating Reforms	22
Conclusion	23
Recommendations	24

TABLE OF ACRONYMS

ALDA	European Association for Local Democracy
CEO	Corporate Europe Observatory
CSE	Civil Society Europe
EC	European Commission
ECF	European Civic Forum
ECJ	European Court of Justice
EDF	European Disability Forum
EEAS	European External Action Service
ENNHRI	European Network of National Human Rights Institutions
EP	European Parliament
EPD	European Partnership for Democracy
EU	European Union
EUA	European University Association
FAFCE	Federation of Catholic Family Associations in Europe
FARA	Foreign Agents Registration Act
FIDE	Federation for Innovation in Democracy Europe
FIRAA	Foreign Influence Registry and Accountability Act
FITS	Foreign Influence Transparency Scheme
FIRS	Foreign Influence Registration Scheme
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Assoc.
IDEA	Institute for Democracy and Electoral Assistance
IPPF	International Planned Parenthood Federation
IIA	Interinstitutional Agreement
MEP	Member of the European Parliament
SOTEU	State of the European Union
TFEU	Treaty on the Functioning of the European Union
TI	Transparency International
US	United States of America

LIST OF TABLES

Table 1: Consultation Responses from European Civil Society Networks	12
Table 2: Analogous National Policies	15
Table 3: National and Regional Transparency Registers in the Europe	17

Introduction

On 14 September 2022, Commission President Ursula von der Leyen gave the State of the European Union address to the European Parliament in Strasbourg (EC, 2022). The annual speech opened with a statement of support for Ukraine and an acknowledgement of the animosity the EU faces from authoritarian regimes. In its course, she took a moment to affirm that, “foreign entities are funding institutes that undermine our values” (EC, 2022). The Defence of Democracy package was then presented as the response to this problem, which would shed light on covert foreign influence.

The Commission took an important step to realize that commitment on 16 February 2023, when it released a call for evidence that contained details for the package and the opportunity for the public to provide feedback. Among the initiatives described, readers found a directive that would introduce “common transparency and accountability standards for interest representation services directed or paid for from outside the EU” (EC, 2023a). Civil society networks based in Brussels gathered together to voice their concern for the disproportionate scrutiny and weaponisable instruments they perceived in the proposal. On 1 June 2023, Commission Vice President for Values and Transparency Věra Jourová announced a delay in the release of the Defence of Democracy package.

This impasse invites a revisitation of the plans for a reform that harmonizes and strengthens transparency standards for foreign interests, without threatening the EU’s values and civic spaces. While the Commission’s proposal is delayed, the need for policies that address covert foreign influence remains. Awareness for this topic has grown since the Qatar corruption scandal, which featured the arrests of current and former members of the European Parliament on 9 December 2022. Conversations on the impact of covert foreign influence on the EU’s democratic integrity, strategic autonomy, and social protections for targeted communities are also emerging.

The prospect of crafting policies that respond to this problem is likely to raise the interest of a broad set of different actors. The public conversation around the Commission’s proposal has so far relied on European civil society networks to represent the views and interests of the public. Reporting on influence practices suggests that this is a topic of great interest to public affairs companies and foreign government representatives. There is also a good amount of academic research into foreign influence and connected policies that merits more consideration in policy discussions. Therefore, an effort to research the concepts, effects, and options for

reforming the EU's rules on foreign influence offers value to policymakers in their aim of building a consensus and securing the success of a renewed proposal for the Defence of Democracy package.

This paper seeks to contribute to that effort. In its first section, the paper covers the context for the Commission's proposal for the Defence of Democracy package. A reason for the shared concern but divergent perspectives on the proposal from civil society networks stems from an underinvestment in policy communication before the release. This encouraged responders to look to the more attention-raising policy responses of national governments, inside and outside the Union, as analogues rather than focusing on the Commission's intentions *per se*. In the second section, the paper considers the available research on key concepts, practices, and policy responses to foreign influence. This helps clarify the connections this emerging priority has to established topics, including foreign interference, corruption, and espionage. The recurring takeaway is nevertheless that covert influence remains an area that is understudied and underappreciated. In the third section, the paper analyses the practicalities, prospects, and impacts of the proposed reforms with a focus on research, time, and legal constraints to its implementation in the near future. Space is dedicated to identifying risks, especially the weaponisation and weakening of any new measures. On this basis, an argument is made for integrating measures against covert influence with the EU's strategic priorities.

In its conclusion, the paper makes the argument that this analysis should inform the setting of actionable objectives for a more substantial reform, with the Transparency Register and an Ethics Authority serving as focal points for gathering information outside and ensuring compliance inside the EU institutions. The paper then proposes a set of policy recommendations for achieving those objectives. An appeal is made for a foreign policy that better reacts to anti-European aggression and protects pro-European communities. In addressing covert influence with transparency and ethical standards, the EU may draw back the curtain on aspects of the political, academic, public affairs, and civil society environments that are contentious. Yet, when considering the tendency of covert influence to stem from actors that are antagonistic to the EU's values, people, and democratic processes, this seems a fair price seems to pay.

The Context for the Commission's Proposal

The Commission's proposal for a Defence of Democracy package is connected to its priorities presented in Ursula von der Leyen's political agenda in 2019 and formulated in the European Democracy Action Plan of 2020. At this time, the focus was put on the need to address foreign interference, especially when it was aimed at electoral processes or spread via digital disinformation. Much of the effort to broaden this focus can be credited to the Parliament's recent deliberations and publications. Foreign influence is a developing concept that is nevertheless distinct from foreign interference. One important reason for this is that influence via interest representation, is recognized as a legitimate practice and protected as a freedom of expression and information in Article 11 and freedom of association in Article 12 of the Charter of Fundamental Rights (EU, 2000). For this reason, those in favour of addressing foreign influence often specify that they are responding to *covert* or *malign* practices.

The Commission's call for evidence presented a dual approach to addressing this issue (EC, 2023a). Requirements would be placed on actors outside the EU institutions via a legal instrument (directive) on transparency and accountability. At the same time, a set of measures without legal force (recommendation) would help raise awareness and promote practices among actors inside the EU institutions. Therefore, both the legal strategy and the policy focus of the package were novel in several ways.

These brief descriptions became the one clear window into the Commission's intention available to viewers. In choosing to release its proposal without an impact assessment or policy communication, the Commission was unable to build on prior understanding and confidence for its entry into this grey area. The responses from civil society networks it received were therefore guided more by the responding organisations' priorities and their reactions to nominally similar initiatives taken by the governments of EU member states and foreign countries. This section explores the reasons for the Commission's decision, the responses it received, and the impact of the postponement on the proposal's future implementation.

Policy Rationale

The concept of covert or malign influence, as a component of the interference strategies of foreign governments, gained an interest in the EU institutions after the 2022 SOTEU address. Ursula von der Leyen made a reference to "Chinese entities"

funding research to influence the stances of European universities (EC, 2023a). This was likely directed at China's network of Confucius Institutes. Concerns over the espionage, pressure, and financing of researchers, administrators, and Chinese nationals had grown to the point where universities in Belgium, France, Germany, Netherlands, and Sweden chose to terminate their agreements with this foreign government-organized organization.

A broader discussion was also being held at the Parliament from 2020 within the two successive special committees on foreign interference, each resulting in the adoption of a report that recognized the scale of the problem and proposed answers to them (EP, 2022a) (EP, 2023). The impetus for these steps came out of a concern for the integrity of elections, media channels, and digital infrastructure during the coronavirus pandemic. The broadening of the scope was reflected in the second report, which included policy recommendations on countering foreign interference via corruption, especially via elite capture and party financing. The idea of foreign influence was presented as a complement to an antagonistic state's interference strategy, with the Chinese, Emirati, Russian, Turkish, and Qatari governments mentioned in name. A recital also noted the weakness of the EU's Transparency Register being voluntary for interest representatives, though at this stage the committee did not agree on recommendations for improvements.

This parliamentary interest in understanding the influence strategies of authoritarian states also led to the commissioning of internal analyses. One of the first focused on Queer persons and communities in Europe as targets of the content of disinformation, intimidation, and restrictions of their rights (Strand *et al.* 2021). The authors conceived of foreign influence as the targeted use of online, cultural, and religious networks as vehicles for the spread of propaganda. The European Parliamentary Research Service had previously produced work with a similar focus on content and information (Bentzen, 2018) (Grieger, 2018). These papers also noted that the scope of policy-oriented investigations was being constrained by the lack of data on covert funding from foreign sources. This left a gap in the conceptual and empirical research available to the Parliament.

The focus on influence strategies, as it appears in the Defence of Democracy package was developed more recently in analyses commissioned by the Parliament's special committee. Jones (2023) adjusted the trajectory of the discussion, characterizing foreign influence as a "normal and legitimate aspect of international relations and diplomacy," while emphasizing that its aim when covert is to "facilitate or cloak foreign interference." The report also recommended transparency rules be strengthened to address this challenge. In particular, the Transparency Register was

identified as the focal point for potential reforms. Vidačak and Šelo Šabić (2023) complemented this work with a study of the bodies, regulations and practices governing MEP transparency, accountability, and ethical behaviour. Kotanidis (2023) analysed the support, principles, and legal basis of the interinstitutional agreement (IIA) that governs the Transparency Register. These deliberations and publications offered the Commission a basis to begin preparing a new initiative.

Civil Society Responses

European civil society networks based in Brussels formed the majority of organisations responding with feedback to the Defence of Democracy package. The initial reactions welcomed the initiative (ALDA, 2023), while often calling for more support to their respective causes (ENNHRI, 2023), and raising concerns specific to their sector (EUA, 2023). The role of recommendations is worth noting, with many organisations using the opportunity to advocate for the recognition of their contributions to civic space and for better access to EU funding. The more critical organisations were therefore more focused on the initiative itself, though the direction of their criticism and recommendations varied. On the Transparency Register, for instance, the European Civic Forum claimed that the public database is “turning into a tool for the control of CSOs” (ECF, 2023). Transparency International instead stated that the “transparency register already serves as a positive example of interest representative regulation harmonisation at EU level” (TI, 2023).

In spite of these differences, civil society networks converged into two coalitions. Each group submitted joint statements opposing the proposed directive on transparency standards for foreign influence; with the European Partnership for Democracy (EPD, 2023) and Civil Society Europe (CSE, 2023a) as the coordinators of the respective coalitions. In both cases, the lack of an impact assessment was used to call for a postponement. This worked as a shared objective, as the coalition members differed on their preferred scenario after the postponement, with some recommending that the initiative be developed, revised, or even cancelled altogether.

On 3 May 2023, MEP Sergey Lagodinsky echoed the call for a postponement in a letter to the Commission signed by 48 colleagues (Lagodinsky, 2023). The letter cited the Parliament’s resolution on the shrinking civic space in Europe, to raise concerns over policies that restrict CSO access to funding. It went on to argue that the proposed directive would give member states the space to impose such disproportionate requirements on targeted CSOs. The signatories raised the case of the Hungarian government’s attempt to use transparency rules to restrict foreign funding of civil society before a ruling against the law from the European Court of Justice (ECJ,

2017). The coalitions achieved their shared objective a month later when the Commission announced the postponement.

Table 1: Consultation Responses from European Civil Society Networks	
ALDA	European Association for Local Democracy
CSE	Civil Society Europe
EDF	European Disability Forum
EMI	European Movement International
ENNHRI	European Network of National Human Rights Institutions
EPD	European Partnership for Democracy
FAFCE	Federation of Catholic Family Associations in Europe
FIDE	Federation for Innovation in Democracy Europe
ILGA Europe	International Lesbian, Gay, Bisexual, Trans and Intersex Association Europe
International IDEA	International Institute for Democracy and Electoral Assistance
IPPF Europe Network	International Planned Parenthood Federation European Network
Philea	Philanthropy Europe Association
TI EU	Transparency International European Union

Notes: Signatories to the joint EPD and CSE coalition responses are not included.

Sources: (EC, 2023a)

Commission Postponement

On 5 July 2023, Commissioner for Justice Didier Reynders sent a letter to CSE affirming that the additional time gained with the delay would be used to conduct an impact assessment (Reynders, 2023). Nevertheless, the CSE coalition maintained its stance that the Defence of Democracy package “risks being weaponised by governments to further restrict the space for civil society” in a publication released on 6 September 2023 (CSE, 2023c). This broad concern over the weaponisation of transparency standards and the stigmatisation of civil society stem from the narratives around foreign influence and the precedents in national policy in and outside the EU. The next section seeks to offer an understanding of these different aspects that identifies the conceptual connections and research gaps that led to the impasse on the Commission’s proposal.

The State of the Art on Foreign Influence

This section discusses some of the core concepts connected to foreign influence. Its objective is to sort out entanglements and identify knowledge gaps that can limit future policy preparation and research. Attention then turns to some of the most cited policy responses aimed at the issue of covert or malign foreign influence into the EU.

Foreign Interference and Influence

The Commission has tended to use the terms *foreign interference* and *foreign influence* interchangeably in its proposal (EC, 2023a). A good test for this is seeing one term stand in for another when a text refers to an earlier document. A consensus around the distinctions between influence and interference, corruption, propaganda, and espionage would allow for policies to be articulated more effectively and research to be conducted more collaboratively. This effort would work best with influence as a neutral term. EU institution documents often refer to civil society as holding an important role in countering disinformation and giving warnings when discussing foreign interference (EP, 2022b). When the focus turns to foreign influence, CSOs have been presented as potential avenues for influence, similar to commercial organisations. It is important to restate that transparent influence can offer important and beneficial perspectives to EU policy conversations especially from allied countries and communities.

The Qatar corruption scandal at the Parliament has been used to raise awareness for the need to counter foreign influence. Nevertheless, corruption and foreign influence are distinct, as concepts and in practice. Influence, as interest representation, is generally a legitimate and legal activity when not covert or malign. This is different from the exchange of funds for favour between EU elected representatives and actors from the Qatari, Moroccan, and Mauritanian governments. Instead, the role that foreign influence can take in facilitating corruption can be seen in the use of Fight Impunity as a source of legitimacy and an avenue for persuasion. Researchers have proposed investigating the legislative footprint of lobbying as a way of looking at the results as well as the sources and practices of covert influence (Mańko, 2022).

Academic and policy researchers have further developed this concept. Korkea-Aho (2022) argues that foreign influence is often defined in relation to a virtue that is being protected, such as the *autonomy* to set a strategic vision, the *integrity* to make

democratic decisions, or the value of *transparency* per se. From this view, the laws of Anglosphere countries have put forward the need to secure integrity, whereas the EU approach focuses more on transparency as a public good in itself. There is also a growing understanding of the relationship between foreign influence and strategic autonomy, where there has been a debate on the degree of openness to third countries the EU should adopt when developing its strategic priorities (Tocci, 2021) (Koeth, 2021). An option for future research, where available data permits, would be to focus on the strategies, objectives, and practices of the influencing state or actor (Solik and Graf, 2023).

Foreign Principals and Agents

Attempts to characterise *foreign principals*, the third country actors using covert influence, has yielded results as diverse as the individual cases available for analysis. Evidence of covert behaviour tends to rely on a few discovered cases rather than wider data (Katzemich, 2022). For instance, data retrieved through the US public registry for foreign influence revealed an Emirati campaign seeking to convince EU policymakers to sanction Qatar (CEO, 2022). In comparison, Saudi efforts to build legitimacy instrumentalised religious channels and exploited acute vulnerabilities in Europe. This was aimed at accusations of their state financing terrorism and calls for accountability from victim groups (CEO, 2019). In both cases, the foreign governments commissioned public relations firms to lobby on their behalf.

There is a need to consider those on the other side of the relationship, the *foreign agent*. The term is usually accepted as a shorthand for an agent acting on behalf of a foreign principal. Critics of the term argue that it risks stigmatising practices that are both legal and ethical under EU and international law (Jones, 2022). The role of these agents can be described as lobbying, interest representation, public affairs, public relations, consulting, advocacy, campaigning, networking, and communications, depending on the circumstances. The organisations engaged in this activity have included dedicated agencies, consultancies, and firms in addition to think tanks, law firms, and civil society organisations. The distinction between commercial and non-commercial lobbying has been made in research and policy (Jones, 2023). However, both state and commercial actors may engage in *astroturfing* and create or pressure non-commercial front organisations. This has led to an understanding that research into influence strategies needs to consider connected networks and financial flows as a whole when characterising the relationship between a potential set of principals and agents (Bentzen, 2020).

National Policy Responses

A search for the approaches to foreign-funded or foreign-directed influence taken by national governments yields a variety of policies that are worth analysing. Most research into these approaches is qualitative and comparative, looking at two or three cases based on shared characteristics to examine patterns and chart effects. One possible strategy for identifying relevant cases is to take the sum of EU publications and CSO responses to generate a list of analogous national policies. These include cases of laws that have passed one stage in the development process, such as acceptance from the government or legislature. For this reason, the case in Bulgaria of an anti-European pro-Russian authoritarian party proposing a bill on the registration of foreign agents was not included, for instance.

Table 2: Analogous National Policies

United States	Foreign Agents Registration Act (FARA)	1938
Russia	Regulation of the Activities of Non-Profit Organisations Performing the Functions of a Foreign Agent	2012
Hungary	Law on the Transparency of Organisations which receive Support from Abroad	2017 - 2021
Australia	Foreign Influence Transparency Scheme Act (FITSA)	2018
Taiwan	Anti-Infiltration Act	2019
Canada	Foreign Influence Registry and Accountability Act (FIRAA)	2022
United Kingdom	Foreign Influence Registration Scheme (FIRS)	2023
Georgia	Law On Transparency of Foreign Influence	2023 - 2023

Notes: Cases that are colour indicated have not been enacted at the time of publication.

Sources: (ALDA, 2023), (CSE, 2023a), (CSE, 2023b), (ENNHRI, 2023), (EDF, 2023), (EMI, 2023), (EPD, 2023), (FAFCE, 2023), (FIDE, 2023), (ILGA Europe, 2023), (International IDEA, 2023), (IPPF Europe Network, 2023), (Philea, 2023), (TI, 2023).

These analogous national policies played a key role in CSO responses to the Defence of Democracy consultation. Their direction can be summarised in three arguments. The first is that the proposed directive could place restrictions on access to foreign funding as in the US (CSE, 2023a). The second is that this category of laws poses a risk of weaponisation by governments within the EU, as in the case of Hungary and Russia (EPD, 2023). A third argument focused on the impact the law would have on the EU's relations with countries on a popular path to democracy when the Commission's proposal "mimics laws the EU itself has opposed elsewhere," notably in Georgia (TI, 2023). The next three subsections evaluate the similarities with the EU case and explores the options for an EU reform based on influence restrictions, transparency registers, and ethical standards.

Restrictions on Foreign Influence

There are three aspects of restrictions on foreign influence in the set of foreign agents legislations that are especially interesting. In the Russian case the requirements are built to be restrictive. An organisation's required registration as a foreign agent can both restrict any participation of foreigners and permits the state to suspend its activities. In the Anglosphere cases, policies enable the gathering of information, investigation of noncompliance, and penalisation of breaches from interest representatives. Transparency advocates have pointed out that most of their information on influence campaigns, from states such as Azerbaijan, China, Qatar, and Russia targeting Europe, stems from these registers in Anglophone countries (CEO, 2023). In the Taiwanese case, the legislation only applies to foreign states engaging in a military conflict or confrontational action against the country (Hung and Hung, 2020). In practice, that restricts the focus to China. None of these cases are especially comparable to current EU legislation or the proposed package, which was presented as harmonising current practices across the EU member states.

Illegitimate influence can perhaps be conceptualised as an economic activity, with the principal needing to choose to invest scarce resources into different influence targets. It could be argued that changes in the relative cost of each target would shift the influencer state's strategy. Research focused on the EU should therefore consider the dynamic effects and international dimension of influence from autocratic and antagonistic states. One idea worth investigating is whether the recent drive for requirements and restrictions on foreign influence in the Anglosphere countries risks encouraging the financing of more illegitimate influence into the EU.

Transparency Registers

Transparency registers can vary significantly depending on their legal, technical, and administrative aspects. Among the EU member states, several operate some form of register. The IIA for the Transparency Register, between the Parliament, Council, and Commission, defines the register's scope as covering interest representation with the "objective of influencing the formulation or implementation of policy or legislation, or the decision-making processes of ... Union institutions, bodies, offices and agencies" (EU, 2021).

Three effects of registers are especially pertinent to the discussions around the Defence of Democracy package. The first is the data it opens to researchers. Information from public registers has been used to supplement investigations into specific cases. For instance, the decision of a firm based in Brussels not to re-register after rule changes to the Transparency Register were seen as an indication of continued Saudi funding (Korkea-Aho, 2022). This data also offers the potential for research into the better picture of influence activities within a given area overall than what can be assembled from cases (You, 2021).

Table 3: National and Regional Transparency Registers in the Europe

Mandatory registration	Austria, Catalonia, France, Germany, Ireland, Lithuania, Poland, Slovenia	Countries and regions with that require registration of interest representatives in specific circumstances.
Voluntary registration	Belgium, Italy, Netherlands, Romania	Countries and regions that incentivise registration of interest representatives.
Informal policy	Croatia, Czechia, Denmark, Finland, Latvia, Spain, Sweden	Countries and regions without rules for interest representatives, with regulation mechanisms and practices set by the sector.
Preparing policy	Bulgaria, Estonia, Malta, Portugal	Countries and regions where legislation on transparency requirements is being prepared by actors in either government, parliament, or both.

Sources: (Bauer et al., 2021)

The second effect is the administrative burden registers pose for organisations. For instance, only 61% of applications for registration in the EU passed an eligibility check (Kotanidis, 2023). This is an under-researched area though the claim that the existing EU standards are unreasonable has appeared in some civil society advocacy (ECF, 2023). There is somewhat of a trend towards a reluctance to register. For instance, the former Commissioner for Administrative Affairs, Audit and Anti-Fraud Siim Kallas publicly addressed a reluctance to register from several think tanks, including Bruegel, Friends of Europe, the Centre for European Policy Studies, and the College of Europe Foundation (Euractiv, 2009).

The third effect, then, is the risk of stigmatization. There is an argument that registries force the hand of organisations engaged in covert influence, either they get better at hiding their funding or they adopt more ethical behaviour (CEO, 2019) (Korkea-Aho, 2022) (Unger, 2023). Some civil society organisations have made the separate claim that the need to register imposes a stigma that may limit an organisation's access to (legitimate) foreign funding and the engagement in genuine advocacy (ECF, 2023). There is a lack of research on whether compliance with transparency standards imparts a stigma. Nevertheless, the Parliament has committed to ensuring "legitimate public scrutiny" in a way that excludes "any abuse of transparency measures to stigmatise particular CSOs" (EP, 2022b).

Ethical Standards

Ethical standards can complement or substitute a register. The current EU Transparency Register is only mandatory for organisations in certain situations, such as those requesting access to the Parliament. Therefore, there is a need to ensure compliance via codes of conduct and rules of procedure from EU actors. For instance, guidelines for Commission and Parliament representatives and staff recommend that meetings only be held with interest representatives who have registered (Kotanidis, 2023). Policy research has broadly backed the need for an integrated approach on transparency, accountability, and ethics, together with the establishment of an independent EU ethics body (Vidačak and Šelo Šabić, 2023). The details of these reforms are discussed in the subsequent section.

An Analysis of the Prospects for Reforms

This section considers the options for reforming EU transparency standards. It approaches this with an analysis of the constraints and risks of the Defence for Democracy package's current course and offers arguments focused on enhancing the

proposal so that it can achieve its overall objective of addressing covert or malign foreign influence into the EU.

Constraints on Policy Implementation

Any immediate plans for the implementation of a revised proposal will face constraints across its time, legal, and knowledge dimensions. The key events that set these constraints are the preparation of the impact assessment, the period of the European elections, and the issue of choosing a legal strategy that passes the political negotiations within and with the Parliament and Council. The Parliament has been more open to transparency requirements compared to the Commission in the past. The three institutions took four years to negotiate the Agreement on a Mandatory Transparency Register (Ammann, 2021). Therefore, a revised proposal would benefit from a realistic timeframe.

Impact Assessment

The impact assessment sets a time constraint on the implementation of the Defence of Democracy package while potentially bridging knowledge gaps. With many of the responses to the Commission's consultation being focused on advocacy, further consultation of affected and qualified organisations and communities would be beneficial. The aim should be to gather actionable recommendations for the steps after the impact assessment (TI, 2023). There are additional options, such as funding independent research projects and organising participatory focus groups to discuss specific user, legal, and technical aspects of the transparency standards proposed.

European Elections

The elections to the European Parliament from 6 to 9 June 2024 were cited in the Commission's call for evidence for the Defence of Democracy package. This could be because proponents of the package intended the proposal to pass the implementation stage before the elections. However, this is no longer feasible. The preparation of an impact assessment may take between six to twelve months; with good reasons not to rush this process (Collovà, 2015) (EC, 2021). Whichever timeframe the Commission opts for; the current circumstances prescribe dual objectives. On one side, there is a need to carry out an effective impact assessment that bridges knowledge gaps. On the other, there is the need to build a consensus around support so that the response to foreign influence via transparency standards remains on the agenda well into the next 5 year period after the elections.

European Treaties

The Commission's legal strategy for the proposed directive rested on the need to harmonise the different transparency requirements among member states via Article 114 TFEU (EC, 2023a). However, there are alternative strategies depending on the reform proposed. A related approach broadens the scope to all interest representation, as defined in the IIA for the Transparency Register, while keeping the same legal basis. An alternative approach keeps the focus on the Transparency Register and recommends amending its legal basis from the voluntary non-legislative agreement based on Article 295 TFEU to a mandatory legislative act based on Article 352 TFEU (Kotanidis, 2023). This procedure would require, a proposal from the Commission, the ascent of the Parliament, and unanimous support in the Council. In terms of timing, this register-oriented approach benefits from a provision in the IIA that the agreement is to be reviewed in 2025 (EU, 2021). Any legal strategy would need to ensure respect for the EU fundamental rights and the precedent set by the ECJ.

Potential for Misuse and Minimisation

The risks of the package being weaponised or weakened are recurring ideas from the previous sections. At this early stage in the package's development and implementation, the former is easier to evaluate due to CSO warnings that member states could weaponise the proposed directive. These concerns were mainly directed at Hungary, though other countries also were mentioned such as Poland for claims that the Lex Tusk is inconsistent with EU fundamental rights (EP, 2023). The kinds of weaponisation discussed can be broken down into risk stemming from the stigmatisation of registrants and gathering of information.

The CSO feedback the Commission received suggests that there are different views on whether the need to register in a public database carries a stigma. There is also a question as to whether this depends on the policy communication and technical details of the register. The Commission's objective then could be to find options that preserve the benefits of the database while reducing reasons for stigmatisation. For instance, the existing Transparency Register can be strengthened rather than creating a separate register only for organisations receiving foreign funding or direction (Jones, 2023) (TI, 2023).

The idea that information gathered and published in an EU public registry can be used to prosecute registrants and put administrative burdens on them by an EU

member state government needs to be discussed in more detail. Some design aspects of the could mitigate this risk. For instance, the current Transparency Register is binding only to the three EU institutions, while conditional for interest groups, who only face the need for compliance when trying to get access (Fyhr, 2021). Another option is for financial reporting requirements to depend on reliable indicators for the organisation's capacity. A related concern is that the information on foreign influence gathered may be used to discredit the causes of CSOs, especially those representing marginalised groups. When handling this argument, it is important to consider that persons and communities that are marginalised tend also to be the targets of the content of malign foreign influence and disinformation (Strand *et al.*, 2021).

The concern that the proposed directive will be weakened has raised comparatively little concern. However, it is in fact the more plausible risk, given that the proposal has already been delayed due to pressure. Broadly, there are kinds of weakening to watch include the preparation of the impact assessment, public reactions during the design phase, and political negotiations in the implementation phase. In the first case, an impact assessment that drives, concentrates, and communicates an understanding of the grey area that is covert and malign foreign influence, sets a foundation that strengthens the Commission's agenda. Insufficient support at this stage is it a weakness.

Since the delay, Věra Jourová and Didier Reynders have held meetings with advisory bodies and civil society networks. The Commission should complement this with consultations of practitioners, researchers and advocates that focus on transparency policy, targeted communities, and the technical aspect of use, compliance, and investigation based around public registers. Since there are perspectives to be gained from across the Union that should be encouraged. The Commission would benefit from feedback that addresses the policy priority with concrete recommendations. This would require more transparent meetings and informative communication from the EU institutions.

The European election will also shape the political environment for a revised proposal for the Defence of Democracy package. There is the prospect that civil society will look to campaign around common issues, candidates will look to engage constituencies, and priorities will be rearranged. If the Commission decides to back augmenting rather than harmonising current standards via Article 352 TFEU, then the proposal will need to the unanimous support of the Council, giving any one member state a veto. The Commission would benefit from presenting foreign interference coming from antagonistic states as an issue of common security instead of political competition.

An Argument for Integrating Reforms

Many aspects of these concerns are interconnected. The risk that the proposal will be weakened stems in part from the perception among stakeholders that it may be weaponised. On 2 June 2022, Parliament President Roberta Metsola announced a ban on the entry of Russian diplomatic, commercial, civil actors and interest representatives to the Parliament (Petre, 2022). The move was soon followed at the Commission and Council. Any reform of the EU's transparency standards needs to be considered in relation to the rule of law, civil society, fundamental rights, democracy promotion, foreign affairs, enlargement, and corruption. The cause of addressing foreign influence from antagonistic states needs the success of internal reforms that protect citizens, civil society, and foreign allies from autocratic governments inside the Union.

CONCLUSION

On 13 September 2023, Ursula von der Leyen delivered a State of the Union address that strengthened the commitment to a geopolitical union that fights for Europe's values and allies (EC, 2023b). The concepts of interference and influence seemed, in comparison, to have lost their place of prominence from the previous year. A Union that strives to protect its citizens, institutions, economy, and civil society from foreign influence that comes via covert means, with malign intentions, or from antagonistic states, benefits from policies that address its transparency standards. For this reason, this paper finds that the Commission should continue the conversation on reforms.

The postponement of the Defence of Democracy package enables the Commission to set concrete objectives for a revised proposal. In this immediate phase, proponents of the reform should address knowledge gaps with research, engage in meetings that are accessible to the public, and share their priorities as they are developed. The contributors to this conversation should build a consensus around the importance of addressing foreign influence. Their focus would be best put on research gaps for the period of the impact assessment and policy gaps ahead of the European elections.

The avenue that appears best suited for the achievement of the Commission's core aims is one that strengthens the interinstitutional Transparency Register and complements it with an independent Ethics Authority. This would allow the EU to set the terms of proper engagement with its elected representatives, functionaries, and staff from interest groups. The necessity and scrutiny of compliance would then start inside the institutions while researchers and activists would be able to better review the integrity of their representatives.

The success of this approach would depend in part on a communication effort that counters the idea that registration is a sign of suspicion and an implementation strategy that adapts to the different capacities and realities of political, civil, and commercial organisations. The reform must also protect persons sharing our values and from targeted communities, both inside and outside the Union. This will entail integrating the reform of transparency standards with a reform to the EU's internal and foreign policy. The threat of autocratic and antagonistic states and governments is itself a fact that necessitates a dedicated policy response across many policy areas. The EU cannot continue to press pause on its reforms.

POLICY RECOMMENDATIONS

1. Implement an impact assessment to set the policy agenda

The Commission should invest the time and resources needed for an impact assessment that identifies and addresses knowledge, research, and policy gaps on foreign influence.

2. Set transparency standards as a policy priority

The Commission, Parliament, and Council should set the foundations, ahead of the European elections in 2024, for a joint reform of the Union's transparency and ethics standards.

3. Reform the Transparency Register

The interinstitutional Transparency Register should be reviewed and revised in 2025. The reforms should strengthen formal requirements to provide information on the institutions' representatives and functionaries. The register should have the personnel and technical capacity to advise on compliance, investigate cases of noncompliance, and offer the public accessible information. The incentives for interest representatives to comply should be strengthened and inconsistencies should be addressed.

4. Create an Ethics Authority

An interinstitutional and independent Ethics Authority should be created to set common standards for conduct, reporting, and sanction of the representatives and functionaries of the institutions. This should complement a Transparency Register that gathers all integrity information for each person or organisation at one point.

5. Review the Union's internal and foreign policy

The reforms of the Transparency Register and the creation of an Ethics Authority should be informed by the new realities for the EU inside and outside its frontiers and integrated into a broader reform of the EU's foreign policy. The Parliament should continue the work of its special committee on foreign interference.

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