



## Feedback from the European Center for Not-for-Profit Law Stichting on the European Commission's Call for Evidence for the Defence of Democracy Package Initiative

The European Commission is [calling for evidence](#) on its Defence of Democracy initiative which proposes amongst others a legal instrument to introduce “common transparency and accountability standards for interest representation services directed or paid for from outside the EU.” The Consultation Document does not explain which entities will be targeted nor how. According to media reports, the Directive will target both profit and non-profit organisations (NPOs), including foundations, associations, consultancies, academic institutions, etc. Reportedly, they will be obliged to disclose any funding coming from non-EU countries as “interest representation”. If accurate, we are deeply concerned about the vagueness of the concept of the “interest representation” and how it may be applied to NPOs, given that they are not and should not be considered to “represent” the interest of funders. This is especially worrying as the Commission has decided **not to conduct a thorough impact assessment** that would help understand the potential impact of the same requirements for different types of entities and consider the proportionality and necessity of the measures it will put forward.

Any obligations to disclose funding (in the form of registration, declaration, labelling, publication) imposed on NPOs directly or indirectly constitutes an **interference with the right to freedom of association** protected by Article 12 of the EU Charter of Fundamental Rights. Such measures also interfere with right to privacy and right to be free from-discrimination. As such, the interference must be clearly **established by law (provide legal certainty), fulfil a legitimate aim and be strictly necessary and proportionate** in that democratic society it wishes to protect. This was also acknowledged by the ECJ in *Commission v Hungary (Transparency of associations)* (C-78/18).

The Consultation document does not define the term “interest representation services” directed or paid for from outside the EU. Hence it is hard to understand why NPOs might be included. How will the Member States assess whether an NPO is representing certain interests of foreign entities? Other EU directives (e.g., on Anti-Money-Laundering) overbroad or vague definitions increases discretionary application by EU Member States and defeats purpose to harmonise the fragmented internal market of interest service provisions. The Commission needs to put forward such definition for public consultation, justify why it proposes NPOs to be included and assess the potential impact of such inclusion. The proposal, as currently described if applied to NPOs could affect NPO ability to seek and receive resources (due to possible stigmatisation as “foreign interest representative”), could disrupt NPO lawful activities (funders not wanting negative perception) or unduly restrict the free movement of capital.



If NPOs are (to full or some extent) included in the scope of this Directive, it is crucial for the Commission to justify its **necessity and proportionality** and to do so in line with EU Law and human rights standards. The OSCE-ODIHR/Venice Commission Guidelines on Freedom of Association (2014) provide that, “*any control imposed by the state on an association receiving foreign resources should not be unreasonable, overly intrusive or disruptive of lawful activities* (para 221). The [European Parliament](#) has emphasised that foreign interference measures should not have the impact of restricting civil space, save to the extent necessary and proportionate to achieving the aim of reducing foreign interference, and that any requirements imposed to guard against foreign influence should not stigmatise or be unduly onerous for foreign-funded organisations. (EP, January 2023).

We **urge the Commission**, in consultation with NPOs and the Fundamental Rights Agency to conduct a formal impact assessment to 1) justify the strict necessity of NPOs to be included in the definition of “interest representation services directed or paid for from outside the EU”; 2) assess if the level of interference imposed is strictly necessary and proportionate, 3) identify other measures (including self-regulatory) that may be promoted to fulfil similar aims in less intrusive manner.

The EU has frequently and unequivocally expressed the need to support, protect and promote civil society and civic space, e.g., “*by continued efforts to foster and protect democracy, the rule of law, and fundamental rights across all relevant policy areas, including by ensuring coherence between the Union’s approach to protecting human rights defenders externally and internally*” ([EU Council](#), March 2023). By adopting the above-mentioned recommendations, the Commission will help ensure policy coherence at home and abroad. Ultimately, it will help reach its own aim to proper functioning of the internal market and remain true to its values.

For impact of foreign funding measures and European standards: see <https://ecnl.org/publications/enabling-flow-donations>