

# EU FOREIGN INTERFERENCE LAW: IS CIVIL SOCIETY AT RISK?

## WHY WE ARE AGAINST AN EU FARA LAW

### embargoed statement for endorsement (deadline 24 April )

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Civil society plays an essential role in vibrant, democratic societies. Civil society organisations (including philanthropy) are key actors in addressing different societal issues and in moving the green, digital and social agendas forward as well as defending rule of law, democracy and fundamental rights. Yet, while an enabling space for civil society is essential, experience across Europe shows how fragile that space can be. Deliberate, or inadvertent steps, can put civil society at risk and destroy the very essence of an essential democratic pillar.

The European Union has played an important role in standing up for civil society, setting standards and calling out threats to civic space. In May 2023 the European Commission will propose a new [Defence of Democracy Package](#) –including welcome proposals to further enhance democratic participation and protect civic space. Yet, some elements of that package threaten to undermine existing and future efforts.

#### A New Legal Instrument

A [call for evidence](#) makes the case for a new ‘*legal instrument (directive) to introduce common transparency and accountability standards for interest representation services directed or paid for from outside the EU, to contribute to the proper functioning of the internal market, and to protect the EU democratic sphere from covert outside interference*’. While focusing on transparency and accountability, this proposal appears to mirror so-called ‘foreign influence legislation’ globally. These laws have significantly curtailed the space for independent civil society and been deployed as a tool to silence critical voices.

Such a proposal seems to echo some debates in the European Parliament and to arguments put forth by some governments to justify harsh restrictions on foreign funding and ‘foreign agents’. This approach is very risky as it can lead to significant restrictions on civic space in the European Union and globally.

As civil society organisations, with extensive experience working on civic freedoms, we call on the European Commission to observe **three key factors** ahead of any proposal:

#### 1. The Requirement for a Fundamental Rights Impact Assessment

The European Union requires an [impact assessment](#) ahead of any legislation that is expected to have significant economic, social or environmental impacts. In addition the [strategy on the effective implementation of the Charter of Fundamental Rights](#) requires that the rights and principles enshrined in the Charter are correctly taken into account at every step of the EU legislative process. This includes a checklist that identifies what fundamental rights are affected and whether any limitation of those rights would be necessary and proportionate to achieve the desired aim.

The call for evidence indicates that no impact assessment is planned. Based on the EU’s own requirements, and the experience of the detrimental fundamental rights impact of similar laws, it is essential that an impact assessment be carried out ahead of any proposal on the basis of EU Treaties, the Charter and in compliance with international human rights.

The Better Regulation framework is also aimed at reducing unnecessary red tape and ensuring subsidiarity and proportionality. These principles must be respected when evaluating the need for legislation.

## 2. Clarity and Purpose

The call for evidence fails to identify the specific need that new legislation would address and why an EU directive is a necessary or appropriate instrument. It also does not define *'interest representation services'* or *'covert outside interference'*.

In a contentious environment, where several EU member states have already adopted or proposed legislation and policy that purposely or unintentionally restrict civic space, we need a risk based approach and a careful assessment of unintended consequences and clear wording. A lack of legal clarity and purpose risks creating legislation that firstly fails to address the perceived risk and secondly opens the space for abuse and disproportionate and discriminatory restrictions on civil society organisations.

## 3. Fundamental Rights Obligations

From a legal perspective and as part of the Charter of Fundamental Rights, the European Union must comply with, and actively promote, the rights that underpin vibrant and healthy democracies. Three references are of particular note:

- Last month the European Council adopted, for the first time, [Council Conclusions](#) on civic space, echoing the [UN Declaration on Human Rights Defenders](#) and stating that *'the freedom to seek, receive and use...resources is an integral part of the right to freedom of association'*.
- In 2020 the Court of Justice of the European Union ruled in the precedent setting case of the [European Commission v Hungary](#) (C-78/18) that freedom of association, enshrined in Article 12(1) of the Charter, *'constitutes one of the essential bases of a democratic and pluralist society'*. It identified the right to access funding as a substantive element of freedom of association and recognised the chilling effect of such laws, that can foster a climate of distrust in the work of associations. In sum the judgment found that Hungary had introduced discriminatory, unjustified and unnecessary restrictions on foreign donations to civil society.
- The [OSCE/Venice Commission Guidelines on Freedom of Association](#) state that *'the right to freedom of association would be deprived of meaning if groups wanting to associate did not have the ability to access resources of different types, including financial, in-kind, material and human resources, and from different sources, including public or private, domestic, foreign or international.'*

These three elements point strongly towards the need for exceptionally careful consideration and a formal impact assessment – to determine whether such a legislative instrument is a necessary and proportionate response, to what is currently a very undefined aim.

The signatories of this statement are worried that the proposal for a directive on covert foreign interference risks inconsistency with international and EU human rights law, and in particular the exercise of civic freedoms. We demand to the European Commission that:

- on the basis of the information published, the proposal for “a legal instrument introducing common transparency and accountability standards for interest representation services directed or paid for from outside the EU” should not be pursued;
- a fundamental rights impact assessment should be considered ahead of any legislative proposal; and

- an open and structured dialogue must be ensured with all stakeholders, in particular all proposals or review of legislation affecting civil society must be prepared in close dialogue with civil society.

Signatories: