

Establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries

2023/0463(COD) - 12/12/2023 - Legislative proposal

PURPOSE: to introduce harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the **provision of interest representation in the Union** is a growing and increasingly cross-border activity. Interest representation activities are regulated in different ways in the Member States. Interest representation is not only carried out on behalf of domestic stakeholders but increasingly also by third countries.

When presented transparently, ideas from third countries can contribute positively to public debate and are a welcome part of international engagement. However, when carried out covertly, interest representation on behalf of third countries is prone to being used as a channel for interference in Union democracies.

To the extent that it is normally provided against remuneration, interest representation, including interest representation provided to third countries, constitutes a service within the meaning of Article 57 of the Treaty on the Functioning of the European Union ('TFEU').

Member States' measures regulating transparency of interest representation activities are very divergent. Some Member States have established mandatory registers aiming, in particular, at ensuring transparency. Others have established voluntary registers, whereas some Member States have no registers for interest representation. There are also considerable variations regarding the granularity of the information provided for transparency purposes, including the type of information required, for instance about the interests represented or about the client. The legislative framework is therefore highly **fragmented** across the Union.

CONTENT: this proposed Directive lays down **harmonised requirements** in relation to economic activities of interest representation carried out on behalf of a third country entity, with a view to improving the functioning of the internal market by achieving a common level of transparency across the Union.

The purpose of this Directive is to achieve that transparency in such a manner as to avoid creating a climate of distrust apt to deter natural or legal persons from Member States or third countries from engaging with or providing financial support to entities carrying out interest representation on behalf of a third country entity.

By providing for **full harmonisation**, the proposed Directive would provide for proportionate harmonised transparency requirements and a comprehensive system of safeguards, including effective judicial review, a harmonised sanction regime limited to administrative fines, independent supervisory authorities,

obligations to prevent stigmatisation, and in particular the need to ensure that no adverse consequences arise from being subject to the transparency rules.

Transparency and registration obligations

The proposal provides for a possibility to **identify third country entities** on whose behalf interest representation service is carried out, a provision on subcontracting, an obligation to keep relevant records, and the obligation on entities not established in the Union to appoint a legal representative.

The proposal:

- provides for the setting up and maintaining of the national registers to be used for registrations under the Directive;
- sets out rules on registration, including the information to be provided. In this context, registered entities are to be provided a unique European Interest Representation Number ('EIRN') and the competent authorities in other Member States concerned are to be notified of the registration;
- establishes which parts of the information provided by registered entities are to be publicly available, as well as a mechanism allowing registered entities to request that all or part of the information provided is not made publicly available where there are overriding legitimate interests preventing publication;
- establishes a yearly publication of data by Member States and the Commission;
- establishes the obligation that registered entities as well as their subcontractors must provide their EIRN when in direct contact with public officials.

Supervision and enforcement rules

Member States should designate: (i) one or more authorities or bodies in charge of setting up and maintaining the national registers; (ii) one or more supervisory authorities.

Each supervisory authority will have access to the national registers under its responsibility for the purpose of supervising the compliance with and enforcing the obligations set out in this Directive as well as exchanging information with the supervisory authorities in other Member States and the Commission, where authorised to do so under this Directive.

Member States will ensure that the supervisory authority is independent in the exercise of its functions.

In addition, the proposal:

- lays down the conditions for information requests by supervisory authorities and the accompanying safeguards, including the applicable thresholds;
- lays down rules on cross-border cooperation as well as rules on cross-border information requests between supervisory authorities;
- sets up an advisory group of representatives of the supervisory authorities assisting the Commission in certain tasks;
- contains a prohibition of activities intended to circumvent obligations in the Directive and obliges Member States to ensure the applicability of Directive (EU) 2019/1937 to the reporting of breaches of the Directive and the protection of persons reporting such breaches;

- provides that Member States are to lay down rules on sanctions for infringements of national provisions adopted to transpose certain provisions of the Directive.