



Brussels, 03 May 2023

Dear President von der Leyen,

We, Members of the European Parliament, are writing to you to express our grave concern regarding the proposal for a Directive on common transparency and accountability standards for interest representation services directed or paid for from outside the EU. The Directive is part of the announced “Defence of Democracy” Package.

According to our information, this Directive could disproportionately impact the right to freedom of association, and erode the already shrunk civic space in the EU. **We therefore strongly appeal to you to reconsider or re-evaluate the draft, also by means of impact assessment.**

It is our understanding that the planned Directive would subject civil society organisations receiving funding from non-EU sources to a number of registration and reporting obligations. We are concerned that these obligations will impose **disproportionate burdens for civil society organisations (CSOs) and violate the Venice Commission/OSCE Guidelines on Freedom of Association.** The guidelines establish that the right to freedom of association is based on the principle for CSOs to seek, receive and use resources from different sources, including domestic, foreign or international, to pursue their activities. Any reporting or transparency obligations imposed on organisations, or any restrictions upon the right to seek resources, **must be based on an assessment on whether the interference in the exercise of the right to freedom of association constitutes the least intrusive measure of all means that could have been adopted.**¹ Furthermore, newly imposed reporting and disclosure requirements must be accompanied by a specific analysis of a risk posed by certain organisations that would justify such a measure, aimed at clarifying whether such measures are necessary to avert a real, and not only a hypothetical danger.²

In our resolution on civic space from 2022, we have warned about damaging civic space through policies restricting CSOs’ access to sustainable funding.³ We are concerned that **the intended Directive will leave a great margin of appreciation for Member States enabling them to subject CSOs to**

¹ Venice Commission Report on Funding of Associations CDL-AD(2019)002, para 110.

² Venice Commission Joint Opinion CDL-AD(2018)006, para 36.

³ European Parliament resolution “Shrinking space for civil society in Europe” (2021/2103(INI)), adopted on 8 March 2022, Art. 3.

fatally restrictive requirements and obligations. It was your own College that has strongly condemned similar initiatives by national governments in the past. The procedure against Hungary for the adoption of Act LXXVI of 2017 on the Transparency of Organisations Supported from Abroad (“LexNGO 2017”) is emblematic for your stance on the issue. The ruling of the European Court of Justice stated that the right to freedom of association and thus EU law is violated if systematic obligations on CSOs are rendering significantly more difficult the action and the operation of the organisations subject to them.⁴ A similar attempt to pass a so-called “Foreign Agent Law”, subjecting CSOs to restrictive disclosure and reporting obligations has taken place in Bulgaria.⁵

We are gravely concerned that **the legislation now proposed by you will fuel illiberal narratives against CSOs and NGOs throughout the EU**, particularly against organisations relying on foreign funding for their operations. We strongly warn against the abusive and chilling effect of such legislation and call on the Commission to also take account of the Council Conclusions on civic space, which stated that no unnecessary or arbitrary restrictions should be adopted, “such as registration requirements and tax regimes that specifically target the civic space in an unfavourable manner.”⁶

Against this background we are stunned to see that the call for evidence of the “Defence of Democracy” package announced that no impact assessment is foreseen for the instruments of the initiative. Given the possible detrimental effects the intended Directive on transparency and accountability standards could have on the fundamental right to freedom of association, **we strongly urge you to conduct a fully-fledged impact assessment with particular regard to the necessity and proportionality of the intended or unintended limitations on fundamental rights of the proposed measure**, as foreseen by the Commission Strategy to strengthen the application of the Charter of Fundamental Rights in the EU, as well as the Commission’s Better Regulation Agenda.

We are happy to discuss our concerns with You or respective Commissioners.

Kind regards,

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⁴ Judgement of 18 June 2020, European Commission v Hungary, C-78/18, ECLI:EU:C:2020:476, paras 115 - 119.

⁵ Civic Space Watch: “Bulgaria: Bill on the registration of foreign agents undermines civic space”, 10 November 2022, available at: <https://civicspacewatch.eu/bulgaria-bill-on-the-registration-of-foreign-agents-undermines-civic-space/> (last accessed on 21 April 2023).

⁶ Council Conclusions on the application of the EU Charter of Fundamental Rights; The role of the civic space in protecting and promoting fundamental rights in the EU, adopted on 10 March 2023, para 13.

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