

# EU Foreign Interference Law: Is Civil Society at Risk?

## *Why we are against an EU FARA law*

Civil Society Europe is bringing together 230 civil society organisations from across Europe to express concern and opposition to a proposed ‘foreign interference’ directive which would create a register of Foreign Funded organisations. This legislation could have unintended negative consequences, hindering CSOs’ ability to fulfil their role as defenders of democracy in Europe and beyond. It will also limit the EU’s capacity to support civil society at risk and human rights defenders globally.

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 paid for or directed 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’ while also emboldening repressive leaders and undercutting the EU’s credibility to speak out about restrictive laws in non-EU countries. 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.

Civil society has been a strong and consistent supporter of transparency reforms and continues to welcome any initiative that builds upon transparency while preserving space for the activities of independent civil society.

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 judgement 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 underline the importance of the EC upholding and being consistent with 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.

## **ENDORSEMENTS**

### **European and International Civil Society Organisations**

Civil Society Europe

Transparency International EU

European Civic Forum

CONCORD Europe

Human Rights Watch

Philea - Philanthropy Europe Association

Open Society Europe and Central Asia

Amnesty International European Institutions Office

European Partnership for Democracy

European Environmental Bureau

Caritas Europa

ALDA - Association for Local Democracy in Europe

Alliance 2015

Civil Liberties Union for Europe

Corporate Europe Observatory (CEO)

ILGA-Europe

ACT Alliance EU

CARE International

Centre for European Volunteering

European Center for Not-for-Profit Law

Eurochild

European Youth Forum

Lifelong Learning Platform

Front Line Defenders

International Commission of Jurists

Social Platform

JEF Europe

FIDH (International Federation for Human Rights), within the framework of the Observatory for the Protection of Human Rights Defenders

Solidar

Balkan Civil Society Development Network

Citizens Take Over Europe

Democracy International

Democracy Reporting International

ECIT Foundation on European citizenship

European Students' Union (ESU)

The Good Lobby

European Council on Refugees and Exiles (ECRE)

European Network on Religion and Belief

Friends of the Earth

Free Press Unlimited

European Alternatives

Human Rights House Foundation

Human Security Collective

Access Info Europe

Civil Rights Defenders

Coalition For Women In Journalism

Araminta

International Partnership for Human Rights

International Planned Parenthood Federation, European Network

La Strada International

Eurogroup for Animals

Lobby Control

New Europeans

PICUM Platform for International Cooperation on Undocumented Migrants

Protection International

Terre des Hommes International Federation

World Organisation Against Torture (OMCT), within the framework of the Observatory for the Protection of Human Rights Defenders

RECLAIM

Volonteuropé

WAVE Network (Women Against Violence Europe)

## **National Organisations**

Academia Cidadã, Portugal

ACCEPT Association, Romania

ADRA Croatia

ADRA Europe

Advocates Abroad

ADDP - Association Défense de la Démocratie en Pologne

African Initiative of Women human rights Defenders

Aktionsgemeinschaft Solidarische Welt e.V.

Arci - Associazione Ricreativa Culturale Italiana

Asociación Española de Fundaciones

Association for Civil Society Development SMART, Croatia

Association Défense de la Démocratie en Pologne

Association for Legal Intervention (Stowarzyszenie Interwencji Prawnej), Poland

BBE National Network for Civil Society, Germany

Belarusian Youth Hub Association

Brot für die Welt, Germany

Bulgarian Center for Not-for-Profit Law

Bulgarian Institute for Legal Initiatives Foundation

Bulgarian Helsinki Committee

Calla - Sdružení pro záchranu prostředí - Association for Saving the Environment, Czechia

Centar za promociju civilnog drustva (CPCD) - Centre for Promotion of Civil Society, Bosnia  
çavaria, Belgium

Carpathian Foundation Hungary

Centar za mir, nenasilje i ljudska prava - Osije, Croatia

Centar za promociju civilnog drustva (CPCD), Bosnia

Center for Public Innovation, Romania

Centre for Social and Gender Research "New Life", Ukraine

Centre for Peace Studies, Croatia

Center for Public Innovation, Romania

CESI - Center for Education, Counselling and Research, Croatia

Česká rada dětí a mládeže (Czech council of Children and Youth)

Citizens Network Watchdog Poland

Cives Foundation, Liga Española de la Educación

Civic Alliance-Latvia

Civic Initiatives, Serbia



Civic Radauti Association, Romania

CIVICA Association, Romania

Civil Rights Project Sisak, Croatia

Civil Society Development Foundation, Poland

Civil Society Development Foundation, Romania

Clean Air Action Group

CNVOS Slovenia

Collegium Artium

Comhlámh, Ireland

Committee on the Administration of Justice (CAJ, Northern Ireland)

Committee for the Defence of Democracy (KOD), Poland

Coordination SUD, coordination nationale des ONG françaises de solidarité Internationale

CROSOL - Croatian Platform for International Citizen Solidarity

Czech Forum for Development Cooperation

DEMAS - Association for Democracy Assistance and Human Rights, Czechia

Diakonia, Sweden

DKolektiv - organisation for social development

ECPI Euroregional Center for Public Initiatives

Education Human Rights House Chernihiv

Education in Action

E\*LC Eurocentralasian Lesbian Community

European Movement Italy

EUROSOLAR, Czechia

Federation for Education Initiatives

FILIA Center, Romania

FINGO - Finnish Development NGOs

Fundacja Akceptacja, Poland

Fundacja Dajemy Dzieciom Siłę (Empowering Children Foundation), Poland

Fundacja Edukacji Zdrowotnej Lepsze Jutro, Poland

Fundacja My Pacjenci, Poland

Fundacja Ośrodka KARTA, Poland

Fundacja Phan Bde, Poland

Fundacja Dajemy Dzieciom Siłę (Empowering Children Foundation), Poland

Fundacja Edukacji Zdrowotnej Lepsze Jutro (Better Tomorrow Foundation for Health Education), Poland

Fundacja Ośrodka KARTA, Poland

Fundacja Pole Dialogu - Field of Dialogue Foundation, Poland

Fundacja Polksiedzioci, Poland

Fundacja Szkoła z Klasą (School with Class Foundation), Poland

Fundacja Sztetl Mszana Dolna, Poland

Fundacja Sztuki, Przygody i Przyjemności ARTS, Poland

Fundacja trzeci - Third Foundation, Poland

Fundacja TVN, Poland

Fundacja Wiedzy i Dialogu Społecznego AGERE AUDE, Poland

Fundacja Wolności - Freedom Foundation, Poland

Funky Citizens, Romania

GENTIUM, Spain

German Fundraising Association

Germanwatch

GLAS Bulgaria

Glopolis, Czech Republic NGO Platform

Greek Forum Of Refugees

Green REV Institute

Greenways Poland Association

Háttér Society, Hungary

Heks/Eper Bread for All, Switzerland

Hellenic League for Human Rights

Help - Hilfe zur Selbsthilfe e.V., Germany

Helsinki Foundation for Human Rights, Poland

HESTIA - Centrum pro dobrovolnictví, Czechia

Human Rights House Zagreb

Hungarian Civil Liberties Union

Hungarian Helsinki Committee

Independent Social Ecological Movement - NESEHNUTÍ, Czechia

Information Society Development Foundation, Poland

Initiative for Development and Cooperation, Serbia

Inklusive House BELL, Croatia

Instrat Foundation, Poland

International Youth Association TIP, Georgia

Iskorak, Croatia

Juniper Foundation

Kampania Przeciw Homofobii -Campaign Against Homophobia, Poland

Klon/Jawor Association, Poland

Latvian Platform for Development Cooperation

Legebrita, Slovenia

Leroy Merlin Foundation, Poland

LDH (Ligue des droits de l'Homme), France

LGBT Komiteen, Denmark

LGBTI Organisation Deystvie

Ligue de l'enseignement, Belgium

Ligue des droits humains (Belgium)

Local Democracy Agency Sisak, Croatia

Maecenata Foundation, Germany

Mazovia Federation, Poland

Mreža mladih Hrvatske, Croatia

#MyBrainMyChoice Initiative, Germany

National Federation of Polish NGOs (OFOP)

National LGBT\* Organisation LGL, Italy

National NGO Coalition Lithuania

National Volunteer Association, Czechia

Netherlands Helsinki Committee

Network of Estonian Non-Governmental Organisations

NGO BE ACTIVE 16

Norwegian Helsinki Committee

Novact - International Institute for Nonviolent Action

Nyt Europa, Denmark

ÖH - Austrian Students' Union

Ökotárs - Hungarian Environmental Partnership

Foundation Okraslovaci Spolek Celakovicky, Czech Republic

Open Estonia Foundation

Open Lithuania Foundation

Open Republic - Association against Anti-Semitism and  
Xenophobia

Open Society Fund Prague

Otevřená společnost - Open Society, Czechia

Panoptykon Foundation, Poland

Partin, Netherlands

Partners Albania for Change and Development

Peace Institute Ljubljana, Slovenia

PILnet

Platform for Social Housing, Czechia

Polish Donors Forum

Polska Fundacja im Roberta Schumana

Power of Humanity Foundation (Emberség Erejével), Hungary

Projekt: Polska

Resource Center for Public Participation

RFSL, Sweden

Rural Development Foundation, Poland

SMES-Europa - Mental Health and Social Exclusion

Society for All, z.s. , Czech Republic

SODI - Solidaritätsdienst International e.V.

Spiralis, Czech Republic

ŠRVŠ, Slovakia

Stefan Batory Foundation, Poland

Stiftung Zukunftsfähigkeit, Germany

Stowarzyszenie Kłodzka Wstęga Sudetów - Lokalna Grupa Działania, Poland

Terra Hub Croatia

Terre des Hommes Germany

The Field of Dialogue Foundation, Poland

The Good Lobby Italia

The Irish Council for Civil Liberties

The Wheel, Ireland

The Wiktor Osiatyński Archive, Poland

Transparency International Czech Republic

Transparency International Nederland

UEF Hungary

Volies, Spain

Voluntare, Spain

Vouliwatch, Greece

We are Europe!

Xnet, Spain

Ženska udruga 'IZVOR', Croatia