OECD Public Governance Reviews

Strengthening the Transparency and Integrity of Foreign Influence Activities in France

A TOOL FOR TACKLING FOREIGN INTERFERENCE RISKS

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Foreword

Strengthening the resilience of democracies against risks of foreign interference has become a priority for many OECD Member countries. While these risks are not new and have long been addressed by the intelligence community, globalisation, the rise of digital technology and more open and participatory approaches to governance have greatly increased the possibilities for interference and destabilisation of political systems. Democracies are particularly vulnerable because of their greater openness and transparency. In recent years, numerous cases of interference illustrate these trends, including electoral interference, disinformation campaigns, political financing and concealed lobbying activities.

Given the multi-faceted and co-ordinated nature of this threat, there are a number of measures governments can adopt to counter it. France already has a solid legal and institutional framework for dealing with the risks of foreign interference from a variety of angles. However, as some recent parliamentary reports have highlighted, this framework still needs to be consolidated. Among the priorities for reform identified in these reports are improving transparency on the links between natural or legal persons operating in the public arena and carrying out influence activities on behalf of foreign state interests and imposing tighter controls on public-private mobilities.

Under its Reinforcing Democracy Initiative, the OECD is assisting the High Authority for transparency in public life (*Haute Autorité pour la transparence de la vie publique – HATVP*) in reflection on how to strengthen the transparency and integrity of foreign influence activities. This report identifies concrete actions, adapted to the French context, to ensure foreign influence activities are transparent, to discourage foreign interference attempts through opaque lobbying activities, and to ensure that the control of public-private mobility takes better account of this risk.

The analysis and recommendations in this report are based on interviews with French public officials responsible for public integrity and national security issues and academics, as well as exchanges with international peers in Australia, the United States and the United Kingdom. The report is also based on the OECD's work on foreign interference and standards such as the OECD Recommendation on Public Integrity and the OECD Recommendation on Principles of Transparency and Integrity in Lobbying.

By considering the recommendations put forward in this report, France will be able to better identify the risks of foreign interference and strengthen the transparency of public life.

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The OECD also expresses its gratitude to all stakeholders who took part in discussions organised as part of the fact-finding mission that took place from 15 December 2023 to 25 January 2024, and at the consultation workshop organised on 15 March 2024 on the preliminary results of the OECD's analysis. This report benefited in particular from discussions with representatives of French government institutions responsible for national security issues and working to prevent and combat foreign interference: the General Secretariat for Defence and National Security (SGDSN), the Service for vigilance and protection against foreign digital interference (VIGINUM), the Intelligence processing and action against clandestine financial circuits (TRACFIN), the European Union Directorate (DUE) of the Ministry of Europe and Foreign Affairs (MEAE), the General Directorate of Internal Security (DGSI) and the Directorate of European and International Affairs (DAEI) of the Ministry of the Interior and Overseas, as well as the Report and Studies Section of the Council of State.

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In addition, the report benefited from insights provided by the institutions responsible for implementing public policies on these topics in other countries during interviews organised in the presence of the HATVP on 24 January and 2 February 2024: the United States Department of Justice, the Australian Attorney-General's Department and the United Kingdom Home Office.

Lastly, this report is informed by insights shared by the European Commission and OECD government representatives during a High-Level Dialogue on tackling foreign malign influence and interference held at OECD headquarters on 14 November 2023, as well as at a discussion of the Working Party Public Integrity and Anti-Corruption (PIAC) on 28 March 2024.

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Executive summary

In recent years, the risks of foreign interference in France have become a major issue, making top headlines. Although France already has a robust legal and institutional framework in place to tackle these risks, notably through its intelligence services and the agencies that support them, it is necessary to complement the existing mechanisms with public governance tools designed to strengthen the transparency and integrity of public life. This report looks into establishing a transparency framework for the interests of natural or legal persons operating in the public sphere and conducting lobbying and influence activities on behalf of foreign state interests, as well as into strengthening the monitoring of movements of certain public officials and civil servants between the public and private sectors.

Key findings

France has developed numerous public policy tools to tackle the risk of foreign interference from a variety of angles, notably through its criminal law system for repressing violations of the fundamental interests of the Nation, regulatory tools dedicated to political financing, the supervision of lobbying activities (defined as "interest representation" in the French legal system), the fight against corruption, influence peddling and illegal interest-taking, as well as administrative systems for foreign investment screening or combating foreign digital interference. However, these measures remain incomplete, as highlighted in various parliamentary reports, which identify transparency and integrity in public life as priority areas for action to strengthen France's resilience in the face of the growing risk of interference in its democratic processes.

For example, , France has had a framework for lobbying in place since the adoption of the Sapin II Act in 2016. Foreign companies are obliged to register on the Register of interest representatives and declare their interest representation activities, as well as the resources allocated to these activities, in the same way as domestic companies. Since October 2023 and the entry into force of the new guidelines by the French High Authority for Transparency in Public Life (*Haute Autorité pour la transparence de la vie publique, HATVP*), third-party states must now also be declared as clients of consultancy firms, where applicable. However, the Sapin II Act was not specifically designed to target foreign influence activities and has several limitations, notably in its scope. For example, the influence of public opinion as an indirect means of influencing public decisions and democratic processes is not covered, whereas a growing proportion of foreign influence activities target public opinion directly to influence the course of public decisions. Nor does it seem sufficiently clear whether certain foreign-government related entities acting in accordance with the directions or instructions of a foreign government, whether acting as beneficiaries or intermediaries of lobbying and influence activities, are included in the scope of application.

In addition to transparency of foreign influence, tackling foreign interference means taking this risk into account in policies related to the integrity of public officials and civil servants. Since its creation, the HATVP monitors the professional mobility of former ministers, presidents of local executives and members of independent administrative authorities. The 2019 Civil Service Transformation Act also gave the HATVP new responsibilities for monitoring the mobility of certain civil servants. However, when it comes to the mobility of former public officials and civil servants in foreign entities, the French system currently does not

enable any monitoring beyond three years, and does not include any specific provisions on the representation of foreign interests. While new provisions have strengthened post-public employment obligations for former military personnel, this is not yet the case for other public officials and civil servants.

Main recommendations

Following the example of existing systems in Australia, the United States and the United Kingdom, France could adopt a specific framework to regulate lobbying and influence activities carried out on behalf of foreign state interests. Such a scheme could enhance the transparency of foreign influence activities, enabling citizens and public decision-makers to be fully informed and understand who is really behind attempts to influence democratic processes. It could also contribute to France's strategic objectives in combatting foreign interference and the protection of the fundamental interests of the Nation, by making it possible to detect and sanction undeclared activities. Such a system should include the following key elements:

- Provide for broad coverage of the interests benefiting from the activities, as well as of entities conducting foreign lobbying and influence activities subject to transparency obligations, including actors who act *de facto* in the interest or under the control of foreign powers or entities linked to them.
- Include influence on decision-making processes and activities seeking to influence public debate in the scope of the scheme.
- Include a list of legitimate exemptions to guarantee fundamental freedoms and facilitate state-to-state relations. For example, it is essential to exclude diplomatic, consular and similar activities, as well as legal advice.
- Require the disclosure of precise and regular information, enabling key details of lobbying and influence activities to be highlighted, including the objectives pursued.
- Provide for a graduated system of sanctions in the event of non-compliance with obligations, including administrative and criminal penalties, with the primary aim of deterring undeclared influence activities.
- Design a balanced and effective institutional framework in charge of administering the system, verifying disclosures and applying sanctions. Among the various scenarios envisaged, the introduction of a new register dedicated to foreign influence, administered by the HATVP in parallel with the existing Register of interest representatives (for which the HATVP is already responsible) has reached consensus among the stakeholders.

Beyond the transparency of foreign influence activities, combating the risks of interference also requires strengthening public integrity. To this end, France could:

- Reinforce ethical obligations, both for those involved in foreign lobbying and influence activities and who are subject to disclosure obligations, and for public officials and civil servants.
- Strengthen the HATVP's powers of control over the new professional careers of certain former public officials and civil servants within entities linked to foreign powers. This control could be extended beyond three years for lobbying and influence activities, or more broadly influence activities, carried out on behalf of foreign interests.

1 Responding to the risks of foreign interference: A priority for OECD countries

This introductory chapter explores the risk of foreign interference and its main channels within OECD countries, and the various public policy tools available to strengthen countries' resilience to this risk. It explains how the transparency of interest representation activities – and of influence activities more broadly – carried out on behalf of a foreign power is an important policy lever for countering the risk of interference.

1.1. Introduction

Strengthening the resilience of democracies to the risk of foreign interference has become a priority for many OECD countries. While foreign interference is not new and has long been addressed through intelligence tools, the effects of globalisation, prevalence of digital technology and more open and participatory approaches to governance have greatly increased the possibilities for interference and destabilisation of political systems. By virtue of their increased openness and transparency, democracies are particularly vulnerable to foreign interference by autocratic systems, who seek to destabilise them by undermining these very values . In recent years, numerous cases of interference illustrate these trends, whether in the form of electoral interference, foreign information manipulation campaigns, political financing or covert lobbying activities.

To mitigate this threat, and as part of its Reinforcing Democracy Initiative, the OECD is supporting France in a reflection on the public policy tools that would help strengthen the integrity of the decision-making processes of public institutions. At the request of the Haute Autorité pour la transparence de la vie publique (HATVP) or French High Authority for Transparency in Public Life, this report aims to identify concrete courses of action to make legitimate foreign lobbying and influence activities more transparent, discourage foreign interference activities through deceptive or covert lobbying and influence practices, and to ensure that the control of movement of public officials and civil servants between the public and private sectors takes better account of this risk.

The analysis and recommendations proposed in this report are based on interviews with the various stakeholders in the French administration responsible for public integrity and national security issues, with academics, and on exchanges with international peers in other OECD countries (see Acknowledgements). Notably, Australia, the United States and the United Kingdom have introduced public policies that are a source of inspiration for France in these areas. This report also draws on the OECD's broader work on foreign interference, public integrity and the transparency and integrity of lobbying activities.

The recommendations put forward by the OECD will enable France to adapt its legal and institutional framework to strengthen the integrity of its democratic processes and complete its range of public policies to deal with the risk of foreign interference. This analysis will also feed into the reflections underway at the European level concerning the Defence of Democracy Package, which has been proposed by the European Commission. Already at the forefront of the fight against foreign information manipulation and the control of foreign investment in relation to national security, France will be able to strengthen its leadership at the European and international level in this area, work towards the more transparent practices of influence with the view of mitigating foreign interference, so as to meet the global challenges of the 21st century.

1.2. From influence to foreign interference

Foreign entities, such as governments, political organisations or companies, have a legitimate interest in promoting and representing their interests in French society as well as in other countries. Through their lobbying and other influence activities, they may seek to influence representatives of a foreign government and/or the public regarding domestic or foreign policies of the country in question to promote their own interests.

These practices generally have three main objectives: (i) to influence the country's decision-making processes, including by influencing public officials and public opinion so that they adopt positions that are favourable to the interests of the foreign entity; (ii) to influence the image of a foreign organisation, company or state within the government, media and population of another country; and (iii) to influence the country's foreign policy orientations, particularly its positions in international negotiations (e.g. on climate, taxation, trade, technology).

Similar to interest representation or lobbying activities that are aimed at influencing public decisions, foreign influence is not by definition an illegitimate activity. By acting on their own behalf or by engaging lobbying or influence actors, foreign entities can inform political debates, advance decision-making processes by considering more diverse interests and promote international co-operation. As such, foreign influence can be a positive force in public decision-making processes and, when it involves states, is a normal and legitimate phenomenon of international relations and diplomacy.

However, foreign influence activities can also be covert or deceptive, undermining the integrity of public policy-making processes. Influence gives way to foreign interference, particularly when such activities are intended not only to affect public decision-making in a deceptive manner, but also to intentionally harm the collective interest of the state in question in order to promote the interests of a foreign government.

1.3. Increased risk of foreign interference in a globalised world

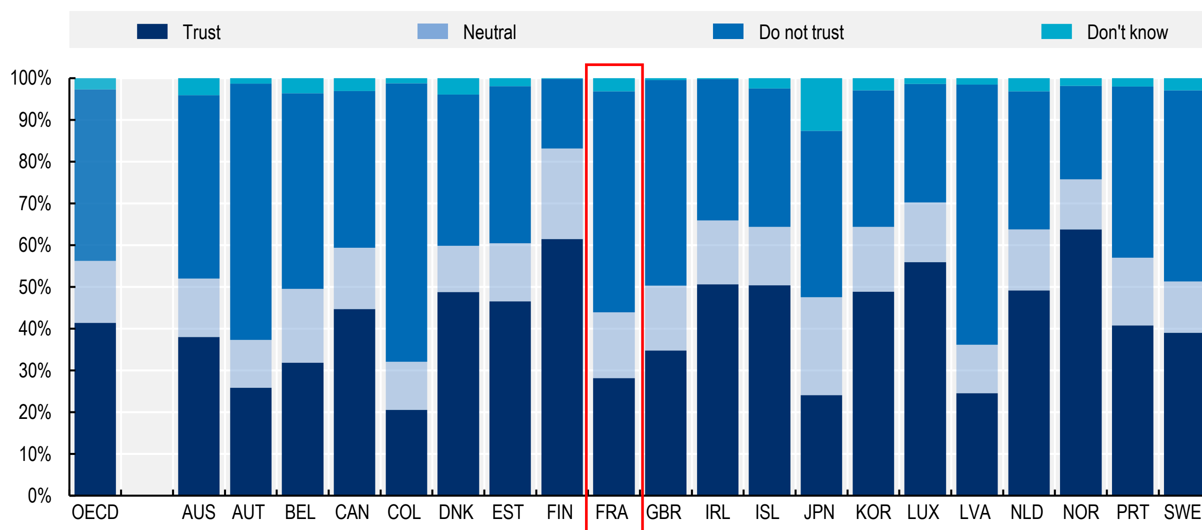
Using covert or deceptive practices to promote one's own interests at the expense of other states has been part of the toolbox of governments to achieve their strategic objectives for as long as international relations have existed. However, these practices seem to have developed considerably in recent years in France and in other OECD countries (Thurber, Campbell and Dulio, 2018[1]). The increase in the risk of foreign interference and the vulnerability of open and democratic societies to it can be explained by several factors.

The circumstances created by globalisation, the rapid development of digital technologies, the re-emergence of authoritarian powers and increased geopolitical tensions have heightened the propensity of non-democratic regimes to engage in interference activities. With the aim of advancing their geopolitical, economic or even military interests (as is the case of Russian interference in Ukraine), these regimes can mobilise various intermediaries on their soil or in the target countries (companies, lobbying firms, non-governmental organisations, think-tanks, community organisations, etc.) to influence public decision-makers and decision-making processes in covert or harmful ways, using coercive economic instruments (investments in strategic sectors), as well as exploiting the possibilities offered by digital tools to manipulate opinions and decision-makers.

Economic and commercial exchanges in a globalised and open economy and increasing public participation in policy-making and consultation processes, with all stakeholders inherent in the functioning of open democracies, offer many opportunities for misleading influence and interference. Similarly, the openness and freedom of academic research, political analysis, civic space and cultural activities in democracies present vulnerabilities. The growing polarisation of public opinion and the lack of trust in public institutions are also seen as opportunities for malicious actors seeking to exploit them. The OECD Survey on the drivers of trust in public institutions shows that only four out of ten respondents (41.4%), on average in OECD countries, trust their national government. France is below this average, with just over a quarter of French people (28%) indicating that they have a high or moderately high level of trust in their national government (Figure 1.1).

Figure 1.1. Just over four in ten people trust their national government

Share of respondents who indicate different levels of trust in their national government (on a 0-10 scale), 2021



Note: Figure presents the within-country distributions of responses to the question "On a scale of 0 to 10, where 0 is not at all and 10 is completely, how much do you trust the national government?" Mexico and New Zealand are excluded from the figure as the question on trust in national government is not asked. "OECD" presents the unweighted average across countries.
For more detailed information, please find the survey method document at http://oe.cd/trust.
Source: OECD Trust Survey (http://oe.cd/trust).

By affecting the integrity of public decision-making, foreign interference can have major consequences in the target countries, in terms of sovereignty, trust, economic growth and national security, and more broadly reinforce the democratic crisis facing OECD countries. Since public integrity is one of the drivers of trust in public institutions, foreign interference can significantly undermine citizens' confidence in public institutions. It can also cast doubt on the integrity of electoral processes - the very essence of democracies - when they are targeted.

1.4. The OECD's approach to the risks of foreign interference

Against this backdrop, the OECD has launched a reflection on the risk of foreign interference and the responses that democracies can provide in terms of public policy. This work is part of the OECD Reinforcing Democracy Initiative, adopted by OECD Ministers in November 2022: the Ministerial Declaration on Building Trust and Strengthening Democracy recognises that "*democracies face global challenges of increasing scale and complexity, including (...) interference by non-democratic foreign actors*" (OECD, 2022[2]). The OECD has since made progress in defining, characterising and responding to this risk.

1.4.1. Towards a common definition of foreign interference

Defining the notion of foreign interference is an important prerequisite for devising appropriate public policy responses. This can prove complex, as the phenomenon is perceived and defined differently by the different governments of OECD Member countries. Beyond the definition, the terminology itself is diverse: some countries, such as the United States and Canada, use both the term "foreign interference" and the term "malign foreign influence". Many countries, particularly in Europe, include the issue of foreign

interference in the notion of "hybrid threats". The European External Action Service (EEAS) uses the expression "foreign information manipulation and interference".

In France, the term was recently defined in a report by the National Assembly on behalf of the Commission of Inquiry into political, economic and financial interference by foreign powers aimed at influencing or corrupting French opinion-formers, leaders or political parties as "*hostile activities, deliberately kept secret, malicious and deceptive, undertaken by a foreign power and implemented by a multiplicitý of actors",* and which "*aim to undermine our societies and undermine our political and military sovereignty, but also economic and technological*" (French National Assembly, 2023[3]). Box 1.1 gives an overview of the definitions that have been adopted, mostly recently, by other OECD member countries.

The OECD proposes a relatively similar definition for its work, which is the one used in this report: "*intentional actions of state or non-state actors conducted in the interest of a foreign government. These activities are covert, non-transparent or manipulative in nature, and are aimed at negatively impacting the structures or processes of the political system, the economy, the society or the informational space*". Kinetic operations, such as sabotage attacks, targeted assassinations and terrorist actions, as well as overt or covert military operations, are excluded from the scope of this definition. This definition pays particular attention to distinguishing the concept of foreign interference from that used in certain non-democratic regimes by emphasising the negative impact on the target country and its sovereign functioning as a democratic state For example, the Foreign Agent Law in Russia mainly targets organisations, particularly civil society organisations, that receive funding from abroad. This is sufficient to characterise them as foreign agents, with civil and criminal consequences for these organisations and their staff.

Box 1.1. Definitions of "foreign interference" used in OECD jurisdictions

Australia

Foreign interference activities are *"activities carried out by, or on behalf of, a foreign power, that are coercive, corrupting, deceptive or clandestine, and contrary to Australia's sovereignty, values and national interests. These activities involve foreign powers trying to secretly and improperly interfere in Australian society to advance their strategic, political, military, social or economic goals, adversely affecting individuals, information and infrastructure of governments, industry, academia, the media and communities"*.

Canada

The Canadian government defines **foreign interference** as "*activities perpetrated by a foreign state, or proxy, that are harmful to Canada’s interests and are clandestine or deceptive or involve a threat to any person".* **Malicious foreign influence** is defined as "*a covert or non-transparent undertaking by, at the direction of, on behalf of, or with the substantial support of a foreign principal, with the objective of exerting influence and affecting outcomes. This is a subset of foreign interference*" (a foreign principal is "an *entity that is owned or directed, in law or in practice, by a foreign government. This could inter alia include a foreign power, a foreign economic entity, a foreign political organisation or an individual or group with links to a foreign government*").

United States

According to the US Code, the term "**foreign malign influence**" means "*any hostile effort undertaken by, at the direction of, or on behalf of or with the substantial support of, the government of a covert foreign country with the objective of influencing, through overt or covert means: (A) the political, military, economic, or other policies or activities of the government of the United States Government or of State or local governments, including any election within the United States; or (B) the public opinion in the United States*".

An additional US definition of "**foreign malign influence**" is provided by the US National Intelligence Council. It includes "*subversive, undeclared (including covert and clandestine), coercive or criminal activities by foreign governments, non-state actors, or their proxies to affect another nation's popular or political attitudes, perceptions, or behaviours to advance their interests. This can include efforts to sow division, undermine democratic processes and institutions, or steer policy and regulatory decisions in favour of the foreign actor's strategic objectives*".

The US Department of Homeland Security also uses the term "**foreign interference**", defined as "*malign actions taken by foreign governments or foreign actors designed to sow discord, manipulate public discourse, discredit the electoral system, the development of policy, or disrupt markets for the purpose of undermining the interests of the United States and its allies*".

European Union

The European Commission's definition of "**foreign interference**" was stated in a working document on research and innovation adopted in 2022 as: "*foreign interference occurs when activities are carried out by or on behalf of a foreign state-level actor which are coercive, covert, deceptive or corrupting and are contrary to the sovereignty, values and interests of the European Union*".

The European Parliament's definition of January 2023 is more detailed: "*foreign interference is illegitimate interference by foreign powers in the democratic and political processes of the EU and Member States. It includes covert or coercive interference by a foreign power in the political or governmental system from within, such as politicians and officials who are working for or under the influence of overseas regimes; influence on the political system from without, such as abuse of the lobbying system, corruption, espionage, cyber-attacks; and manipulative influence on public engagement or views, for example through online disinformation and manipulation campaigns* ".

Source: Australia: https://www.homeaffairs.gov.au/about-us/our-portfolios/national-security/countering-foreign-interference/defining-foreign-interference; Canada: https://www.publicsafety.gc.ca/cnt/ntnl-scrt/frgn-ntrfrnc/fi-en.aspx; United States: https://www.law.cornell.edu/uscode/text/50/3059#e_2, https://www.dni.gov/files/ODNI/documents/assessments/NIC-Declassified-ICA-Foreign-Threats-to-the-2022-US-Elections-Dec2023.pdf and https://www.cisa.gov/sites/default/files/publications/19_0717_cisa_foreign-influence-taxonomy.pdf; European Union: (European Commission, 2022[4])

1.4.2. Better characterisation of foreign interference

Foreign interference is a complex and constantly evolving process, which requires OECD governments to improve their knowledge and collective understanding of the interference practices used in democracies in the 21st century. The OECD is developing a mapping of the various channels that can be used by foreign powers to influence negatively and covertly the political processes, economies or societies of target countries. These channels are as follows, illustrated by recent concrete cases in Box 1.2:

- **Elite capture**: the aim is to establish a relationship of subordination with political, economic, media or civil society elites so that they then act in favour of the country that is conducting the interference. Corruption, undue influence, the offer of gifts and other benefits, or the professional mobility of public decision-makers in foreign entities, are among the many tools used.
- **The financing of political life**: necessary for democratic functioning, political financing is one of the main sources of undue influence and political capture in general (OECD, 2017[5]). Used by foreign actors, this can enable the influence of political processes of the target country, particularly if it enables the targeted candidates to enter parliament or government.
- **Electoral interference**: attempts at electoral interference have taken a variety of forms, which have already been documented, aimed at manipulating the electoral process itself, from the campaign to the results (Charon and Jeangène Vilmer, 2021[6]). In addition to political financing,

the development of misleading narratives through disinformation campaigns, smear attacks or computer hacking against candidates, and the funding of targeted advertising, are used by foreign powers to favour candidates or simply to weaken confidence in the democratic system of the target country.

- **Foreign information manipulation**: campaigns to manipulate information have become common in an increasingly digital and globalised information environment (OECD, 2024[7]). Aimed at shaping public opinion and often reinforcing political polarisation and distrust in public institutions, information manipulation can take various forms: use of state media from a foreign power (e.g. Sputnik, Russia Today, Xinhua or CCTV); - investment in the target country's media, disinformation websites, troll farms and bots on social networks; influencers and journalists under foreign influence, artificial intelligence.
- **Economic coercion**: international investment and trade offer a wide range of opportunities for foreign interference in today's globalised and interdependent world. Direct investment by foreign powers, state-owned companies or similar entities in strategic sectors or critical infrastructures can create strong dependencies. The use of trade restrictions, sanctions or indirect barriers targeting a specific country can also be a powerful lever for influencing international policy.
- **Misuse of academic and cultural co-operation, civil society organisations and think-tanks:** The many opportunities for academic and cultural exchanges and travel, as well as the openness and freedom of academic research, political analysis, civic space and cultural activities in democracies, can easily pave the way for foreign interference. Whether directed at the ideas conveyed, the individuals (researchers, students, influencers, artists) or institutions themselves, the creation of financial dependencies, the capture of elites, propaganda and intimidation are all methods used by authoritarian powers in democracies. The Confucius Institutes, for example, have been documented on numerous occasions as being involved in such activities, under the guise of teaching language and culture (Charon and Jeangène Vilmer, 2021[6]).
- **Transnational control, surveillance and repression of diasporas:** diaspora communities can offer several opportunities for interference, ranging from influencing local or national politics, to using diaspora businesses as a means of financing interference activities, or manipulating individuals involved in politics, administration or strategic economic sectors A foreign power can rely on embassies and consulates, on the community's cultural, social, political or religious organisations (which are formally independent but *de facto* linked to the host country), the community's media (particularly in foreign languages or on social media networks), and can even in the most extreme cases resort to repression or intimidation.

Box 1.2. Examples of recent foreign interference

Qatargate: An interference operation within the European Parliament was uncovered by the Belgian security services, who found large sums of cash in the homes of several Members of Parliament and their staff. These sums were allegedly paid by a foreign power in exchange for interventions by these actors or the NGOs they headed within the European institutions in favour of the interests of the said power (European Parliament, 2023[8]).

Interference in the US elections: In 2018, thirteen Russian citizens and three Russian companies - including the *Internet Research Agency* (IRA) - were charged with seeking to influence the US political system, including the 2016 presidential elections, through information manipulation and failure to register under the *Foreign Agents Registration* Act. The charged defendants remain fugitives in Russia (U.S. Department of Justice, 2019[9]). In 2023, one Russian national, two Russian intelligence officers, and four US citizens were charged with engaging in a foreign malign influence campaign that included Russian funding and direction of separatist political groups in the United States to spread pro-Russian

propaganda, sow discord, and advance the political campaign of a particular candidate in a local election (U.S. Department of Justice, 2023[10]).

Interference in a French news channel: In France, a TV journalist was influenced to broadcast biased information by a lobbyist working on behalf of the "Team Jorge" consultancy, which offers a whole range of practices and strategies for manipulating information, mainly for foreign states. The Story Killers investigation conducted by the *Forbidden Stories* consortium revealed interference by this company in thirty-three elections around the world, twenty-seven of which are said to have had an influence on the outcome (French National Assembly, 2023[3]).

Manipulation of information in the Netherlands following the crash of the MH17 plane: In 2014, through the intermediary of its Minister for Foreign Affairs and various media, Russia deliberately conveyed misleading information about the origin of the crash of the Malaysian Airlines flight, which caused 193 victims, when in fact it had been caused by a missile of Russian origin (Council of the European Union, n.d.[11]).

Information manipulation in Europe to discredit Western support for Ukraine: In 2022, the French agency VIGINUM was able to identify a digital information manipulation campaign targeting several European countries, including France. Known as "RRN", the campaign involved impersonating major national media and European government websites, with the aim of discrediting Western support for Ukraine (VIGINUM, 2023[12]). More recently, VIGINUM also uncovered the activity of a network called "Portal Kombat" made up of digital "information portals" disseminating pro-Russian content, targeting French-speaking audiences, seeking to polarise public debate and using mass automation to disseminate content (VIGINUM, 2024[13]).

Economic coercion of Lithuania: In 2021, following its official recognition of Taiwan and various measures aimed at limiting Chinese influence, Lithuania fell victim to large-scale economic coercion measures by China, causing trade between the two countries to fall by 90% without any measures being officially announced (NATO, 2022[14]; European Commission, 2023[15]).

Interference in universities in the United Kingdom: The UK Parliament's Security and Intelligence Committee has highlighted the important role played by Confucius Institutes in interfering in universities. Using the leverage generated by their funding, the intimidation of researchers, the control of Chinese students and the coercion of think-tanks, the committee considers that this type of interference threatens academic freedom (UK Parliament, 2023[16]).

These various channels of interference, often used concurrently, demonstrate the multiplicity of actors and tools that can be used by non-democratic regimes to advance their geopolitical or geo-economic objectives through interference in OECD countries. In addition to intelligence services or diplomatic institutions, many actors, particularly non-governmental, such as companies(state-owned or private), think-tanks, cultural institutions, civil society organisations, universities, diasporas and the media, are mobilised for these purposes, serving as cover for malicious activities. Their effective - and sometimes forced - mobilisation requires both a strategic approach and co-ordination of interference activities by the centres of government of foreign powers.

There are many instruments and tools of foreign interference, some of them legal, through which the various channels can operate to achieve the desired results. Espionage, hacking and other forms of cyber attack, bribery and lobbying are among the most common. Corruption is a general tool used in several channels to generate a means of control or pressure on elites, political decision-makers, companies, the media, researchers or diasporas in particular. Similarly, the use of lobbying activities or the representation of legitimate interests, such as the recruitment of lobbyists, can be very effective.

1.4.3. Raising the response to the risk of foreign interference

Given the multifaceted and co-ordinated nature of this threat, and the fact that it is more prevalent in OECD countries in the current geopolitical context, traditional intelligence tools, particularly counter-intelligence, no longer seem sufficient. A more co-ordinated approach by public authorities, the introduction of regulatory measures to increase the transparency of foreign influence in the many sectors in which it manifests itself, greater awareness of the society and potentially targeted players, and enhanced international co-operation in this area are some of the avenues for action for OECD governments to raise the level of their response to this risk and strengthen their resilience to foreign interference.

Numerous measures can therefore be put in place by governments, such as foreign influence transparency schemes; rules on the financing of political parties; the strengthening of rules on movement of public officials between the public and private sectors; advice for public officials on the risks associated with foreign interference, screening of foreign investments, contracts, technology purchases and media ownership; improved strategic communications; guidelines on protecting universities and civil society organisations from foreign interference; measures to protect electoral systems; and strengthening the capacity of law enforcement agencies to deal with transnational diaspora repression.

While a number of OECD countries have some of these tools at their disposal to tackle foreign interference - for example, foreign investment screening mechanisms to take account of national security, agencies in charge of cybersecurity, and increasingly to combat foreign disinformation as well - it is only in recent years that more holistic approaches to this risk have been put in place.

Since the enactment of offences in the Criminal Code Act 1995, introduced by the National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018, Australia, for example, has established a national co-ordinator, a national strategy and an interdepartmental co-ordination mechanism dedicated to this risk and covering all the different channels. The United Kingdom revised its National Security Act in 2023 to better counter the risk of interference. Work is underway to adopt a more robust approach to this risk at the European level, particularly following the work of the Special Committee on Foreign Interference in all Democratic Processes in the European Union (INGE), with its reports published in 2022 and 2023.Furthermore, an Anti-Coercion Instrument (ACI) came into force in December 2023 to discourage and respond to economic coercion; and the European Defence of Democracy Package proposed by the European Commission on 12 December 2023 proposes both the strengthening of election protection measures, as well as the establishment of transparency registers for interest representation activities carried out on behalf of non-European countries.

While public policy responses to the increased risk of interference are gradually being structured at the national level in OECD countries, strengthening international co-operation on this issue is an important area for action. Adopting common definitions of the risk of foreign interference, exchanging best practice on the public policies to be put in place, as well as information on the activities and methods of interference identified, and devising shared tools for tackling foreign interference in a globalised world, can enable a common and more robust approach to this risk, which all countries face to varying degrees. Ultimately, this may also lead to a broader dialogue on what constitutes legitimate foreign influence *versus* harmful interference, in order to expose and end the development of these practices, for healthier international relations that better address today's pressing global challenges.

1.5. Transparency: An important lever for countering the risk of foreign interference

Among the public policies being implemented in the various OECD countries, transparency registers are gaining traction. Certain lobbying registers in force in OECD jurisdictions already cover some of the lobbying and influence activities carried out on behalf of foreign governments or entities linked to them. In

Canada, for example, any person who, for a fee, engages in lobbying activities - within the meaning of the Canadian Lobbying Act - on behalf of "*any government other than that of Canada*", is required to register in the Registry of Lobbyists (Government of Canada, 1985[17]). Similarly, for European Union institutions, the 2021 Interinstitutional Agreement on a common transparency register specifies that authorities of third countries, including their diplomatic missions and embassies, are excluded from the scope of application "*except where such authorities are represented by legal entities, offices or networks without diplomatic status or are represented by an intermediary*", who are therefore required to register and disclose their interest representation activities carried out on behalf of third countries (EUR-Lex, 2021[18]).

Other countries have opted for a separate transparency register covering a wider range of influence actors and activities, modelled on the *Foreign Agent Registration Act* (FARA) that has existed in the United States since 1938. Australia has set up a similar system with the *Foreign Influence Transparency Scheme Act* in 2018, and the UK is also in the process of establishing the *Foreign Influence Registration Scheme* following the update of the National Security Act in 2023. These three registers are separate from the existing lobbying registers under the *Lobbying Disclosure Act* in the US, the *Lobbying Code of Conduct* in Australia, and the *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act* 2014 in the UK. Canada is also currently considering the possibility of establishing a separate foreign influence transparency registry (Public Safety Canada, 2023[19]; Public Safety Canada, 2023[20]). In December 2023, as part of the European Defence of Democracy Package, the European Union also presented a proposal (European Commission, 2023[21]) of a Directive that would establish harmonised requirements in the internal market regarding the transparency of interest representation activities carried on behalf of third countries (European Commission, 2023[22]).

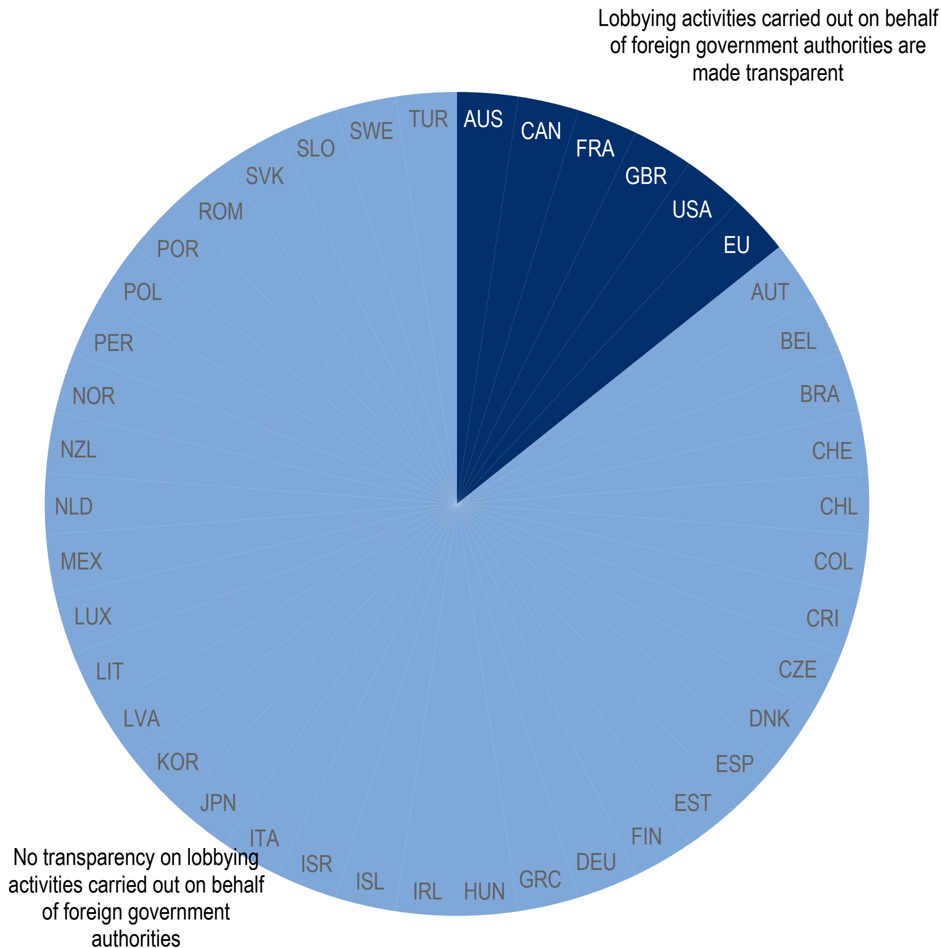
By making the declaration of influence activities mandatory, these registers aim to strengthen transparency of foreign influence activities and increase their integrity. This allows decision-makers and citizens to know whose interests are being defended, and influence not to be seen as an attempt to interfere. By increasing the transparency of legitimate activities, and thus also facilitating the detection of undeclared or deceptive activities, such tools can provide a powerful incentive for the various actors mobilised by foreign powers in interference activities to refuse to do so and alert decision-makers and other targets to the risk of interference.

In France, the current provisions on the transparency of interest representation activities do not explicitly exclude activities carried out on behalf of third countries, but this type of activity was also not covered in practice until recently. Indeed, within the meaning of Article 18-2 of Law 2013-907, an interest representative carrying out an interest representation activity on behalf of a foreign state could be registered in the directory, as the law does not explicitly exclude foreign States as “clients” of interest representation activities. This is why a government circular dated October 2021 on "reinforcing the transparency of foreign influence actions carried out with State officials" mentioned the transparency mechanism for relations between interest representatives and public authorities as an effective lever for tackling foreign interference. In practice, however, interest representation activities carried out on behalf of foreign states were not declared in the directory of interest representatives.

The entry into force in October 2023 of new HATVP guidelines on the registration of interest representatives has clarified this point and increased the transparency of interest representation activities carried out on behalf of foreign states. As a result, consultancies and law firms must now declare whether any or all their activities have been carried out on behalf of third parties. Any legal entity other than the one carrying out the interest representation, and on whose behalf it is carried out, must be declared as a third party. This may include national public administrations, but also foreign public authorities when the interest representation activity is carried out in relation to national public officials covered by the law (HATVP, 2023[23]). Although the application of these new guidelines will not cover all actors carrying out lobbying and influence activities on behalf of third countries, it is nevertheless a first step towards greater transparency, similarly to the update of the European Union transparency register in 2021.

To date, five OECD countries and the European Union thus have a transparency tool that makes all or some of the lobbying and influence activities carried out on behalf of foreign governments transparent (Figure 1.2).

Figure 1.2. Countries that have a transparency tool that makes certain lobbying activities carried out on behalf of foreign governments transparent



Source: Updated 2024 data based on (OECD, 2021[24]).

In response to the growing and multi-faceted risk of foreign interference, OECD countries, including France, are developing responses to strengthen their resilience and are seeking to implement public policy tools that promote transparency that go beyond responses related to security, in line with their democratic values. The OECD's analysis in this report is designed to support France in this area.

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2 Enhancing the framework for tackling foreign interference in France

This chapter presents the French legal and institutional framework for tackling foreign interference. In particular, the chapter details the relevant measures already in place and explains how this framework could be strengthened beyond the actions of the intelligence services by public governance tools to enhance the transparency of public life in France.

2.1. Foreign interference: A priority for the French government

The risks of foreign interference in society and the functioning of democracy are a priority for the French government. Identifying and characterising the aims, methods and consequences of foreign interference on sovereignty and national interests are among the priority issues of France's 2019 *Stratégie nationale du renseignement* (SNR) or National Intelligence Strategy (Box 2.1).

Box 2.1. The National Intelligence Strategy (2019)

Drawn up by the National Intelligence and Counter-Terrorism Coordination Committee (CNRLT), the National Intelligence Strategy concerns the entire intelligence community in France. It is subject to interministerial review and validation by the President of the Republic at the National Intelligence Council (*Conseil National du Renseignement*).

The 2019 SNR is the second edition, following a first edition in 2014. It identifies four priority issues:

- The terrorist threat.
- Anticipating crises and the risk of major disruptions.
- Defending and promoting France's economic and industrial interests.
- Combating cross-cutting threats.

In particular, the SNR highlights the activities *of "interference and espionage carried out by several foreign powers in an uninhibited manner [which] cause major damage to our interests (political, strategic, scientific, etc.), our sovereignty and those of our European partners".*

Among the worrying forms of interference, the SNR notes in particular "*the acuteness and sophistication of actions to manipulate information, especially those orchestrated by foreign powers hostile to our interests*", and stresses the need to identify the actors of the threat and their targets, to describe their aims and methods, and to assess the consequences for France's sovereignty and interests, in order to inform the political decision to respond to these hostile actions.

Source: SGDSN (2019[1]), *La stratégie nationale du renseignement*, Secrétariat général de la Défense et de la Sécurité nationale, https://www.academie-renseignement.gouv.fr/files/piece_jointe_2_strategie_Nationale_du_Renseignement.pdf.

In recent years, the subject has emerged as a major topical issue. In 2021, a plan was introduced to raise awareness of foreign interference and the launch of discussions to ensure greater transparency of foreign influence on public life (certain media reports referred to these discussions as the introduction of a "*FARA à la française*") and better protection of knowledge and know-how in higher education and scientific research (French Parliamentary Delegation for Intelligence, 2023[2]; Intelligence Online, 2023[3]). In October 2021, a government circular on increasing the transparency of foreign influence actions targeting State officials was sent to the ministries. This circular identifies levers to be implemented to deal with this issue, namely: (i) the relevant integrity standards in terms of foreign influence attempts for the most senior French public officials; (ii) whistleblowing procedures; (iii) strengthening the transparency mechanism for relations between interest representatives and the public authorities.

A number of parliamentary committees and missions have also taken up the issue, including a Senate information mission on the impact of non-European state influence in the French university and academic sphere (French Senate, 2021[4]), a National Assembly Commission of Inquiry into the political, economic and financial interference of foreign powers (French National Assembly, 2023[5]), the Parliamentary Delegation for Intelligence in its 2023 annual report (French Parliamentary Delegation for Intelligence, 2023[2]), as well as a Senate Commission of Inquiry into public policies relating to foreign influence

operations, which began its work in February 2024. The Council of State (*Conseil d'État*) is also taking an interest in the subject as part of its 2024 annual study on the theme of sovereignty (French Council of State, 2023[6]).

Finally, in February 2024, a bill aimed at preventing foreign interference in France, which proposes to establish "a legislative mechanism making it compulsory to register actors influencing French public life on behalf of a foreign power", was tabled in the National Assembly. This bill, under discussion at the time of publication of this report, is inspired by the provisions in force in the United States and the United Kingdom (French National Assembly, 2024[7]).

2.2. Foreign interference is a phenomenon well covered by the legal framework and public authorities in France

Preventing foreign interference in France is based on "*a relevant legal framework and effective institutions to tackle this scourge* (French National Assembly, 2023[5]). These include the institutions listed in Table 2.1 and the following mechanisms:

- The system for punishing violations of the fundamental interests of the Nation (Criminal Code).
- Restrictions on foreign funding of political parties and election campaigns.
- The system for tackling breaches to integrity, including corruption, influence peddling and unlawful acquisition of interest.
- The foreign investment screening mechanism.
- Measures to tackle digital interference.
- The framework for interest representation activities.

Table 2.1. Institutional overview of institutions working to prevent and combat foreign interference in France

Institution	Status	Main missions (relevant to foreign interference)
National Intelligence Community		
Directorate-General for Internal Security (DGSI)	Specialised French intelligence service attached to the Ministry of the Interior	The DGSI has general intelligence powers to tackle all activities likely to undermine the fundamental interests of the nation and national security, in particular the prevention of interference activities by foreign powers on national territory.
National Customs Intelligence and Investigation Directorate– (DNRED)	Specialised French intelligence service reporting to the Ministry of the Economy and Finance	The DNRED is responsible for implementing customs intelligence, control and anti-fraud policies.
Tracfin	National financial intelligence unit reporting to the Ministry of the Economy and Finance	Tracfin contributes to the development of a healthy economy by combating clandestine financial circuits, money laundering and the financing of terrorism. Its priority missions are: (i) the fight against economic and financial crime; (ii) the fight against public finance fraud; (iii) the defence of the fundamental interests of the Nation.
Secretariat General of National Defence		
General Secretariat for Defence and National Security (SGDSN)	Prime Minister's department	The SGDSN assists the Prime Minister in fulfilling their responsibilities in the area of defence and national security. Its remit covers military planning, deterrence policy, internal security contributing to national security, economic and energy security, the fight against terrorism and crisis response planning.

Institution	Status	Main missions (relevant to foreign interference)
French National Agency for Information Systems Security (ANSSI)	National Department	Reporting to the SGDSN, the ANSSI is responsible for information systems security and cyber defence.
Vigilance and protection service against foreign digital interference (VIGINUM)	National Department	State technical and operational service responsible for vigilance and protection against foreign digital information manipulation.
Combating breaches to integrity, including corruption and trafficking of influence		
French Anti-Corruption Agency (AFA)	Department with national jurisdiction under the joint authority of the Ministers of the Economy and Justice.	The AFA monitors the existence and effectiveness of anti-corruption measures put in place by public authorities and major companies. It publishes a national anti-corruption plan and carries out an inventory of anti-corruption measures in public administrations.
National Commission for Campaign Accounts and Political Financing (CNCCFP)	Independent administrative authority	The CNCCFP receives campaign accounts from candidates in all elections and political consultations (with the exception of municipal constituencies with a population of 9 000 or less) and checks that their accounting obligations have been met.
High Authority for Transparency in Public Life (HATVP)	Independent administrative authority	The HATVP is responsible for preventing conflicts of interest among public officials by checking the declarations of interest and assets made by some of them, monitoring the movement between the public and private sectors of certain public officials and civil servants, and administering the register of interest representatives.
Central Office for Combating Corruption and Financial and Tax Offences (OCLCIFF)	National department of the Central Directorate of the Judicial Police	The OCLCIFF conducts investigations into national and international corruption, breaches of probity, breaches of business law, complex tax fraud and the laundering of such offences. It also investigates possible cases of corruption of elected representatives by foreign powers.
Justice		
National Financial Prosecutor's Office (PNF)	Public prosecutor's office with national jurisdiction	The PNF is responsible for serious economic and financial crime. It deals with offences against public finances, probity, the proper functioning of financial markets and free competition.

Note: This table lists the main institutions that are relevant to this report, but is not intended to be an exhaustive list of institutions with expertise in foreign influence.
Source: Author’s elaboration.

2.2.1. Crimes against the fundamental interests of the Nation in the Criminal Code

While the concept of "interference" as such is not covered by criminal law, the phenomenon is covered by through violations against the fundamental interests of the Nation, which are set out in Title I of Book IV of the Criminal Code, and are defined in article 410-1 of the Criminal Code as damage caused to "*its independence, [its] territorial integrity, [its] security, [the] republican form of its institutions, [its] means of defence and diplomacy, [the] safeguarding of its population in France and abroad", [the] equilibrium of its natural environment and [the] essential elements of its scientific and economic potential and its cultural heritage*" (Article 410-1). Book IV of the Criminal Code on crimes and offences against the nation, the State and public order also defines a number of offences likely to relate directly to interference by a foreign power, such as treason, espionage and various threats to national defence.

2.2.2. Controlling the financing of political parties and election campaigns

The framework for the financing of political parties and election campaigns is set out in Act no. 88-227 of 11 March 1988 on the financial transparency of political life and strengthened by Act no. 2017-1339 of 15 September 2017 on promoting trust in political life. The *Commission nationale des comptes de campagne et des financements politiques* (CNCCFP) or National Commission for Campaign Accounts and Political Financing (oversees the campaign accounts of candidates in all elections and political parties'

compliance with their accounting obligations. In 2017, reforms to the political financing system were introduced as part of the law on promoting trust in political life, following questions about the financing of a French political party's presidential campaign through a Czech-Russian bank. For both election campaigns and political parties, the law now prohibits loans from any legal entity other than political parties filing their accounts with the CNCCFP and banks or credit companies with registered offices in the European Economic Area (Table 2.2). The OECD Public Integrity Indicators show that France meets 100% of the regulatory criteria for political financing, whereas the OECD average is 73% (OECD, 2023[8]).

Table 2.2. Summary of rules on private funding of political parties and election campaigns

Source of financing		Donations and subscriptions	Loans and guarantees
Individuals	French nationality or resident in France	Authorised (up to a maximum of EUR 7 500 per year for parties and EUR 4 600 per election for candidates)	Authorised (subject to the legal interest rate and, for parties, 24 months and EUR 15 000, for candidates, 18 months and the campaign expenditure ceiling)
	Of foreign nationality and not resident in France	Forbidden	(not specified in the laws and regulations)
Legal entities	Domestic law	Forbidden (except other parties)	Prohibited (except other parties and banks)
	Under foreign law (including States)	Forbidden (even indirectly)	Forbidden (except banks domiciled in the EU or EEA)

Source: Assemblée nationale (2023[5]), *Rapport fait au nom de la Commission d'enquête relative aux ingérences politiques, économiques et financières de puissances étrangères visant à influencer ou corrompre des relais d'opinion, des dirigeants ou des partis politiques français*.

2.2.3. The system for combating breaches to integrity, including corruption, and trafficking of influence

The fight against corruption in France took a decisive step forward starting in the eighties, with the Act of 13 July 1983 on the rights and obligations of civil servants - which prohibits civil servants taking an interest in a company subject to the control of their administration - and the adoption in 1993 of the first Sapin Act on the prevention of corruption and the transparency of economic life and public procedures. Between 2013 and 2017, a number of laws established operational tools to combat corruption and promote transparency in public life.

- Law 2013-907 on the transparency of public life of 11 October 2013 required more than 18 000 public officials, both elected and non-elected, to file both a declaration of assets and a declaration of interests online with the High Authority for Transparency of Public Life (HATVP).
- Act 2013-1117 of 6 December 2013 relating to the fight against tax fraud and large economic and financial crime created the National Financial Prosecutor's Office and the Central Office for Combating Corruption and Financial and Tax Offences, which are responsible for investigating the most complex cases of corruption.
- Law 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life requires companies to set up an anti-corruption programme to identify and manage corruption risks. Public bodies are also required to adopt procedures to prevent breaches of integrity. The law creates the French Anti-Corruption Agency (*Agence française anti-corruption*, AFA), provides for the creation of an online Register of interest representatives to be implemented by the HATVP, and introduces a system to protect whistleblowers.

- Law 2017-1339 of 2017 for promoting trust in public life strengthens the ethical obligations of members of government and parliament and creates mandatory penalties of ineligibility for breaches of probity.

2.2.4. The foreign investment screening mechanism

France has a comprehensive system for screening foreign investment (*Investissements étrangers en France*, IEF), which covers sectors relating to national defence or likely to jeopardise public order and activities essential to safeguarding the country's interests (governed by article L. 151-3 of the Monetary and Financial Code). In practical terms, any foreign entity wishing to invest in these sectors must apply to the Treasury Department for prior authorisation. The decision to treat a foreign investment as foreign interference is taken on a "case-by-case" basis by the Interministerial Committee on Foreign Investment in France (CIIEF), which brings together government representatives to analyse the sensitivity of the French company's activity to national security issues.

2.2.5. Measures to combat foreign digital interference

In June 2021, France created a national agency to combat information manipulation from abroad aimed at "destabilising the State" (VIGINUM), reporting to the General Secretary for Defence and National Security (SGDSN). VIGINUM's main mission is to detect and characterise foreign digital interference affecting digital public debate in France and uses four legal criteria to characterise foreign digital interference: (i) potential harm to the fundamental interests of the Nation; (ii) involvement of a foreign actor, which does not necessarily mean that the attack is attributed to a designated protagonist; (iii) manifestly inaccurate or misleading content ; (iv) artificial or automated, massive and deliberate dissemination, or the intention to carry out such dissemination.

2.2.6. The framework for interest representation activities

The provisions of the Sapin II Act establish legal recognition of the existence of lobbying (“interest representation”), while addressing the risks associated with lobbying through mandatory registration in a public register and the application of ethical obligations for lobbyists. While interest representation activities carried out on behalf of foreign states were not explicitly excluded from the legal framework, in practice they were not included in the register. Since the publication and entry into force of the new HATVP guidelines in October 2023, third countries must be declared as clients of consultancies carrying out lobbying activities.

2.3. The legal and institutional framework needs to be strengthened to better address the issue from the perspective of transparency in public life and breaches to integrity

While France has a solid legal and institutional framework for dealing with the risks of foreign interference from various angles, this framework remains incomplete. In particular, the two parliamentary reports published in 2023 on this subject note that tackling foreign interference still relies too heavily on intelligence services and the agencies that support them. Among the priorities for reform, the reports identify the need for transparency for the interests of natural persons or legal entities operating in the public sphere and carrying out interest representation activities, and for tighter control of movement of public officials in the public and private sectors.

The following chapters provide recommendations on strengthening the transparency of foreign lobbying and influence activities (Chapter 3) and the integrity standards applicable to senior French public officials and civil servants in matters of foreign influence (Chapter 4).

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3 Strengthening the transparency of foreign influence in France through a dedicated scheme

This chapter analyses the legislative and institutional framework that could be established in France to enhance transparency and address concerns relating to foreign influence activities. It examines the essential elements of a scope of application that is appropriate and adapted to foreign influence.

3.1. Introduction

3.1.1. Strengthening public integrity through greater transparency

One way in which countries can strengthen their resilience to foreign interference is implementing robust transparency frameworks that cover lobbying and influence activities carried out on behalf of foreign governments and other foreign entities. The experience of OECD countries in increasing the transparency of lobbying activities, whether domestic or from abroad, shows that effective regulation should provide an adequate degree of transparency on activities aimed at or likely to influence government decision-making processes (OECD, 2010[1]).

Transparency is the disclosure and subsequent availability of relevant government data and information (OECD, 2017[2]). Applied to foreign lobbying and influence activities, it is a tool that allows the public to better monitor the public decision-making process (OECD, 2021[3]). Thus, transparency obligations are not intended to restrict, deter, criminalise or punish legal foreign influence activities. On the contrary, transparency aims to highlight legal activities carried out for the benefit of foreign interests, and thus avoid any opacity or risk of interference.

But while disclosing the right amount and type of information is essential to achieving adequate levels of transparency, it is not always easy to determine what constitutes the “right” information. In order for public officials and citizens to obtain sufficient information about influence activities carried out on behalf of foreign entities, it is recommended that the information disclosed should include who is lobbying or influencing government – or public opinion – and on whose behalf, who is the target of these activities and what specific public decision or policy issue has been the subject of these activities (OECD, 2021[3]).

3.1.2. France's experience of lobbying regulation

Since the adoption of the Sapin II Act in 2016, France has had a framework for lobbying that is in line with international best practice, and which can serve as a source of inspiration for strengthening the transparency of foreign influence. Upon its adoption in 2016, this Act represented a decisive step forward, since it established a legal recognition of lobbying activities (called “interest representation” activities in France), while addressing the risks associated with lobbying by making it compulsory to register lobbying activities in a single register that is made public, administered and monitored by the HATVP.

Foreign companies that meet the criteria set out in article 18-2 of the law of 11 October 2013 on transparency in public life must therefore register in the Register of interest representatives and declare their interest representation activities and the resources allocated to conduct these activities on an annual basis, in the same way as French companies. Since October 2023 and the entry into force of the HATVP's new application guidelines, third-party countries must be disclosed as clients of consultancy firms or lawyers where applicable, following the example of what is done at the European level (European Union Transparency Register) and in Canada (Register of Lobbyists), and as specified in Section 1.5 in Chapter 1.

However, the current system has several limitations. First, the Register of interest representatives only covers a limited number of actors carrying out lobbying activities on behalf of foreign governments and state organisations. For example, the register does not make it possible to clearly identify whether the interest representation activities of a company that is directly or majority controlled by a foreign state are carried out on behalf of the company to promote its commercial interests, or on behalf of the foreign state to promote state interests. Similarly, certain entities linked to a foreign state, and which act *de facto* on behalf of that foreign state to carry out influence activities without there being any written agreement between the entity and the foreign state, are not covered by the scheme. Yet, foreign influence activities are often characterised by the use of proxies, although the link between the proxy and the foreign power is not always clearly publicly established. Establishing a specific scheme would therefore make it possible

to include actors who have a direct link with a foreign state or who act *de facto* under the control or direction of a foreign state.

Second, foreign influence activities, particularly when they have a malicious intent, often have distinct objectives, particularly regarding their targets, as outlined in Chapter 1. For example, a foreign influence activity may have the objective of influencing public opinion during an electoral process by using, for example, think tanks, NGOs or disinformation campaigns. However, influencing public opinion and electoral processes are in most cases not included in the types of public decisions or democratic processes covered by lobbying regulations. This is the case, for example, with the French system regulating interest representation activities.

3.1.3. Establishing a framework dedicated to the transparency of foreign influence activities

Several countries, including the United States, Australia and, more recently, the United Kingdom, have chosen to implement a legal framework and a register of foreign influence activities separate from their existing register of lobbying activities. In the United States, for example, the register set up under the *Foreign Agents Registration Act (FARA)* covers influence activities carried out on behalf of a government of a foreign country, a foreign political party, foreign individuals and companies, while domestic lobbying and influence activities are covered by the *Lobbying Disclosure Act*. The Canadian government is also considering the adoption of a specific framework and launched a public consultation on the subject in 2023, highlighting the limitations of the current Canadian lobbying regulation (Box 3.9).

Following the example of existing frameworks in the United States and Australia, and initiatives in the United Kingdom and Canada, the French legislator could therefore adopt a framework for foreign lobbying and influence activities carried out on behalf of foreign states or state organisations. However, in order to determine whether a separate regime from the existing one for lobbying or whether an adaptation of the latter would be the most appropriate approach, it is important to look at all the functions necessary for the proper functioning of the system, in particular the compliance functions, and at the legal and institutional framework existing in France, as well as the lessons learned from the implementation of similar systems internationally.

Thus, in order to respond effectively to the risks set out in Chapter 2, increasing the transparency of foreign influence activities in France must first and foremost define a precise scope of application, i.e. the actors and activities covered (Section 3.2), the targets of influence, and the actors who must comply (Section 3.3). A second important element to consider is the disclosure regime: what information must be requested, how often, and in what format (Section 3.4). The system of sanctions, whether administrative or criminal, is another key point for an effective transparency mechanism (Section 3.5). Lastly, from an institutional point of view, it is important that the roles and responsibilities of the administrations in charge of managing the system, monitoring, investigating and enforcing sanctions are well defined within the French institutional system (Section 3.6).

3.2. Defining the foreign influence actors and activities covered by the transparency scheme

3.2.1. An adequate level of transparency of foreign influence activities should cover a wide range of foreign state interests that may benefit from them

A French system for the transparency of foreign influence and interest representation activities will have to clarify the beneficiaries on whose behalf the foreign influence activity is carried out.

The current register of interest representatives administered by the HATVP covers any legal entity (consultancies, law firms, companies, professional groups, non-governmental organisations, think tanks and research bodies) or natural person (consultants acting in an independent capacity) who takes the initiative to contact a public official in order to influence a public decision, thus covering activities to defend an economic or non-economic interest. This definition of “interest representatives” is clearly set out in the Sapin II Act.

Since its creation, the register has already covered foreign entities such as companies or foreign civil society organisations. However, transparency did not originally cover third-party legal entities employed by foreign governments or persons/organisations affiliated to foreign governments (political parties, political figures, state media). Since the publication and entry into force of the new application guidelines by the HATVP in October 2023, third-party states must be declared as clients in the register, which is a first step towards greater transparency of the beneficiaries of certain foreign influence activities (Box 3.1).

Box 3.1. The identity of third parties on whose behalf interest representation activities are carried out in the new HATVP guidelines

This applies to interest representatives who carry out this activity in whole or in part on behalf of third parties. Any legal entity other than the one carrying out the interest representation and on whose behalf it is carried out must be declared as a third party, whether or not this person fulfils the organic criterion set out in article 18-2 of the Act. This may therefore include national public administrations but also foreign public authorities when the representation of interests is carried out in relation to the national public officials referred to in the Act.

Source: (HATVP, 2023[4]).

A significant proportion of foreign influence players are therefore already covered by the register, as is the case for European institutions and Canada. Under Canada's Lobbying Act, consultant lobbyists must disclose information concerning the identity of their client (which may be a government other than the government of Canada) when, for a fee, the consultant communicates with a public office holder on a regulated lobbying measure (OECD, 2021[3]). Similarly, the European register covers interest representation activities carried out on behalf of “public authorities of third countries, including their diplomatic missions and embassies” when these authorities are represented by legal entities, offices or networks without diplomatic status or are represented by an intermediary (EUR-Lex, 2021[5]).

However, the legal framework and guidelines do not seem to sufficiently clarify whether certain entities linked to a foreign state (e.g. those controlled by a foreign state or acting *de facto* at the request of a foreign state, or foreign political parties or personalities), whether acting as beneficiaries or as intermediaries acting on behalf of foreign public authorities, are included in the scope of application (Box 3.2).

Box 3.2. Mapping of foreign influence actors

Foreign lobbying and influence – private commercial or non-commercial interests

- If a company or entity representing private commercial or non-commercial interests in a country A influences a public decision-making process in country B, this can be considered as foreign lobbying and influence that is not related to a foreign power.
- In most countries with lobbying regulations in place, lobbying by foreign commercial interest groups, foreign civil society organisations or consultant lobbyists representing foreign commercial interests or private entities is generally covered.

Foreign lobbying and influence – political and state interests

- If a government or government entity of a country A influences the government of a country B through traditional diplomatic and consular channels, this is diplomacy and not lobbying. However, certain activities carried out directly by foreign governments may still involve risks of foreign interference (e.g., economic coercion, cyber-attacks, strategic investment choices). However, these actors and activities are not intended to be covered by a foreign influence transparency framework.
- When the government or a government entity of country A chooses to influence the government of country B outside traditional and formal diplomatic channels and processes, the same actors/practices can be found as for the influence of private interests. This means that the foreign government influences via entities and individuals without diplomatic status who may act as "foreign agents" or interest representatives" of the country (e.g., lobbying, consultancy or law firms commissioned by foreign governments). This can be considered as foreign lobbying and influence on behalf of a foreign power. Some of these activities are legal and can be considered legitimate but must be made transparent to avoid the risk of interference.

Grey areas of foreign influence

- Where private and foreign government interests are intertwined, certain activities can be seen as a grey area at the intersection of diplomatic soft power and lobbying on behalf of foreign governments. This type of influence happens when the government of a country A influences the government of a country B through entities controlled by or acting under the direction of the government of country A
- These activities also carry significant risks of foreign interference, as foreign governments may use affiliations with foreign-owned or controlled entities as channels of influence, including:
  - Public companies/state-owned companies.
  - State-owned and state-funded media services.
  - Cultural institutes (e.g. Confucius Institutes).
  - Religious institutions.
  - Civil society organisations created or controlled by a foreign state.
- These organisations may act either as "principals" (e.g., when they, as a foreign government-related entity, use intermediaries such as lobbying firms) or as intermediaries – "foreign agents" or "interest representatives" – acting on behalf of a foreign government. Their activities can alsp be considered as foreign lobbying and influence on behalf of a foreign power.

Source: Author's elaboration

For a more comprehensive coverage of foreign beneficiaries, the French legislator could rely on the definitions in force in the United States, Australia and the United Kingdom, which use the term “foreign principal”, which can be translated into French as “*mandant étranger*”, “*donneur d'ordre étranger*” or “*commettant étranger*”.

In the United States, for example, the FARA term "*foreign principal"* includes:

- A foreign government or foreign political party.
- A person (individual, partnership, association, company, organisation or any other combination of individuals) outside the United States.
- A partnership, association, company, organisation or any other combination of persons organised under the laws of a foreign country or having its principal place of business in a foreign country.

The second and third categories are exempt from registration requirements if the lobbying activities are carried out on their own behalf and if these entities register under the *Lobbying Disclosure Act*. However, the exemption does not apply to agents of foreign governments and foreign political parties (first category), or where a foreign government or foreign political party is the principal beneficiary of the lobbying activities of the actors specified in the second and third categories.

The Australian FITS covers four main categories of foreign principal, which are explained in detail in Annex B:

- A foreign government, including an authority of the government or part of the government of a foreign country.
- A foreign political organisation, including a foreign political party and a foreign organisation that exists primarily to pursue political objectives.
- A foreign government-related entity.
- A foreign-government related person, i.e. who is under an obligation (formal or informal) to act in accordance with the directives, instructions or wishes of the foreign government, the entity linked to the foreign government or the foreign political organisation.

The Canadian government's consultation paper on setting up a register dedicated to foreign influence describes a “foreign principal” as any “*entity that is owned or directed, in law or in practice, by a foreign government. This could inter alia include a foreign power, foreign economic entity, foreign political organization, or an individual or group with links to a foreign government*”. Finally, at the European level, the European Commission's proposal as part of the Defence of Democracy (DoD) package mentions “third country entities”, which also include public or private actors controlled directly or indirectly by foreign powers outside Europe (European Commission, 2023[6]).

3.2.2. To ensure an adequate level of transparency of foreign influence activities, the scheme should clarify what is meant by “acting on behalf of a foreign principal” and which entities or persons are likely to carry out these activities

Another crucial aspect that the French system should clarify concerns the meaning of “carrying out lobbying and influence activities, or interest representation on behalf of a foreign principal” and the entities or individuals who are likely to carry out these activities, and therefore to register in a transparency register.

The American, Australian and British systems adopt a relatively broad definition of the term “*foreign agent*” to designate persons who are considered to be acting on behalf of a foreign principal. The existence of a written contract between an agent and a foreign government or the payment of fees are not necessary to establish the obligation to register. In the United States, an agent facilitating the organisation of meetings with US government officials in response to a simple “request” from a foreign principal, is sufficient to

trigger an obligation to register with the US FARA Registry. Similarly, providing advice to a foreign principal on how best to influence policy or public opinion may trigger the need to register.

For example, Australia's FITS requires a person or company to register if it undertakes foreign influence activities on behalf of a foreign principal or under a *registrable arrangement* (Australian Attorney-General's Department, 2019[7]). The term thus includes foreign influence activities that are carried out:

- Under an arrangement with the foreign principal. An arrangement between the person and the foreign principal could be formal or informal, written or verbal. It could be a contract, understanding or agreement of any kind. It does not need to have been made in Australia for it to be registrable. The foreign principal does not need to pay the person to undertake the activity, or provide any other advantage to the person.
- In the service of the foreign principal.
- On the order or at the request of the foreign principal.
- Under the direction of the foreign principal.

Regardless of the nature of the relationship between the person and the foreign principal, both the person and the foreign principal must have intended or expected that the person might or would undertake the registrable activities on behalf of the foreign principal. If a person undertakes an activity without the foreign principal's knowledge or expectation, there is no obligation to register under the scheme. In this case, the person's activities and the foreign principal's interests are merely coincidental (Australian Attorney-General's Department, 2019[7]).

FARA adopts a similar approach (Annex A), while the consultation document on the introduction of a similar system in Canada also uses the term "agreement", in line with the conditions of the Australian FITS (Public Safety Canada, 2023[8]).

This broad approach enables these schemes to cover key foreign influence actors, and in particular those in the "grey zone" of foreign influence described in Box 3.2, such as those actors who act *de facto* in the service or under the control of foreign powers in a concealed manner, as appears to be the case with Russian and Chinese influence operations (Charon and Jeangène Vilmer, 2021[9]). In all cases, it is paramount, in the case of a framework on foreign influence, not to limit the relationship between a "foreign principal" and the natural or legal persons who carry out influence activities on their behalf, to a financial (i.e. remunerated) or contractual relationship.

It should also be noted that in both the American and Australian schemes, the fact of receiving funding from a foreign government or foreign political organisation is not a sufficient criterion to be considered a "foreign agent" or an entity acting on behalf of a "foreign principal". If the funding is the only link between the entity and the foreign government or political organisation, the entity will not be considered a "*foreign agent*". This clarification is important, as it has recently been a source of confusion and numerous misinterpretations in the public debate, particularly in the context of discussions on the European DoD package. The crucial element here is the notion of "arrangement" or "service" ("*agency relation*" in the case of FARA) which links a foreign principal on the one hand, and a natural or legal person carrying out influence activities on its behalf on the other. This also makes it possible to distinguish these systems from those in force in authoritarian contexts where the simple fact of receiving funding from abroad can lead to the classification of an entity as a foreign agent, with often serious consequences for these entities and their agents.

In order to avoid any loopholes, a French foreign influence transparency regime could adopt a similar approach of broadly defining the scope of the transparency register. It is important to note, however, that such approaches have also been challenging in the United States and Australia, as they make the scope broad and the relationship between foreign principal and agent difficult to establish and prove in cases where an entity is acting on the mere "request" of the foreign principal. In particular, they require the allocation of relatively broad investigative resources, so that the authorities responsible for implementing

the scheme can detect the existence of an informal agreement between a principal and a foreign agent. This aspect is discussed in more detail in Section 3.6.

3.2.3. The foreign influence activities covered by the scheme should take into account not only influence on decision-making processes, but also on public debate

Once the relationship between a foreign principal and a foreign agent has been established, a foreign influence transparency register requires a clear list of specific activities that trigger the registration requirement. As mentioned in Chapter 2, an increasing proportion of foreign influence activities are not aimed at directly influencing public officials, but rather at influencing public opinion so that it can influence the course of public decisions.

In this sense, the current definition of an interest representation activity in France seems too restrictive for a system regulating foreign influence, as it is limited to entering into communication with a public official with the aim of influencing a public decision. The French legislature has chosen to limit interest representation to direct lobbying, explicitly excluding influence on public opinion (Box 3.3). In the context of a framework for foreign influence, such a definition would therefore not cover a significant range of influence activities, which would constitute an obstacle to adequate transparency of foreign influence activities, a significant proportion of which would remain outside the scope of transparency obligations.

To ensure an adequate level of transparency of foreign influence activities, indirect influence activities, sometimes referred to as "*grassroots communications*", must be taken into account. The scope of the provisions on foreign influence should therefore be extended to cover not only the "classic" interest representation activities of entering into communication with a public official, but also broader influence activities and in particular influence exercised via intermediaries such as think tanks or other civil society organisations.

This may also enable the system to contribute to France's strategic objectives in the fight against foreign interference and the protection of the nation's fundamental interests by, for example, acting as a potential source for detecting cases of information manipulation operations of foreign origin, whether carried out through local or community media, the mainstream media or social networks. The systems in place in the United States, Australia and the United Kingdom cover this type of activity (for a detailed description of the activities and their definitions, see Annexes A, B and C). The Directive proposed as part of the European DoD also includes these activities (Annex D).

Box 3.3. The activities that come under interest representation in the current system are not sufficiently adapted to foreign influence

Under the current rules governing interest representation activities, several types of activities are considered to be communications likely to constitute interest representation:

- A physical meeting, regardless of the context in which it takes place (dedicated meeting, business lunch, trade show visit, club meeting, etc.).
- A conversation by telephone, videoconference or electronic communication service.
- Sending a letter, e-mail or private message via an electronic communication service.
- Directly questioning a public official by name on a social network.

However, the following are excluded:

- Public awareness campaigns or street demonstrations.
- Monitoring legislative and regulatory developments.
- Preparing notes, briefs and talking points in advance of a presentation.
- Newsletters, as long as they do not concern a public decision and are not specifically addressed to public officials.

Source: HATVP (2024[10]), "Représentation d'intérêts", https://www.hatvp.fr/espacedeclarant/representation-dinterets/ressources/#post_14593.

In the United States, for example, activities considered to be foreign influence activities include "political activities", i.e. "any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies or relations of a government of a foreign country or of a foreign political party". This definition therefore also includes activities that seek to promote a positive image of a foreign government within American society. Other types of activities covered, such as acting as a publicity agent, an information-service employee or a public relations counsel, also expressly cover perception management.

As in the United States, the Australian system covers both direct influence activities, such as lobbying members of Parliament, and activities undertaken with the aim of influencing public debate, such as the promotion of information or material intended to influence the public vote in a federal election. The Australian FITS adopts a precise and clear classification of influence activities, that could serve as an inspiration for the French legislator (Table 3.1).

Table 3.1. Foreign influencing activities covered by the Australian FITS

Category of activity	Type of activity
• **Parliamentary lobbying** • **General political lobbying**	Lobbying includes communicating with the intent to influence processes, decisions or outcomes and representing the interests of another person in any process. Lobbying activities are deemed to be for the purpose of exerting political or governmental influence if they are undertaken for the primary or substantial purpose of influencing: • A process in relation to a federal election or a designated vote. • A process in relation to a federal government decision. • Proceedings of a House of the Parliament. • A process in relation to a registered political party. • A process in relation to a member of Parliament who is not a member of a registered political party. • A process in relation to a candidate in a federal election who is not endorsed by a registered political party. Parliamentary lobbying on behalf of a foreign government is registrable regardless of whether it is undertaken for a political/governmental purpose. Otherwise, parliamentary lobbying on behalf of other foreign principal types is registrable only if the purpose is for political or governmental influence.
Communication activities	Communications activity covers all circumstances in which information or material are disseminated, published, disbursed, shared or made available to the public. Information and material can be in any form including interpersonal, visual, graphic, written, electronic, digital and pictorial forms A communications activity must be registered if it is undertaken for the purposes of political or governmental influence. Such activities can influence the views and opinions of those involved in political and governmental processes.
Disbursement activities	Disbursement activity includes the distribution of money or things of value on behalf of a foreign principal. This activity must be registered if the person, or the recipient of the disbursement, is not required to disclose the activity (for example under political party finance disclosure laws) and the activity is undertaken for the purposes of political or government influence.

Source: (Australian Attorney-General's Department, 2019[11])

The scope of application of the French system could also be based on the Canadian Registry of Lobbyists and the Transparency Register of the European Union (EU) institutions, which have each adopted a definition that is admittedly more restrictive, but which goes beyond mere oral or written communication between an interest representative and a public official:

- At EU level, the activities covered include: “organising communication campaigns, platforms, networks and grassroots initiatives” as well as “preparing or commissioning policy and position papers, amendments, opinion polls and surveys, open letters and other communication or information material, and commissioning and carrying out research” (EUR-Lex, 2021[5]).
- In Canada, in addition to oral and written communications, the Lobbying Act covers “grassroots communications”, defined as “any appeals to members of the public through the mass media or by direct communication that seek to persuade those members of the public to communicate directly with a public office holder in an attempt to place pressure on the public office holder to endorse a particular opinion” (Box 3.4).

These two registers do not include extensive reporting obligations for this type of activity, i.e. detailed information on all communication campaigns carried out as part of influencing activities in support of a specific objective. However, the inclusion of this type of activity in the scope of application has enabled a first step towards greater transparency on indirect influence. For example, the European Transparency Register includes a specific section devoted to lobbying activities, including the main EU legislative proposals concerned and “communication activities (events, campaigns, publications, etc.) linked to the aforementioned proposals”.

Box 3.4. Interpretation Bulletin of the Office of the Commissioner of Lobbying of Canada on the applicability of the Lobbying Act to grassroots communication

In its August 2017 Interpretation Bulletin, the Office of the Commissioner of Lobbying Canada clarified the means used for the purpose of conducting grassroots communications, which may include direct mail and electronic communication campaigns, advertisements, websites, social media posts and platforms such as Facebook, Twitter, LinkedIn, Snapchat, YouTube, etc.

The Office of the Commissioner also indicated that participation in the strategic and operational activities of a grassroots communication (approving elements, providing advice, conducting research and analysis, drafting messages, preparing content, disseminating content, interacting with members of the public) also requires registration.

Source: Office of the Commissioner of Lobbying of Canada (2017[12]), "Applicability of the Lobbying Act to Grass-roots Communications", https://lobbycanada.gc.ca/en/rules/the-lobbying-act/advice-and-interpretation-lobbying-act/applicability-of-the-lobbying-act-to-grass-roots-communications/.

If this recommendation (a scheme covering a broader range of lobbying and influence activities than the current system regulating interest representation activities) were to be favoured by the French legislature, a term other than "representation of interests" could be used for the specific scheme on foreign influence. The HATVP pointed out that using the same term for two different registers could lead to confusion, insofar as the activities covered would not be exactly the same in the two registers. On the other hand, the term "representation of interests" could be used if the two systems were to be aligned.

3.2.4. In order to guarantee fundamental freedoms and fluid state-to-state relations, France's scheme on the transparency of foreign influence activities may include a list of legitimate exemptions

As with certain legitimate exemptions included in existing lobbying frameworks in OECD countries, the definitions of activities covered by a foreign influence framework should clearly specify the type of communications that are not covered by the framework. This applies, for example, to communications that have already been made public, including formal submissions to parliamentary committees, public hearings and established consultation mechanisms (OECD, 2010[1]).

More specifically, the definitions must clearly specify the type of activities which are not considered to be foreign influence activities requiring transparency (exclusion), or which could benefit from a legitimate exemption. In terms of exclusions, it is essential in a scheme covering foreign influence activities to exclude diplomatic, consular and similar activities when these activities are carried out by a diplomatic or consular agent. These are classic diplomatic activities, legitimate and essential to international relations. Similarly, it is appropriate to exclude employees of a foreign government from the scheme, given the need for international co-operation in many areas of public policy in a globalised world. Legal advice activities and legal representation (i.e. where the activity in question is principally related to the provision of legal advice in, or arising out of, judicial processes) may also be legitimately excluded.

With regard to exemptions, a balance must be struck to ensure that the list of exemptions is not used by foreign powers to try to secretly influence the decision-making process and thus avoid the obligation to register.

The Australian and American schemes offer a detailed list of exemptions, which, however, according to the authorities responsible for administering FARA and FITS, may be too broad (for an exhaustive description of the exemptions, please refer to the annexes). In the United States, for example, FARA's

transparency goals could be inhibited by certain exemptions relating to private and non-political activities, as well as academic activities, which may be exploited to avoid FARA's disclosure requirements.

In France, the work of the National Assembly's Commission of Inquiry into Foreign Interference addressed the case of religious associations, which are currently excluded from the scope of the framework regulating interest representation activities. However, several officials interviewed by this commission reported progress in this area, particularly since the implementation of the law of 24 August 2021 reinforcing respect for the principles of the Republic. The OECD's discussions with Tracfin for the purpose of this report confirmed that the law has achieved positive results, with a sharp reduction in the funding from abroad received by religious associations . However, as the criterion of funding is not always the most relevant for characterising the link between a principal and a foreign agent, as explained above (Section 3.2.3), it seems desirable not to exclude religious organisations from the scope of application of a system for regulating foreign influence.

3.3. Defining the targets of foreign influence activities in the scheme

3.3.1. The public officials and entities likely to be targeted by foreign influence activities must be clearly specified and could include political parties and candidates in elections

In France, the definition of "interest representation" already covers activities carried out with ministries, parliament and national and decentralised administrations. Since 2022, the scope of public decision-makers likely to be targeted by lobbying activities has thus included around 18 000 public officials, making the French lobbying regulation one of the most extensive in the world. France is also one of seven OECD countries whose national legal framework also cover lobbying activities carried out at local level (with Austria, Chile, Ireland, Lithuania, Peru, Slovenia) (OECD, 2021[3]).

To make it easier for interest representatives to take on board the extension of the register, which has been in operation since 1 July 2022, the High Authority has published on its website a *vade-mecum* on identifying the new public officials with whom a communication could be considered as an interest representation activity (HATVP, 2022[13]).

As the list of public officials in respect of whom a communication may constitute an action of interest representation is sufficiently broad, a scheme on foreign influence could be based on this existing scope, which would guarantee a certain coherence between the two instruments.

However, it is important in the context of a system on foreign influence to also include candidates for elections and/or political parties, in order to take proper account of the risk of electoral interference in particular. These officials are included in the most recent regimes in this area:

- In the United Kingdom, the *Foreign Influence Registration Scheme* covers senior decision-makers such as UK ministers (and ministers in the devolved administrations), electoral candidates, MPs and senior civil servants.
- In Australia, the *Foreign Influence Transparency Scheme* covers lobbying activities directed at registered political parties or candidates in federal elections under the "political lobbying" category.

3.3.2. The public decisions and democratic processes targeted could be extended to include foreign policy positions and electoral processes

To complete the scope of application of a foreign influence framework, it is necessary to specify which public decisions or democratic processes are likely to be targeted by a foreign influence activity. As in the case of the scope of persons targeted, existing foreign influence schemes generally go further than "traditional" lobbying or interest representation frameworks, by including, for example, influence on

electoral processes (Australia, United States, United Kingdom), but also influence activities that seek to give a positive image of the foreign principal, without specific reference to a public decision (see Section 3.3.3 below).

In France, as specified in an annex to the decree of 9 May 2017, the type of public decisions that must be mentioned by interest representatives in their registrations concern laws or regulatory acts whose content they seek to influence. In addition to laws and regulations, this also includes all administrative decisions, whether general and impersonal decisions or individual decisions (LégiFrance, 2017[14]). An interest representation activity may relate to the amendment or abolition of a decision in force, as well as to the preparation of a future decision under discussion or adoption, or to the adoption of a new decision, even when the latter is not clearly identified or identifiable (for example, the regulation of a sector).

This list appears to be both too imprecise and too broad, making the system particularly complex. This creates methodological confusion and major difficulties in determining which decisions are actually covered by the regulation. In its 2022 activity report, the HATVP emphasised that this difficulty in identifying the public decisions concerned can be a source of legal uncertainty for the interest representatives concerned, and has been exacerbated by the extension of the register to local and regional authorities (HATVP, 2023[15]). The HATVP has therefore recommended on several occasions that the scope of application be restricted by specifying in the texts the criteria for public decisions falling within the scope of the regulations on the representation of interests, according to their importance, nature or effects. In addition, a flash report by the National Assembly "on the drafting of Decree No. 2017-867 of 9 May 2017 on the digital register of interest representatives" also confirmed the "*vagueness surrounding the public decisions that fall within the scope of the system and those that are excluded, due to the general and broad wording of the law*" (French National Assembly, 2023[16]). In order to avoid this type of challenge, a scheme dedicated to foreign influence should therefore provide for a more precise list.

With regard to the public decisions and democratic processes covered by a framework for foreign influence, a precise list could be drawn up in consultation with the authorities mentioned in Table 2.1, particularly the SGDSN. The development of a risk-based analysis could identify the type of public decisions likely to be the target of foreign interference attempts and the impact that non-transparent foreign influence on these decisions could have on the fundamental interests of the Nation. The act of influencing the public within the framework of the decisions and procedures defined should then also be covered by the system.

Given the broad scope of activities covered by the proposed system, consideration should be given to defining the scope of public decisions concerned in a relatively broad manner, along the lines of the systems in force in Australia, the United Kingdom and the United States (Table 3.2). With regard specifically to influence on electoral processes, specific consideration could be given both to the experience of other OECD countries, but also taking into account the risk of creating a legal loophole in the fairness of elections and consequently a risk of invalidating the results. In Australia, for example, the expression "political or government influence" has a broad definition. It can encompass influence over any person, entity, structure or process that forms part of Australia's federal political and governmental architecture - including a federal election or vote, a decision of the federal government, a proceeding of either house of Parliament, a registered political party, an independent member of Parliament or an independent candidate in a federal election (Table 3.2).

Table 3.2. Public decisions covered in the United States, United Kingdom and Australia

	Law	Public decisions covered
Australia	*Foreign Influence Transparency Scheme*	• A process in relation to a federal election or a designated vote. • A process in relation to a federal government decision. A 'government decision' includes any formal or informal, final or interim decisions of the Executive Council, the Cabinet (or a committee of Cabinet), a Minister, an Australian Government Department, agency or company (or their subsidiary) of the Australian Government (within the meaning of the Public Governance, Performance and Accountability Act 2013), or any person performing duties in relation to any of those other entities. Examples of these types of processes related to these decisions include grant, licensing or procurement processes, policy development processes or other decisions. • Proceedings of a House of the Parliament. • A process in relation to a registered political party. • A process in relation to a member of Parliament who is not a member of a registered political party. • A process in relation to a candidate in a federal election who is not endorsed by a registered political party. Influencing the public or a section of the public in relation to these processes and procedures is also covered by the law.
United Kingdom	*Foreign Influence Registration Scheme*	• An election or referendum in the United Kingdom. • A decision of a Minister or Government department (including a Minister or Government department of Wales, Scotland or Northern Ireland). • The proceedings of a UK registered political party (such as their manifesto commitments). • A Member of the House of Commons, House of Lords, Northern Ireland Assembly, Scottish Parliament or Senedd Cymru (when acting in their capacity as such).
United States	*Foreign Agents Registration Act*	• Formulating, adopting, or changing the domestic or foreign policies of the United States with reference to. • The political or public interests, policies or relations of a government of a foreign country or a foreign political party.

Source: Author's elaboration.

The obligation to declare in a specific transparency register would therefore concern any natural or legal person who conducts an activity with the aim of influencing defined public decision-making processes or electoral processes - including by influencing public opinion regarding these processes - on behalf of, under the direction of or under the control of a foreign principal.

3.3.3. Influence activities involving the promotion of the image, policies or relations of a foreign principal could also be included in the scheme

A large part of foreign influence activities consists of promoting a positive image of the foreign principal within the target society and among public officials in the target country, so that public opinion or the opinion of the target public officials are aligned with the interests or vision defended by the foreign principal.

In the United States, FARA is unique in that it covers not only actions to influence US domestic or foreign policy, but also influence in relation to the political or public interests, public policies or relations of a government of a foreign country or a foreign political party. For example, influence activities that are not necessarily intended to directly influence a public decision, but are intended to influence the opinion of a public official or the general public in favour of that of the foreign power, its public policies or foreign policy are also covered. FARA also covers individuals acting in perception-management roles: publicity agents, public-relations counsels or information-service employees.

The example presented in Box 3.5, taken from information registered as part of FARA, is a good illustration of this type of activity and the value of including it in a framework on foreign influence: the individuals targeted and the public can thus be fully aware of who is influencing them.

Box 3.5. Promoting a positive image of a foreign country: A widespread activity without specific reference to a public decision or democratic process

During the COVID-19 crisis, the US Consulate General of an OECD country hired a lobbying firm to study how the US media portrayed the country's response to COVID-19. The contracts included a comprehensive public relations strategy based on the following activities to create a positive image of the country's response to the COVID-19 crisis in the early months of the pandemic:

- Schedule one meeting a month with journalists and the consulate.
- Writing briefing notes for meetings with influencers and stakeholders.
- Providing advice on the placement of opinion pieces and letters to the editor (including editorial advice, research to determine strategic placement and direct communication with appropriate editors/news outlets).
- Develop and implement a sponsored content partnership with a US-based media outlet.

Source: FARA.

3.4. Defining transparency requirements for foreign influence activities

3.4.1. The legal framework could specify that registration within a reasonable registration period should be a prerequisite for any foreign influence activity for a specific foreign principal

As with a “traditional” register of interest representatives, mandatory registration could be a prerequisite for conducting foreign influence activities, with minimum time limits for entry in the register. At present, entry in the register of interest representatives is mandatory within two months of the day on which the conditions laid down by law for qualifying as an interest representative are met (i.e. 10 communications per year assessed at the level of an entity's natural persons). While such a system allows greater flexibility for those with transparency obligations, specific attention must also be taken to ensure that the registration deadline does not become an obstacle to the objective of transparency and rapid access to information on influence, or a source of confusion for certain public officials who may wish to check the registration of a person before entering into communication with him or her.

In the case of a specific scheme for foreign influence, the legal framework could impose a shorter registration period, without a threshold criterion, derived from good practice in other jurisdictions. In the United States, for example, a foreign agent must register with the Department of Justice within 10 days of agreeing to act as agent for a foreign principal.

3.4.2. Reporting requirements should include accurate and regular information that highlights the key objectives of the activities

At present, the information to be disclosed on initial registration in the Register of interest representatives includes: (i) the identity of the interest representative and its directors; (ii) the identity of the persons responsible for the interest representation activities; (iii) the areas in which the interest representative is involved; (iv) the organisations of which the interest representative is a member.

Once a year, and pursuant to the 2017 decree on the digital register of interest representatives, the latter are required to send the High Authority details of the activities carried out over the year within three months of the close of their financial year. This information includes:

- All the interest representation activities carried out during the last financial year, including the types of public decisions covered by the activities, the type of activities undertaken, the area of intervention and the objective pursued by these activities.
- The identity of the clients for whom the activities were carried out.
- Expenditures for interest representation.
- The total number of full-time equivalent employees (FTE) of natural persons having carried out interest representation activities within the legal entity.
- In the case of entities which invoice interest representation services on behalf of their clients, the turnover linked to the interest representation activity.

However, the information to be declared does not fully meet the objectives set by the law (to trace the decision-making footprint of the law, i.e. the information enabling citizens to know which actors were involved in a specific public decision and the impact of their influence) because it remains too vague. For example, the declaration must indicate the type of public decision in question (e.g. whether it is a law or a regulation), but not its exact title. It is therefore impossible to know precisely which decision was the subject of the lobbying activity. Similarly, the annual frequency of activity reports results in a delay in the publication of certain information on interest representation activities: an activity carried out at the beginning of the reporting period will not be made public until a year later.

The HATVP has regularly highlighted these points in its activity reports. In December 2022, the Senate's Parliamentary Ethics Committee also recommended that the information in the activity reports be clarified by indicating the decision targeted by the interest representation activity as well as its objective, and that the reporting frequency be changed from annual to twice a year. This would bring the French system in line with international best practices.

These two key changes appear to be necessary for a framework governing foreign influence, along the lines of the approaches chosen in the United States and Australia with regard to the information to be declared and the frequency of disclosures (Table 3.3). In these two systems, most of the disclosures are made at the time of initial registration, when registrants are required to provide specific information about their relationship with the foreign principal, as well as the objectives of their activities. The information is then regularly updated.

A similar approach could be adopted in France. The information to be disclosed during the registration process could include the personal details of the person or entity carrying out the activities, the nature of the relationship between the person/entity and the foreign principal, the precise objectives of the activities carried out and specified by the principal, and the types of activities carried out or intended to be carried out by the registrant. During regular updates, for example every six months, registrants could provide details of the activities actually carried out during the period. For example, this could involve disclosing information about a specific communication campaign that was carried out over the last six months or information about activities that related to a specific public decision.

Table 3.3. Frequency of declarations in Australia and the United States

		Australia	United States
Registration and content of declarations	**Initial registration**	1. Details of the activities covered by the scheme (including types of activities, dates of activities, details of the purpose of the activity). 2. Information describing the nature of the relationship with the foreign principal. However, the information made public does not include commercially sensitive information or information relating to confidential government consultation on proposed policy changes or affecting national security.	Each registrant must complete several forms: • **Registration statement** including (i) information about the agent of a foreign principal who is registering; (ii) information about the foreign principal; (iii) a description of the activities that the agent of a foreign principal has undertaken or will undertake; (iv) financial information about any monies received from the foreign principal, any monies disbursed on behalf of the foreign principal and any political contributions made by employees of the agent; (v) disclosure documents about any plans of the agent to distribute disclosure documents on behalf of the foreign principal, including how and to whom they will be distributed. • Exhibit A, describing the foreign principal. • Exhibit B, describing the nature and terms of the agreement. • Exhibit C, including copies of the association's articles of association, by-laws or partnership agreement. • Exhibit D, if the agent receives or collects money or other valuables as part of a fundraising campaign. • Simplified "registration declarations" for each partner, manager, director, associate and employee acting in the interest of the foreign principal. • "Information materials", including items that an agent distributes on behalf of the foreign principal.
	Regular disclosures	Registrants are required to annually review their registration if they remain liable to register. Registrants are required to report any changes and update their information to ensure that it is not misleading or inaccurate. Where a registrant becomes aware that the information provided is or will become inaccurate or misleading, they are required to correct this information **within 14 days**. Registrants are also required to report the total value of disbursements disbursed in the course of undertaking a disbursement activity, where the total value meets electoral donations thresholds or a multiple of that threshold. Specific obligations apply during voting periods (including election periods): 1. Check the registration details and confirm that they are correct or update the details. 2. Report any recordable activity undertaken during voting periods (if related to the vote or election concerned).	Registrants must file supplementary declarations **every six months** after the date of their initial registration. This supplementary declaration updates all the elements and activities of the registration declaration, including each contact with the press or the government established on behalf of a foreign principal.

Source: (OECD, 2021[3])

Whilst the UK register is not yet in force, the documents available highlight that the information published will include the name of the registrant, the name of the foreign power for which the activities are being carried out, the start and end dates of the activities, the contact details of the persons who will be carrying

out the activities and details of the nature, purpose and intended results of the activities (UK Parliament, 2023[17]).

In the case of communications aimed at the general public and not specifically targeting a public official or a given public decision, the information to be declared could be based on the Australian example, presented below (Box 3.6).

Box 3.6. Disclosure statement for the Australian *Foreign Influence Transparency Scheme*

Details of the disclosure requirements for different types of communication activities, including where and when disclosure must take place, and in what form, are prescribed by the Foreign Influence Transparency Scheme (Disclosure in Communication Activities) Rules 2018.

These details depend on the type of communications activity undertaken, for example whether it involves print or audio communications.

However, the content of the disclosure is the same regardless of the type of communication activity. Disclosure must:

- Identify who is undertaking the communications activity (usually the person who is required to be registered under the scheme).
- Identify the foreign principal on whose behalf the communications activity is undertaken (for example, the relevant foreign government, entity or person).
- State that the communications activity is undertaken on behalf of the foreign principal.
- State that the disclosure is made under the Act.

The factsheets give the following example of disclosure: "*this document is disclosed by [name of person] on behalf of [name of foreign principal]. This disclosure is made under the Foreign Influence Transparency Scheme Act 2018*".

Source: Australian Attorney-General's Department (2019[18]), Foreign Influence Transparency Scheme Factsheet 10: Disclosures in communications activity, https://www.ag.gov.au/sites/default/files/2020-03/disclosures-in-communications-activities.pdf

3.4.3. The disclosure system could include differentiated obligations for a list of foreign principals/foreign powers whose activities have been determined to pose a risk to the Nation's interests

While registers of interest representatives ensure that all those subject to reporting obligations are placed on an equal footing (which is the case for all existing lobbying registers, as well as the US FARA and Australian FITS), it may be useful in the case of foreign influence activities to require additional information from certain foreign principals whose activities carry a significant risk of foreign interference and harm to the fundamental interests of the nation. Where certain foreign powers or other foreign principals are specifically identified as sources of particularly harmful interference, a strengthened mechanism could apply. This could apply, for example, to entities whose digital information interference activities have been identified by the VIGINUM agency. This list could be determined by decree, along the lines of the system currently being set up in the United Kingdom with the *Foreign Influence Registration Scheme*, which includes two tiers, including a reinforced tier applying to specific foreign powers or entities (Box 3.7). Establishing such a regime would therefore differentiate between foreign states. However, such a provision could also serve as a deterrent mechanism without necessarily being activated.

Box 3.7. The two-tier reporting regime of the *Foreign Influence Registration Scheme in the United Kingdom*

Political influence tier

- This tier will require registration of arrangements to carry out political influence activities in the United Kingdom at the direction of a foreign power.
- These arrangements will need to be registered within 28 days of being made with the foreign power.
- Political influence activities include communications to senior decision makers such as UK ministers (and ministers of the devolved administrations), election candidates, MPs and senior civil servants. It also includes certain communications to the public where the source of the influence is not already clear, and disbursement of money, goods or services to UK persons for a political purpose. To be registerable, this activity has to be for the purpose of influencing UK public life, for example, elections, decisions of the government or members of either House of Parliament or the devolved legislatures.

Enhanced tier

- The scheme also contains a power to specify a foreign power, part of a foreign power, or an entity subject to foreign power control, where the Secretary of State considers it necessary to protect the safety or interests of the United Kingdom. Use of the power will be subject to Parliamentary approval.
- This tier will require the registration of:
  - Arrangements to carry out any activities within the United Kingdom at the direction of a specified power or entity: the person making the arrangement with the specified body will be responsible for registration.
  - Activities carried out in the United Kingdom by specified foreign power-controlled entities. In these circumstances, the specified entity (not a foreign power) will be responsible for registration
- Where appropriate, the government may narrow the activities requiring registration under this tier. This will allow the requirements to be tailored to the risk posed by the foreign power or entity being specified.

Source: UK Government (2024[19]), "Foreign Influence Registration Scheme factsheet", Updated 12 February 2024, https://www.gov.uk/government/publications/national-security-bill-factsheets/foreign-influence-registration-scheme-factsheet.

3.5. Ensuring compliance with transparency obligations

3.5.1. The system could describe a specific list of breaches of the transparency obligations relating to foreign influence

As with a framework for interest representation activities, a framework for foreign influence activities should specify the types of offences committed and which could give rise to sanctions. On the basis of international best practices (FARA, FITS, FIRS), sanctions could cover the following offences:

- Conducting registrable foreign influence activities without registering.
- Failure to comply with statutory reporting obligations (i.e. reporting and disclosure obligations).

- Giving false or misleading information or presenting false or misleading documents when filing a return.
- Inciting, on behalf of a foreign principal, individuals or entities to engage in activities that would, if carried out, be notifiable activities, without informing them of the transparency obligation.
- Destroying documents that are relevant to the foreign influence activity.

The offences under the *Foreign Influence Transparency Scheme are* specified in (Box 3.8).

Box 3.8. Foreign Influence Transparency Scheme offences in Australia

The *Foreign Influence Transparency Scheme Act* 2018 sets out offences for non-compliance. These include:

- Undertaking registrable activities while not being registered under the scheme.
- Failure to fulfil responsibilities (e.g. reporting and disclosure obligations) under the scheme.
- Failure to comply with an information gathering notice issued under sections 45 or 46 of the Act.
- Providing false or misleading information or documents in response to an information gathering notice issued under section 45 or 46 of the FITS Act.
- Destroying scheme records which registrants are required to keep under the Act.

Source: Australian Attorney General's Department (2019[20]), Foreign Influence Transparency Scheme Factsheet 17: Penalties for non-compliance, https://www.ag.gov.au/sites/default/files/2020-03/penalties-for-non-compliance-enforcement.pdf.

3.5.2. The scheme could provide for prior notifications to facilitate compliance

To ensure compliance, administrative enforcement mechanisms can be designed with a progressive tiered approach. At the first stage, the institution responsible for enforcing the system could issue a "notification" to a potential registrant who is not registered or who fails to comply with the registration obligations, before issuing a formal notice - made public - to comply with its registration obligations. These incentive mechanisms already exist as part of the current framework for interest representation activities: the HATVP has the power to issue warnings and formal notices in the event of breaches of reporting obligations.

A similar system is in place in the United States and Australia. In the United States, for example, the FARA unit may send a "*letter of inquiry*" to an entity or person where the Department of Justice obtains credible indications that a registration requirement may exist. The letter will inform the entity or person of the potential registration requirement and may request additional information to inform the opinion as to whether registration is required. In Australia, section 45 of the Foreign Influence Transparency Scheme Rules 2018 includes a similar system to the US letters of inquiry, referred to as "information gathering notices". Concretely, section 45 allows the Secretary of the Attorney-General's Department to request a person to provide information/documents if the Secretary reasonably suspects that the person might be liable to register under the scheme. However, the Secretary currently does not have a power to compel registration if a person if found liable to register (in this case, the only option is to refer for criminal investigation).

In the event of non-compliance with the obligations and despite dialogue with the registrant and a formal notice, the next stages would consist of the application of a graduated system of sanctions, starting with the application of administrative penalties (Section 3.5.3).

3.5.3. The scheme could provide for a graduated system of sanctions ranging from administrative fines to criminal sanctions

As with the lobbying framework, a system of sanctions is essential to the effectiveness of the system. Administrative and/or criminal sanctions must therefore be part of the system for implementing and enforcing the rules, with the primary aim of deterring undeclared lobbying activities, followed by sanctions as a last resort in the event of breaches of transparency obligations.

The HATVP's experience of applying sanctions in the current framework regulating interest activities shows that a graduated system of sanctions is preferable. To ensure compliance with the system, administrative financial penalties could therefore be imposed, and criminal penalties could then be considered, along the lines of the penalties provided for in Article 8 of Decree 2017-867 in the event of a breach of the interest representative's reporting obligations. The American, Australian and British systems all provide for graduated administrative and criminal penalties. In the United States, the application of criminal sanctions has had a deterrent effect. The number of FARA registrations increased dramatically beginning in 2017 after high-profile criminal charges under FARA became public. In contrast, the European Commission's proposal as part of its DoD package only provides at this stage for administrative penalties of a pecuniary nature and limited to EUR 1 000 for natural persons and 1% of the annual worldwide turnover in the preceding financial year for legal undertakings.

Failure to comply with an obligation following formal notice from the HATVP could be considered a criminal offence, as could the provision of information that is deliberately false and misleading, or the destruction of documents relating to the activities covered and likely to be useful in an investigation. Administrative sanctions could be applied for minor offences, such as a delay in registering and/or updating information on the register, or a failure to comply with the ethical obligations applying to actors carrying out influence activities.

3.6. Defining the institutional framework for administering, monitoring, investigating and imposing penalties

3.6.1. The French legislator could consider several scenarios in which the HATVP is entrusted with all or part of the implementation of the foreign influence scheme

One of the powers essential to the proper application of the system is the ability to compel any person or entity - including foreign entities - to produce any information or documentation where there are reasonable grounds for suspecting an obligation to register.

The interviews conducted for this report raised major implementation challenges, given the national security dimension of foreign influence and the investigative resources and means required to apply the scheme, particularly to detect potential unregistered actors or undeclared activities. These interviews led to the emergence of several possible scenarios for the institutional organisation of the scheme, presented below.

Scenario 1 *- A separate foreign influence register administered by the HATVP*

Setting up a new register dedicated to foreign influence administered by the HATVP alongside the register of interest representatives for which it is already responsible is the first scenario considered. This is the option favoured in the bill tabled in the National Assembly in February 2024 (French National Assembly, 2024[21]) as well as in the latest annual report of the Parliamentary Delegation for Intelligence (French Parliamentary Delegation for Intelligence, 2023[22]). According to this report, published in 2023, the current system for regulating the representation of interests appears to be inadequate, since it was designed primarily to target economic lobbying activities and is insufficiently adapted to the specific characteristics

of foreign lobbying and influence. The adoption of an *ad hoc* transparency regime, specific to foreign influence, would have the merit, according to the report:

- Making a clear distinction between economic lobbying and foreign influence.
- Catching a larger number of actors in the scope of the new register than those who fall within the scope of the current register under the Sapin II Act.
- Sending a strong political signal in a geopolitical context marked by the resurgence of foreign interference.

As with the system for interest representatives, the report recommends entrusting the management of this register to the HATVP, which already has expertise and dedicated resources, as well as more than seven years' experience in the administration of a register of interest representation activities, particularly with regard to the interpretation of the legal framework, the production of guidelines, exchanges with registrants and the implementation of monitoring procedures. This expertise is all the more necessary as some players likely to be registered in the new system may have obligations to declare in both registers (for example, consultancy firms). The administration of the two registers by the HATVP would thus make it possible to ensure complementarity between the two registers as well as a certain consistency in implementation.

This is also the option being considered in Canada, where a separate foreign influence registry would complement the existing registry administered by Canada's Commissioner of Lobbying (Box 3.9).

This scenario would also benefit not only from the HATVP's experience in administering a register of interest representatives but also from its status as an independent administrative authority. However, it would be necessary to strengthen the HATVP's means and capacities for monitoring the new register and to ensure that it has access to the information required for this monitoring. When it comes to foreign interference, access to information held by intelligence services, which can be transmitted in simplified forms, or even classified information, may prove essential to these monitoring activities, and the HATVP's ability to receive classified information is currently limited. Only information collected as part of the measures provided under the Monetary and Financial Code may be exchanged between the HATVP and Tracfin.

Box 3.9. Public consultation in Canada on the merits of a foreign influence transparency registry.

In 2023, the Government of Canada launched a consultation with Canadians on the merits of a foreign influence transparency registry.

In particular, the documentation provided for this consultation highlights that "*while Canada has a number of tools that can ensure transparency, new measures could be considered, such as a foreign influence transparency registry, to better align Canada's approach with that of like-minded allies and partners and thereby strengthen global collective resilience*".

In particular, the consultation paper points out that the current lobbying register is difficult to apply to malign foreign influence campaigns that are designed to circumvent the registration requirements of the Lobbying Act. Above all, the Lobbying Act was not designed to prevent malign foreign influence. Aimed primarily at protecting Canada from influence when communication occurs between an entity and public office holders or politicians, the transparency mechanism associated with the Lobbying Act does not allow for the targeting of communication activities aimed broadly at the Canadian public.

Foreign states, and their proxies, seeking to disguise their intentions when influencing Canada could do so by circumventing lobbying registry obligations, and the tools in place may not apply to certain key

processes, such as party nomination contests and sub-national elections, which are particularly vulnerable to malign foreign influence.

Source: Public Safety Canada (2023[23]), "Consulting Canadians on the merits of a Foreign Influence Transparency Registry", https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/2023-nhncng-frgn-nflnc-wwh/index-en.aspx; Public Safety Canada (2023[8]), "Enhancing Foreign Influence Transparency: Exploring Measures to Strengthen Canada's Approach", https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/2023-nhncng-frgn-nfluence/index-en.aspx.

Scenario 2 *- A single register of representation of interests administered by the HATVP*

A variant of the first scenario would be to envisage a single register, covering both lobbying in the broad sense and foreign influence in the same system.

While the United States, Australia and the United Kingdom have opted for a separate register, interviews with the institutions responsible for implementing these systems have highlighted the fact that such a decision was sometimes made by default, due to the existence of a lobbying register that is too limited in scope and the political and practical difficulty of implementing a single register with ambitious transparency obligations.

While a discussion of the limits of the current lobbying framework in OECD countries is not the specific subject of this report, the OECD's work on lobbying has highlighted the significant changes in the lobbying landscape in recent years, and in particular the evolution of practices. In particular, the rise of social media has made the lobbying phenomenon more complex. Today, a growing proportion of lobbying activities are also carried out via more global influence strategies that are no longer limited to simply entering into communication with a public official. Increasingly, the aim is to steer public debate, shape perceptions or persuade civil society to exert pressure on decision-makers. In this sense, traditional lobbying also involves techniques similar to those described for foreign influence purposes in this report, from the funding of *think tanks* and research institutes to influence campaigns on social media (OECD, 2021[3]).

As a result, the OECD standards on the transparency and integrity of lobbying activities are evolving towards more stringent transparency requirements, whether the activities are of domestic or foreign origin, and whether they are carried out on behalf of commercial, private or state interests. A conceptual rapprochement between the two systems is therefore conceivable.

It is also important to take into account potential avoidance strategies linked to the existence of two separate registers. Indeed, registration in the lobbying register may in some cases give rise to exemptions from registration in the foreign influence register. This is the case in the American FARA, where an exemption exists for companies in order to establish a principle of equity between foreign and American companies in the same industrial sector in accordance with the principles of competition. A foreign company registering on the lobbying register does not have to register under the FARA, which has more extensive disclosure requirements. This exemption allows a grey area for foreign influence by certain actors, in particular state-owned enterprises or those that act *de facto* under the direction or control of a foreign state. Several cases have been highlighted in which certain entities that should have registered under FARA have registered in the lobbying register to avoid more substantial and precise reporting obligations under FARA. In a 2021 memo, the DOJ noted that "*foreign governments are increasingly using state-owned enterprises for strategic commercial as well as geopolitical purposes, making it more difficult to distinguish between representatives of foreign business interests and those who are agents of foreign governments and political parties*" (Covington, 2022[24]). Several proposed amendments to FARA including a repeal of the exemption have already been considered by Congress.

Countries that already have a register on lobbying should therefore assess the costs and benefits of building the register on foreign influence on top of the existing one or establishing a separate register. On

the other hand, countries that do not have any of these registers would certainly do well to consider the advantages and disadvantages of setting up a single register.

__Scenario 3__ - A separate registry under the responsibility of a new structure reporting to national security

A third scenario envisages the creation of a new structure under the authority of a government department that would be more effective in matters of security and defence of national sovereignty and would have broader powers than the HATVP to receive information from the intelligence services in order to ensure more effective control, beyond the information collected by Tracfin under the Monetary and Financial Code. The General Secretariat for Defence and National Security, for example, could host such a structure. The HATVP would still be responsible for the “classic” register of interest representatives.

In terms of advantages, this scenario would make it possible to clearly distinguish the lobbying register from the foreign influence register, giving it a particularly clear security aspect. The lobbying register and the HATVP would thus remain quite distinct. Such an approach would also make it easier to identify potential registrants who would not be registered.

However, this scenario would not benefit from synergies with the current lobbying register and would not build on the experience acquired by the HATVP in administering this type of register. The HATVP's status as an independent authority is also a strong point of the existing lobbying system, which would not be used for the system dedicated to foreign influence. Finally, it is important to take into account the potentially more stigmatising aspect of registering on the register dedicated to foreign influence if it is managed by a regalian institution linked to national security. Avoiding a strong stigmatisation of actors is a point of attention raised by countries with a foreign influence system, as this can act as an obstacle to registration.

In light of the advantages and disadvantages of the different scenarios presented above, and following collective discussions between the public administrations concerned during exchanges organised by the OECD, a consensus emerged on scenario 1.

3.6.2. The French legislator should ensure that the entity responsible for implementing the scheme has the necessary financial and human resources to carry out its mandate

Whatever the preferred scenario, the implementation of a system for the transparency of foreign influence activities will require additional human and financial resources. The size of the team needed to implement the scheme will depend heavily on the scope of the system, the types of activities covered, the extent of the verifications carried out and the investigative powers entrusted to the entity in charge of implementation, the size of the register, and the disclosure and transparency platforms put in place.

For example, the *Attorney-General's Department* team responsible for implementing FITS in Australia is made up of eight persons, while certain functions (e.g. legal advice) are shared with other schemes, such as the lobbying register, also implemented by the Attorney-General's Department.

In the United Kingdom, the number of legal entities and individuals who will be required to join the register is still uncertain, as the British authorities expect the system to provide a better picture of the size and scope of foreign influence in the United Kingdom. In view of this uncertainty, a team responsible for implementing FIRS will be set up. This team will work alongside an operational team within the *Home Office*, which will allow flexibility and mobility within the teams (e.g. in the event of excessive recruitment for the management of the register or, on the contrary, in the event of the need for additional recruitment).

Proposals for action

In order to promote an adequate level of transparency of foreign influence activities, the OECD recommends that France consider the following proposals:

Defining the foreign influence actors and activities covered by the transparency scheme

- An adequate level of transparency of foreign influence activities should cover a wide range of foreign state interests that may benefit from them
- To ensure an adequate level of transparency of foreign influence activities, the scheme should clarify what is meant by "acting on behalf of a foreign principal" and which entities or persons are likely to carry out these activities
- The foreign influence activities covered by the scheme should take into account not only influence on decision-making processes, but also on public debate
- In order to guarantee fundamental freedoms and fluid state-to-state relations, France's scheme on the transparency of foreign influence activities may include a list of legitimate exemptions

Defining the targets of foreign influence activities in the scheme

- The public officials and entities likely to be targeted by foreign influence activities must be clearly specified and could include political parties and candidates in elections
- The public decisions and democratic processes targeted could be extended to include foreign policy positions and electoral processes.
- Influence activities involving the promotion of the image, policies or relations of a foreign principal could also be included in the scheme.

Defining transparency requirements for foreign influence activities

- The legal framework could specify that registration within a reasonable registration period should be a prerequisite for any foreign influence activity for a specific foreign principal.
- Reporting requirements should include accurate and regular information that highlights the key objectives of the activities.
- The disclosure system could include differentiated obligations for a list of foreign principals/foreign powers whose activities have been determined to pose a risk to the Nation's interests.

Ensuring compliance with transparency obligations

- The system could describe a specific list of breaches of the transparency obligations relating to foreign influence.
- The scheme could provide for prior notifications to facilitate compliance.
- The scheme could provide for a graduated system of sanctions ranging from administrative fines to criminal sanctions.

Defining the institutional framework for administering, monitoring, investigating and imposing penalties

- The French legislator could consider several scenarios in which the HATVP could be is entrusted with all or part of the implementation of the foreign influence scheme :
  - Scenario 1 - A separate register administered by the HATVP
  - Scenario 2 - A single register of representation of interests administered by the HATVP

- Scenario 3 - A separate registry under the responsibility of a new national security structure
- The French legislator will have to ensure that the entity responsible for implementing the scheme has the necessary financial and human resources to carry out its mandate.

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4 Reinforcing integrity standards applicable to foreign influence activities in France

This chapter examines the French integrity framework from the point of view of interactions between public officials and foreign influence actors. First, it makes recommendations on strengthening the integrity framework applicable to public officials and civil servants as part of a framework for foreign influence, and to persons acting on behalf of foreign state interests. The chapter also suggests ways in which the control of public/private mobility can be better adapted to the risks associated with foreign influence.

4.1. Introduction

In addition to a transparency mechanism for foreign influence, policies relating to the integrity of public officials must take the risk of foreign interference into account. Promoting a culture of integrity in the interactions between public officials and those engaged in foreign influence activities is also an important complementary element of the response to this risk. Transparency laws and regulations will never be able to cover all the grey areas and practices of influence. Interactions between representatives of foreign interests and public officials must therefore also be approached from the perspective of ethics and integrity on the part of both representatives and public officials.

In this respect, the HATVP plays an essential role in disseminating a culture of integrity in the public sector, particularly with regard to interactions between public officials and employees and interest representatives, and in the movement of public officials and employees between the public and private sectors.

First, the High Authority monitors the application of the ethical obligations applicable to interest representatives and set out in article 18-5 of the Law of 11 October 2013.

Second, since its creation, the HATVP has monitored the professional mobility of former ministers, presidents of local executive bodies and members of the State's independent administrative authorities (article 23 of Law 2013-907 on transparency in public life). The law of 6 August 2019 on the transformation of the civil service also gave the HATVP new responsibilities for monitoring the mobility of certain civil servants (Law 83-634 on the rights and obligations of civil servants). While the vast majority of civil servants are subject to ethical control by the administration itself, some cases may require the involvement of the HATVP, in accordance with the principle of subsidiarity, except for certain civil servants for whom referral to the HATVP is compulsory. This concerns more than 15 000 people occupying the highest positions in the three civil services, such as members of ministerial cabinets and directors of central administrations.

However, with regard to the risks associated with foreign influence, this system has several limitations. There is no specific rule to limit or prohibit an activity in a foreign structure or representing foreign interests after public employment, unless the HATVP considers that there is a criminal or ethical risk (HATVP, 2023[1]). In addition, the adoption of a system on the transparency of foreign influence could also include specific ethical obligations for both interest representatives and public officials.

4.2. Reinforcing the ethical obligations applicable to public officials and interest representatives with regard to foreign influence

4.2.1. The foreign influence framework could clarify the responsibility of public officials and civil servants to enforce the legal framework

The current framework for interest representation does not confer any specific responsibilities on public officials and civil servants with regard to interest representation activities. The legal framework does not require them to check whether or not those seeking to influence them are registered in the lobbying register.

While it is not the responsibility of public officials and civil servants to monitor the application of the legal framework on interest representation in general, and rightly so, it would nevertheless seem conceivable to require due diligence verification on their part, particularly in the context of a specific scheme on foreign influence. They could be required to ensure that the persons contacting them are in fact registered as interest representatives - or are covered by exemptions - including for a scheme governing foreign influence. For example, EU Commissioners and members of their cabinets must refuse to meet lobbyists who are not on the European lobbying register. This verification on the part of public officials could be specified in the standards of conduct expected within a foreign influence regime. The effective application

of such standards of conduct would require dedicated awareness-raising, training and guidance for public officials.

In all cases, it would be useful for the ethical obligations applicable to public officials to include guidelines relating to the risk of undue influence and foreign influence. For example, public officials should be reminded of the need to be vigilant with regard to lobbying and influence activities, particularly when these come from a representative of foreign interests, by means of dedicated awareness-raising initiatives, as instructed by the Prime Minister's circular of 11 October 2021 on increasing the transparency of foreign influence actions carried out in relation to public officials.

4.2.2. The ethical rules applicable to interest representatives could be extended to actors covered by a framework for foreign influence

Article 18-5 of the Law of 11 October 2013 stipulates that “interest representatives shall carry out their activity with probity and integrity” and lists the ethical obligations they are bound by, including declaring their identity and the interests they represent, refraining from giving remuneration, gifts or benefits, not using fraudulent means or monetising information obtained from public officials.

When the High Authority finds, on its own initiative or following a report, that a breach of the rules of professional conduct has occurred, it sends the interest representatives concerned a formal notice, which it may make public, to comply with the obligations to which they are subject, after giving them the opportunity to present their observations. After a formal notice, and for a period of three years thereafter, any further breach of ethical obligations is punishable by one year's imprisonment and a fine of EUR 15 000. However, these provisions do not apply to relations between interest representatives and members of parliament.

To ensure the overall coherence of the system for regulating interest representation activities and foreign influence activities, the same ethical rules could be applied to foreign interest representatives, regardless of the scenario envisaged.

4.3. Enabling tighter controls on the professional careers of former public officials in foreign entities

4.3.1. The HATVP could be given greater powers to monitor the new professional careers of former public officials and civil servants within entities linked to foreign powers

Another particularly important issue to consider in the context of foreign influence is the “revolving door” between the public and private sectors. As noted in the report by the European Parliament's INGE Committee of 9 March 2022 (European Parliament, 2023[2]) as well as that of the National Assembly's Committee of Inquiry (French National Assembly, 2023[3]), the employment of former public officials and civil servants in companies controlled directly or indirectly by foreign states may entail a risk of interference. The knowledge they may have acquired during their time in office or while carrying public functions, their network of influence within the administration or among elected representatives, or more broadly in society, may constitute valuable sources of influence for a foreign power carrying out interference activities. This risk currently appears to be poorly controlled within the European Union and its Member States.

In France, the HATVP is currently responsible for monitoring the post-public employment activities of former ministers, presidents of local executive bodies and members of independent authorities (article 23 of Law 2013-907 on the transparency of public life). For a period of three years, any person who has held one of these positions must refer the matter to the HATVP so that it can examine whether the new private activities he or she plans to pursue are compatible with his or her former positions. The HATVP is also required to monitor the career transition of a certain number of civil servants, the list of whom is set out in

legislation, and can be called upon to examine any case in which the administration has serious doubts (Act 83-634 on the rights and obligations of civil servants). However, this control is essentially carried out under the prism of the potential conflict of interest, if the manager in question is likely to allow the entity he or she intends to join to benefit from his or her knowledge, previous decisions or networks.

The High Authority will therefore check whether the activity envisaged by the official or public servant leaving office poses difficulties: (i) of a criminal nature and/or (ii) of an ethical nature. This applies to self-employed activities or remunerated private activities within a public or private company, as well as those carried out within a public establishment of an industrial or commercial nature or within a public interest group of an industrial or commercial nature. When it identifies such difficulties, the HATVP may issue an opinion of incompatibility, which prevents the person from carrying out the envisaged activity, or of compatibility with reservations, in which the HATVP imposes precautionary measures to prevent the criminal or ethical risk.

To complete this system, the report of the National Assembly's Committee of Inquiry in 2023 recommended “more specific controls on the new professional careers of former senior civil servants, high-level politicians and certain categories of military personnel, possibly targeting certain powers that are not part of the same alliances as France, or that engage in forms of interference in our country” (French National Assembly, 2023[3]).

While new provisions have since strengthened the obligations for former military personnel, this is not yet the case for other public officials and civil servants. The Military Planning Act 2024-2030 and *Decree no. 2023-1171 of 13 December 2023 relating to the performance by a member of the armed forces or a civilian employee of the State and its public establishments of an activity for the benefit of a foreign State, a foreign local authority or a company or organisation based outside France or under foreign control* have tightened the rules for members of the armed forces: a declaration must be made to the Ministry of the Armed Forces, which has the power to prevent the post-public employment activity of military personnel who have held positions in strategic areas.

For other public officials and civil servants, it could be envisaged that the HATVP's remit be extended beyond the criminal and ethical risks to include the risk of foreign interference. The National Assembly's commission of enquiry recommended “*providing a framework that excludes certain geographical areas or countries, reserving the possible professional development of senior public officials to countries that are members, for example, of the European Economic Area or alliances of which France is also a member*”. However, consideration of the exact scope of such an exclusion list should also take into account France's alliances beyond the European framework. The attractiveness of the senior civil service in a globalised employment market also needs to be taken into account, as do the skills needed for the State to function properly in a globalised economy. For example, it might be useful to specify by decree a list of foreign powers for which stricter control would be necessary, and in some cases a ban. This echoes the two-tier system in force in the United Kingdom for a list of foreign principals/foreign powers established by decree and whose activities have been determined to pose a risk to the interests of the Nation.

4.3.2. Control over the new professional careers of former public officials could be extended beyond three years for influence activities within entities linked to foreign powers

With regard to the post-employment activities of former public officials in foreign entities, the French system does not currently provide a framework for their mobility beyond three years and does not include any specific provision on the representation of interests. The HATVP was able to stress, during the discussions organised as part of this report, that the introduction of generalised cooling-off periods, which would apply to activities of influence and interest representation carried out on behalf of foreign interests, would be contrary to the logic of the current system. This system is based on a case-by-case examination of the proposed professional activities of public officials and civil servants.

Given the specific risks associated with interest representation activities, or more broadly influence activities, carried out on behalf of foreign interests, another option could be to extend the period of control beyond three years in the case of professional reconversion within a foreign entity, particularly for certain specific public officials, for example former members of the Government.

Proposals for action

In order to strengthen the integrity standards applicable to foreign influence activities, the OECD recommends that France consider the following proposals.

Reinforcing the ethical obligations applicable to public officials and interest representatives with regard to foreign influence

- The foreign influence framework could clarify the responsibility of public officials and civil servants to enforce the provisions of the legal framework.
- The ethical rules applicable to interest representatives could be extended to actors covered by a framework for foreign influence.

Strengthening controls on the professional careers of former public officials and civil servants in foreign entities

- The HATVP could be given greater powers to monitor the new professional careers of former public officials and civil servants in entities linked to foreign powers.
- Control over the new professional careers of former public officials could be extended beyond three years for influence activities within entities linked to foreign powers.

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Annex A. The Foreign Agents Registration Act (FARA) in the United States

Description

The United States Foreign Agents Registration Act (**22 U.S.C. §§611-621; "*Foreign Agents Registration Act"* – FARA)** was enacted in 1938 against a backdrop of growing influence of Nazi propaganda in the United States. In the years leading up to World War II, the US Congress had in fact identified a number of individuals and organisations operating in the United States and spreading propaganda aimed at shaping American public opinion. These activities sought to create a positive image of the new German state and counter reports of the Nazi regime's brutality toward political opponents and Jews.

Upon the recommendation of the 73rd Congress (1934-1935) Special Committee on Un-American Activities, the FARA was passed to shed light on the use of '*proxies*' by requiring that those engaged in propaganda activities on behalf of foreign governments register with the government and disclose information about their clients, activities and contract terms, without, however, prohibiting these activities. In this regard, FARA is often referred to as 'the oldest lobbying law in the world'.

Amended over the years, FARA currently applies broadly to any person acting on behalf of a foreign *principal* to influence, among other targets, US policy or public opinion.

Recognising that efforts by foreign governments to influence US domestic and foreign policies, legislation, democratic processes, and public opinion by employing lobbyists, public relations professionals, prominent businesspeople or former US government officials on their behalf, are "*legal – if they are transparent*", FARA's objective is to enable the American people and their elected representatives to understand who is really behind such influence activity, appreciate the activities they conduct in light of the established link to the foreign entity, and in doing so, better respond to national security threats.

Concretely, FARA requires certain agents who engage in specified influence activities in the United States on behalf of a *foreign principal* to periodically register with the *Department of Justice* (DOJ) their relationship with the foreign principal, as well as the activities and expenses in support of those activities. The Department of Justice is required to make such information publicly available.

Scope and definitions

FARA covers a wide spectrum of actors and activities. First, a *foreign principal* is not necessarily a foreign government: it may be a foreign public official (e.g. an elected public official), a foreign private sector company or a foreign individual who lives outside the United States (Table A A.1).

Secondly, the existence of a written contract between a foreign agent and a foreign principal is not necessary to establish the obligation to register, nor the payment of a fee. A mere "*request*" from a foreign principal, for example, to help setting up meetings with US government officials, is sufficient to trigger registration if acted upon by the agent. Similarly, providing advice to a foreign principal on how best to influence US policy or public opinion could trigger registration.

Actors covered

Table A A.1. Definitions of “*foreign principal*” and “*foreign agent*” in FARA

	Actors covered
Foreign principal 22 U.S.C. §611(b)(2)	(a) **A government of a foreign country** and a **foreign political party**; (b) A **person** (individual, partnership, association, corporation, organisation, or any other combination of individuals) **outside the United States**, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organised under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business in the United States; and (c) A **partnership**, **association**, **corporation**, **organisation**, or other **combination of persons** organised under the laws of or having its principal place of business in a foreign country.
Agent of a foreign principal 22 U.S.C. §611(c)(1)	(a) Any person (individual, partnership, association, corporation, organisation or any other combination of individuals) who **acts as an agent, representative, employee or servant of a foreign principal.** **OR** Any person (individual, partnership, association, corporation, organisation or any other combination of individuals) who **acts in any other capacity at the order, request, or under the direction or control, of a foreign principal** or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidised in whole or in major part by a foreign principal. **AND** who, **directly, or through any other person:** • engages within the United States in **political activities** for or in the interest of such foreign principal; • acts within the United States as a **public relations counsel**, **publicity agent**, **information-service employee** or **political consultant** for or in the interests of such foreign principal; • within the United States **solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value** for or in the interest of such foreign principal; or • within the United States **represents the interests of such foreign principal before any agency or official of the Government of the United States.** (b) Any person (individual, partnership, association, corporation, organisation or any other combination of individuals) who **agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship**, an agent of a foreign principal as defined in clause (1) of this subsection.

Source: https://www.justice.gov/nsd-fara

Decisions and public officials covered

FARA does not necessarily cover activities whose aim is to influence a decision or a public official. For example, distributing money on behalf of a foreign principal within the United States is a covered activity.

However, the definitions specify that activities involving the “representation of interests” of a foreign principal before **“an agency or official of the United States Government**” are covered.

Similarly, FARA covers "**political activities"** which means any activity that the person engaging in believes will, or that person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to:

- Formulating, adopting, or changing the domestic or foreign policies of the United States with reference to
- The political or public interests, policies or relations of a government of a foreign country or a foreign political party.

Types of activities covered

FARA covers four main types of activities, whether carried our directly or through any other person:

- Engaging within the United States in **political activities** for or in the interest of a foreign principal.
- Acting within the United States **as a public relations counsel, publicity agent, information-service employee or political consultant** for or in the interests of a foreign principal.
- Within the United States **soliciting, collecting, disbursing, or dispensing contributions, loans, money, or other things of value** for or in the interest of a foreign principal.
- Within the United States **representing the interests of a foreign principal before any agency or official of the Government of the United States.**

The term "**political activities**" means "any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies or relations of a government of a foreign country or of a foreign political party".

Exceptions/exemptions

FARA includes exemptions for certain agents of foreign principals who register with the Secretary of the Senate and the Clerk of the House of Representatives under the *Lobbying Disclosure Act* of 1995 (LDA; 2 U.S.C. §§1601-1614) and are therefore permitted to lobby the Legislative or Executive Branches. However, the exemption does not apply to agents of foreign governments and foreign political parties, —or when a foreign government or foreign political party is the principal beneficiary of the lobbying activities.

There are other categories of actors and activities that are exempted from registration requirements under FARA (22 U.S.C. §613). These exemptions are for:

- **Diplomatic or consular officers** – and their staff members – of a foreign government who is so recognised by the US Department of State, while said officers are engaged exclusively in activities which are recognised by the US Department of State as being within the scope of the functions of such officers.
- **Officials of foreign a foreign government** who are not US citizens and are not public-relations counsels, publicity agents, or information-service employees.
- **Private and nonpolitical activities**, including the solicitation of funds, not serving predominantly a foreign interest.
- **Fundraising for humanitarian purposes**.
- **Religious, scholastic, academic, fine arts or scientific pursuits**.
- Certain **persons qualified to practice law**, insofar as they engage or agree to engage in the legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States

Disclosure regime

FARA requires *foreign agents* to disclose information on their activities, including on the dissemination of "informational materials" within the United States on behalf or in the interest of a foreign principal.

Initial registration

When FARA registration is required, individuals acting as foreign agents and their employer must file a registration statement within 10 days of having agreed to act as an agent of a foreign principal. Foreign agents may not begin to act as an agent of a foreign principal before registering (22 U.S.C. § 612(a)). A registration fee of USD 305 applies upon initial registration.

Each registrant must complete the following forms, available at https://www.justice.gov/nsd-fara/fara-forms:

- A **Registration statement** (mandatory declaration).
- **Exhibit A**, describing the foreign principal (mandatory declaration).
- **Exhibit B**, describing the nature and terms of the agreement concluded between the registrant and foreign principal, as well as the activities the registrant engages in or proposes to engage in on behalf of the foreign principal (mandatory declaration).
- **Exhibit C**, including articles of incorporation, association, bylaws or partnership agreement when the registrant is an association, company, organisation or any other combination of individuals.
- **Short Form Registration Statements** (form for each individual person of the foreign agent carrying the covered activities).
- **Exhibit D**, if the agent receives or collects money or other things of value as part of a fundraising campaign.

FARA imposes detailed disclosure obligations on a foreign agent's covered activities, which are much more specific and extensive than those required of registrants under the *Lobbying Disclosure Act*. In particular, FARA requires information about the foreign agent and the foreign principal, including a description of the activities that the agent of a foreign principal has undertaken or will undertake, financial information about funds received from the foreign principal, funds disbursed on behalf of the foreign principal and political contributions made by the foreign agent's employees.

Subsequent registrations and updates

A foreign agent must register with the Department of Justice within **10 days** of agreeing to act as the agent of a foreign principal.

Registrants must file supplemental statements at six-month intervals following the date of the registrant's initial registration. The supplemental statement, and its corresponding filing fee of USD 305 for each foreign principal, is due 30 days after the six-month reporting end date.

Any changes to the information provided in Exhibit A or B must be reported to the FARA Registration Unit within ten days of the change. The filing of a new exhibit may then be required by the Assistant Attorney General.

Data

FARA requires the Attorney General to maintain a public database of registration statements made by foreign agents (22 U.S.C. §616(d)). This database is publicly available on the Department of Justice's FARA website under "*Search Filings*" (https://www.fara.gov/search.html). The database can be searched by document type (e.g. registration statement) or by actor, such as a specific foreign country, foreign principal, or individual foreign agent.

According to the latest available data (published in 2022), the register contains more than 450 active registrants representing approximately 750 foreign principals.

Registry administration, compliance and enforcement

The FARA Unit is part of the National Security Division of the *Department of Justice* (DoJ) and is responsible for administering and enforcing FARA. Specifically, the FARA unit:

- **Provides support, guidance and assistance to registrants and potential registrants**. In particular, potential registrants who are unsure whether they qualify for an exemption may submit a request for an Advisory Opinion pursuant to 28 C.F.R. (*Code of Federal Regulations)* §5.2. Advisory opinions, provided by the FARA unit within 30 days, are made public at the following address: https://www.justice.gov/nsdfara/advisory-opinions.
- **Processes registration filings and informational materials** to make those materials available to the public.
- **Reviews filings for deficiencies and inspects registrant's books and records.**
- **Identifies FARA violations**.

Any person who believes that a person or entity may have a registration requirement, but is not registered, may contact the FARA Unit.

The FARA Unit makes registration information and disclosures available to the public to inform the public about the activities of foreign agents in the United States.

The Attorney General must submit a report to Congress on the administration of FARA every six months (22 U.S.C. §621).

Violations and sanctions

The FARA unit may send a "*Letter of Inquiry*" to an entity or person if the FARA Unit obtains credible indications that a registration obligation exists. The letter will notify the entity or person of the possible registration obligation and may seek additional information to inform the Unit's view whether a registration obligation exists.

Failure to comply with FARA provisions may result in fines or imprisonment (22 U.S.C. §618): persons who willfully violate FARA statutory provisions or associated regulations are subject to fines of up to **USD 10 000 and a prison sentence of up to five years.**

If the Attorney General determines that the filing or disclosure documents do not comply with the law, filers generally have the opportunity to file an amended declaration before legal action is initiated.

Impact and planned reforms

Between 1966 and 2016, FARA led to only seven prosecutions (Covington, 2023[1]). Since the suspected Russian interference in the 2016 US election, the number of prosecutions has increased significantly. Indeed, the investigation into the suspected interference led, in 2018, to the indictment of thirteen Russian nationals and three Russian companies for committing federal crimes while seeking to interfere in the United States political system, including the 2016 Presidential election. The defendants allegedly conducted "information warfare against the United States," with the stated goal of "spread[ing] distrust towards the candidates and the political system in general." The indictment alleged that the defendants failed to register and disclose their activities under FARA.

According to the report of Special Counsel Robert Mueller, digital technologies played a key role in this Russian attempt to influence the 2016 US presidential elections, and preparations for this ambitious interference operation started several years earlier. Indicted individuals and companies were indeed part

of so called “Project Lakhta”, which, since 2014, has sought to obscure its conduct by operating through various entities, such as the Russian Internet Research Agency (IRA), which employs hundreds of persons for its online operations, ranging from creators of fictitious personas to technical and administrative support, with an annual budget of millions of dollars (U.S. Department of Justice, 2019[2]). Since then, the FARA Unit has strengthened its monitoring activities.

Numerous other criticisms have been directed towards FARA, with one prominent concern being the existence of two different regulatory frameworks for foreign lobbyists/foreign influence (FARA) and domestic lobbyists/domestic influence (*Lobbying Disclosure Act* – LDA). These two laws have different disclosure requirements (with FARA requiring much more extensive disclosures) and are administered by two different entities: FARA by the Department of Justice (DOJ) and LDA by Congress. To streamline the administration of lobbying registration and disclosure, it has been suggested that the administration and enforcement of FARA and the LDA be combined either at DOJ or in Congress to consolidate the oversight of all lobbying-related activities, whether of domestic or foreign origin. However, as both regulations have been in force for many years (1938 for FARA and 1995 for LDA), it is unlikely that such a change will be made (Congressional Research Service, 2024[3]).

Second, the DOJ and several legislators have suggested that the *LDA exemption* included in FARA (22 USC 613(h)), which allows foreign principals (a) and (b) in Table A A.1 to register under the LDA rather than FARA, should be repealed. Originally, this exemption was introduced to create a principle of fairness between companies operating in the same industrial sector (e.g. a foreign automobile company and a US automobile company) that would seek to influence US decision-making processes and that would seek to do so solely by representing their commercial interests, and thus not subject a foreign company to a much more extensive disclosure regime (FARA) than an US company (LDA). However, this exemption is now causing confusing because it covers a significant grey area – that of foreign state-owned enterprises or enterprises that act *de facto* under the direction or control of a foreign state. For example, Huawei is now registered with FARA due to established links between its influence activities in the United States and the Chinese Communist Party (CCP), which administers and largely subordinates Chinese economic entities (Open Secrets, 2019[4]). Previous cases confirm that actors have sought to conceal their criminal violations of FARA by making fraudulent LDA filings. Several proposed amendments to FARA, including a repeal of the exemption have already been considered by Congress.

References

Congressional Research Service (2024), *Foreign Agents Registration Act (FARA): An Overview*, https://crsreports.congress.gov/product/pdf/IF/IF10499. [3]

Covington (2023), *The Foreign Agents Registration Act (FARA): A Guide for the Perplexed*, https://www.cov.com/en/news-and-insights/insights/2018/01/the-foreign-agents-registration-act-fara. [1]

Open Secrets (2019), *US firms register as foreign agents of embattled Chinese telecom giant Huawei*, https://www.opensecrets.org/news/2019/03/us-firms-register-as-foreign-agents-of-embattled-chinese-telecom-giant-huawei/. [4]

U.S. Department of Justice (2019), *Special Counsel Robert S. Mueller, III. Report On The Investigation Into Russian Interference In The 2016 Presidential Election. Volume I of II Submitted Pursuant to 28 C.F.R. § 600.8(c)*, https://www.justice.gov/archives/sco/file/1373816/download. [2]

Annex B. The Foreign Influence Transparency Scheme (FITS) in Australia

Description

Australia's *Foreign Influence Transparency Scheme Act* was enacted in 2018 "*to provide the public and government decision-makers with visibility of the nature, level and extent of foreign influence on Australia's government and political processes*". The scheme establishes a public register of registrable activities undertaken on behalf of a foreign principal, and which are intended to influence any persons, entities, structures or processes that are part of Australia's federal political and government architecture. The scheme is not intended to restrict, deter, criminalise or punish lawful activities. What it does is highlight lawful activities being pursued for the benefit of foreign interests.

The scheme uses the term "**influence**", which refers to of the act of trying to affect or have an impact on a process, decision or outcome. This includes direct and indirect influence and is not limited by the degree of effect the activities have. It is not only influence to create change that is relevant to the scheme. It also includes influence to maintain the *status quo*. As such, the scheme clearly differentiates "**foreign influence"** from "**foreign interference**":

- **Foreign influence** is considered legitimate insofar as "governments and other actors from around the world commonly make efforts to influence important issues and policies in Australia in a way which benefits their interests". When conducted in an open, lawful and transparent manner, the Australian Government considers that it "contributes to [Australia]'s vibrant and robust democracy by ensuring that decision makers and the public are exposed to diverse opinions and voices from all sectors of society. The diverse opinions of community members, academics, the media, the business sector, non-government organisations as well as others, are a positive contribution to healthy and robust public debate".
- **Foreign interference** goes beyond the routine diplomatic influence that is commonly practised by governments. It includes covert, deceptive and coercive activities intended to affect an Australian political or governmental process that are directed, subsidised or undertaken by (or on behalf of) foreign actors to advance their interests or objectives (Australian Attorney-General's Department, 2019[1]).

The FITS particularly highlights the significant risks that foreign interference activities pose to Australia's open system of government and national sovereignty, as these activities could "limit or shape government independent judgments and can corrupt the integrity established systems". Furthermore, foreign interference into Australia's political system could "erode public confidence in its political and governmental institutions and could also interfere with private sector decision-making". Ultimately, this "can be to the detriment of national security and economic prosperity" because foreign interference activities allow the interests of a foreign principal in Australia to be promoted in a covert manner, to the detriment of national interests if it is not clear that the act is undertaken on behalf of a foreign principal.

For these reasons, **foreign interference is a serious criminal offense under the Commonwealth's *Criminal Code***, punishable by up to 20 years' imprisonment (Australian Attorney-General's Department, 2019[1]).

Scope and definitions

Actors covered

Persons undertaking registrable activities on behalf of a foreign principal for the purpose of political of government influence must register under the scheme.

Table A B.1. Definitions of a "*foreign principal"* in Australia (FITS Section 10)

	Categories covered
Foreign government	• The government of a foreign country or parts of government of a foreign country. • An authority of the government of the government of a foreign country or parts of the government of a foreign country (departments, agencies or other public entities that act in the name of the foreign government). • A foreign local government body or a foreign regional government body. This definition captures all levels of government (e.g. ministry, municipal council).
Foreign political organisation	• A foreign political party • A foreign organisation that exists primarily to pursue political objectives. An organisation is a foreign political organisation if its primary purpose is to pursue the political objectives associated with governing a foreign country, even if the foreign country does not have a system of registration for political parties.
Foreign government-related entity	• A **company that is related to a foreign government or foreign political organisation in one or more of the following ways**: ○ The foreign government or foreign political organisation holds more than 15% of the issued share capital of the company. ○ The foreign government or foreign political organisation holds more than 15% of the voting power in the company. ○ The foreign government or foreign political organisation is in a position to appoint at least 20% of the company's board of directors. ○ The directors of the company (however described) are accustomed or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of the foreign government or foreign political organisation. ○ The foreign government or foreign political organisation is in a position to exercise total or substantial control over the company. • An **entity that is not a company** and that is related to a foreign government or foreign political organisation in either of the following ways: ○ The members of the executive committee (however described) of the entity are accustomed or under an any kind of obligation to act in accordance with the directions, instructions or wishes of the foreign government or foreign political organisation. ○ The foreign government or foreign political organisation is in a position to exercise total or substantial control over the entity. • An **entity that is not a body politic** and that is related to a foreign political organisation in both of the following ways: ○ Its directors, officers or employees are required to be a member or part of a foreign political organisation, and ○ The above requirement is contained in a law, constitution, rules or governing documents by which the entity operates. Where an entity receives funding from a foreign government or foreign political organisation, this is not a sufficient link for the purposes of the scheme. If funding is the only link between the entity and the foreign government or foreign political organisation, then the entity will not be a foreign government-related entity.
Foreign government-related individual	An individual is a foreign government-related individual if the individual is not an Australian citizen or Australian permanent resident, and a foreign government, foreign government-related entity or foreign political organisation is able to exercise total or substantial control over the individual. This might be because the individual is accustomed or under an obligation (formal or informal) to act in accordance with the directions, instructions or wishes of the foreign government, foreign government-related entity or foreign political organisation, or they are in a position to exercise such control for other reasons. A person is not a foreign government-related individual if the only reason they satisfy the definition is because the individual is under an obligation to obey the laws of a foreign government. This scenario represents a relationship between the individual and the foreign principal that is already transparent if the laws are public knowledge.

Source: Australian Attorney-General's Department (2019[2]), Foreign Influence Transparency Scheme Factsheet 3: Foreign principals, https://www.ag.gov.au/sites/default/files/2020-03/foreign-principals.pdf.

The scheme applies where the person undertakes registrable activities (FITS sections 11 and 13A):

- Under an **arrangement** with the foreign principal. An arrangement between the person and the foreign principal could be **formal** or **informal**, **written** or **verbal**. It could be a **contract**, **understanding** or **agreement** of any kind. It does not need to have been made in Australia for it to be registrable. The foreign principal does not need to pay the person to undertake the activity, or provide any other advantage to the person.
- **In the service** of the foreign principal.
- **On the order or at the request** of the foreign principal, or
- **Under the direction** of the foreign principal.

Regardless of the nature of the relationship between the person and the foreign principal, both the person and the foreign principal must **have intended or expected that the person might or would undertake the registrable activities on behalf of the foreign principal.**

A connection between the actions of the person and the foreign principal must be established. It is not sufficient for a person to unilaterally decide that they will undertake an activity on behalf of a foreign principal. The foreign principal must be **seeking or expecting the activity.**

If a person undertakes an activity without the foreign principal's knowledge or expectation, there is no obligation to register under the scheme. In this case, the person's activities and the foreign principal's interests are merely coincidental. Where the person and the foreign principal expect the person to undertake a registrable activity, even if the activity is in the interests of both the person and the foreign principal, the person must register unless an exemption applies (Australian Attorney-General's Department, 2019[3]).

Decisions and public officials covered

FITS is intended to cover a wide breadth of political or governmental decisions, including but not limited to:

- Political decisions.
- Legislative processes.
- Regulatory decisions.
- Procurement decisions, and
- grant-making decisions.

FITS covers four main categories of activities, which are described below. Among them are activities aimed at "**political or governmental influence**", which is intended to have a broad definition. Activities are considered to be aimed at political or governmental influence if the sole or primary purpose, or a substantial purpose, of the activity is to influence the public, (FITS Section 12) one or more of the following:

- A process in relation to a federal election or a designated vote.
- A process in relation to a federal government decision. A 'government decision' includes any formal or informal, final or interim decisions of the Executive Council, the Cabinet (or a committee of Cabinet), a Minister, an Australian Government Department, agency or company (or their subsidiary) of the Australian Government (within the meaning of the *Public Governance, Performance and Accountability Act* 2013), or any person performing duties in relation to any of those other entities. Examples of these types of processes related to these decisions include grant, licensing or procurement processes, policy development processes or other decisions.
- Proceedings of a House of the Parliament.
- A process in relation to a registered political party.
- A process in relation to a member of Parliament who is not a member of a registered political party.

- A process in relation to a candidate in a federal election who is not endorsed by a registered political party.

Any attempt by a foreign principal to influence the opinion of the Australian public about these political and governmental processes is also covered by the scheme.

Types of activities covered

Whether the activity is registerable depends on a number of factors, namely the identity of the person undertaking the activity, the identity of the foreign principal, the nature of the relationship between the foreign principal and the person undertaking the activity, and the nature and purpose of the activity.

The regime covers **activities of a political nature** (e.g. lobbying members of Parliament) and activities **undertaken for political or governmental influence** (e.g. providing information or material to influence public voting during a federal election). The scheme also captures activities where the purpose of the activity is not always clear. This includes activities undertaken on behalf of a foreign principal to **influence any aspect** of Australia's democratic system (e.g. processes of government including the creation of laws and policies, the practices of Parliament and the conduct of federal elections).

Table A B.2. "Registrable" activities within the meaning of FITS

<table>
<tr><th></th><th>Type of activities</th><th>Description</th><th>Examples</th></tr>
<tr><td rowspan="2">Lobbying for political or governmental influence

Lobbying includes communicating with the intent to influence processes, decisions or outcomes and representing the interests of another person in any process.</td><td>Parliamentary lobbying
(Sections 10, 20, 21)</td><td>Lobbying a Member of Federal Parliament or their staff.
N.B: any parliamentary lobbying undertaken on behalf of a foreign government, for whatever purpose, is a registrable activity unless an exemption applies. Parliamentary lobbying undertaken on behalf other foreign principals for the purpose of political or governmental influence, is registrable.</td><td>(e.g. meeting with a parliamentarian to express a particular point of view on behalf of a foreign principal).</td></tr>
<tr><td>General political lobbying
(Sections 10, 21)</td><td>General political lobbying covers lobbying activities directed towards:
• Commonwealth public officials.
• Departments, agencies or authorities of the Commonwealth.
• Registered political parties.
• Candidates for federal elections.</td><td>(e.g. sending a letter to a ministry, in order to express a particular point of view on behalf of a foreign principal).</td></tr>
<tr><td colspan="2">Communication activity, including for the purpose of political or governmental influence. Such activities can influence the views and opinions of people involved in political and governmental processes.

(Sections 13, 21)</td><td>Communications activity covers all circumstances in which information or material are disseminated, published, disbursed, shared or made available to the public. Information and material can be in any form including interpersonal, visual, graphic, written, electronic, digital and pictorial forms</td><td>(e.g. the government of country Y asks an eminent Australian expert to write and publish an article protesting against a measure taken by the government).</td></tr>
<tr><td colspan="2">Disbursement activity
(Sections 10, 21, 35)</td><td>Disbursement activity includes the distribution of money or things of value on behalf of a foreign principal.
This activity must be registered under the scheme if the person, or recipient of the disbursement, is not required to disclose the activity under Part XX of the Commonwealth Electoral Act 1918 and the activity is undertaken at purposes of political or governmental influence. The Commonwealth Electoral Act 1918 disclosure requirements relate to donations made to candidates for federal election and political parties during a relevant disclosure period.</td><td>(e.g., an individual acting on behalf of a foreign political organisation makes donations on behalf of that foreign organisation to a student organisation on a college campus in order to encourage students to vote for a specific party). This donation is not made public under electoral laws and must be registered.</td></tr>
</table>

Source: (Australian Attorney-General's Department, 2019[4])

Exceptions/exemptions

Exemptions from registration in the Australian FITS are specified in sections 5, 24, 25, 26, 27, 29, 30 of the Act. These are the following activities:

- **Humanitarian aid or assistance**: The exemption applies where a person is undertaking a registrable activity on behalf of a foreign principal and that activity primarily relates to the provision of humanitarian aid or humanitarian assistance.
- **Legal advice or representation**: This exemption applies where a person is undertaking a registrable activity on behalf of a foreign principal and the activity primarily relates to, or is incidental to, providing (i) legal advice; (ii) legal representation in judicial, criminal or civil inquiries, investigations or proceedings; or (iii) legal representation related to government administrative proceedings involving a foreign principal.
- **Members of Parliament and statutory office holders**: This exemption applies where a person is undertaking a registrable activity on behalf of a foreign principal and, while the activity is being undertaken the person holds a position or appointment as a member of the Australian parliament or a member of the state Parliament or territory Legislative Assembly, or an office bearer under a law of the Commonwealth, state or territory.
- **Diplomatic, consular, and similar activities**: This exemption applies where a person is undertaking a regitrable activity on behalf of a foreign government and the activity is within the scope of the person's function as a diplomatic or consular official.
- **United Nation (UN) Officials:** This exemption applies to UN personnel or individuals formally associated with the UN who are undertaking a registrable activity on behalf of a foreign principal.
- **Religion**: This exemption applies where a person is undertaking religious activity on behalf of a foreign principal and the activity is undertaken in good faith.
- **Foreign government employees**: This exemption applies where a person is undertaking a registrable activity on behalf of a foreign principal and does so while employed as an officer of a foreign government and the activity is undertaken in name of the foreign government.
- **Commercial or business pursuits - directors and employees of a foreign government-related entity**: this exemption applies where: (i) a person is undertaking a registrable activity on behalf of a foreign government-related entity, (ii) the activity is a commercial or business pursuit, (iii) the activities are undertaken by the individual are in the capacity as a director, officer or employee of the foreign government-related entity, and (iv) it is clear that the person is undertaking the activity in their official capacity.
- **Commercial or business pursuits – operating under the name of a foreign government related entity:** This exemption applies where: (i) a person undertakes an activity on behalf of a foreign government related entity, (ii) the activity is a commercial or business pursuit, and (iii) the person undertakes the activity in or under the same or a substantially similar name to the foreign government-related entity.
- **Industry representative bodies**: This exemption covers circumstances where a registrable activity is undertaken in the course of representing the collective interests of members (both foreign and domestic) of an industry representative body. The exemption does not apply to representative groups which are foreign entities or where the membership does not include Australian entities.
- **Personal representations in government administrative processes:** This exemption applies to individuals who make representations on behalf of a foreign principal in relation to a governmental administrative process that involves the foreign principal or matters affecting the personal welfare of the principal stranger.
- **Registered charities**: The exemption applies to registered charities that undertake certain registrable activities on behalf of a foreign principal in pursuit of the charity's purpose. This

exemption only applies to parliamentary lobbying, general political lobbying and communications activities. The exemption does not apply to disbursement activities.

- **Artistic purposes**: This exemption applies where a person is undertaking a registrable activity on behalf of a foreign principal and the activity relates to the arts or to a person's artistic purposes.
- **Certain registered organisations**: This exemption applies where an association of employees or an enterprise association that is registered under the *Fair Work (Registered Organisations) Act 2009* undertakes registrable activity on behalf of a foreign principal.
- **Activities of members of certain professions**: This exemption applies where a tax agent, a customs broker or a liquidator or receiver undertakes a registrable activity on behalf of a foreign principal in the usual context of undertaking their profession.
- **Employees and contractors engaged under the *Members of Parliament (Staff) Act 1984* and Commonwealth public officials**: This exemption will only apply if the person undertakes a registrable activity within the scope of the person's ordinary or usual duties, and at the time the activity is undertaken, the identity of the foreign principal is made apparent or is disclosed to all persons with whom the person is dealing (Australian Attorney-General's Department, 2019[5]).

Disclosure regime

Initial registration

The full list of information which must be made public under FITS is in section 6 of the Rules. Upon initial registration, registrants are required to provide the following related information and supporting documents:

- Detailed information about registrable activities (including types of recordable activities, dates of activities, details about the purpose of the activity).
- Information describing the nature of the relationship with the foreign principal.

The specific information and documents that registrants are required to provide will depend on their particular circumstances, including the types of registrable activities they are undertaking and the nature of their relationship with the foreign principal. For example, for any disbursement activity, the exact amount must be mentioned as well as the beneficiary. For a communications activity, the registrant must state the format of the communications activity (for example, radio broadcast, article, speech, text message) as well as details about the audience or recipient of the communication.

However, the information that is made publicly available does not include information that the Secretary of the department is satisfied is commercially sensitive, is sensitive and relates to a confidential government consultation on proposed policy changes, or affects national security.

Frequency of disclosures

Registrants are required to report material changes in circumstances, including updating their information to ensure it is not misleading or inaccurate. When a registrant becomes aware that information provided is or will become inaccurate or misleading, they are required to correct that information within 14 days.

Specific obligations during voting periods

People and entities who need to register under the FITS scheme have specific obligations during voting periods (including election periods). The particular obligations that apply during voting periods include:

- Reviewing registration information and confirming it is correct or updating the information.
- Reporting any registrable activities undertaken on behalf of a foreign principal during the voting period within seven days if the activity relates to the relevant vote or election, or involves disbursement activity that reaches the 'electoral donations threshold' or a multiple of the threshold.

During a voting period, the Attorney General's Department is required to publish the above corrections, updates and reports within 48 hours of receipt.

Registry administration, compliance and enforcement

The registry is administered by a dedicated Unit within the Attorney *-General's Department*. This Unit is also in charge of the *Australian Government Register of Lobbyists*.

Violations and sanctions

The Foreign Influence Transparency Scheme Act 2018 contains offenses for non-compliance under the scheme. These include:

- **Undertaking registrable activities while not being registered under the scheme**. It is a criminal offence for a person to not register under the scheme when they should do so. The maximum penalties for these offenses range from six months to five years' imprisonment, depending on the seriousness of the conduct.
- **Failure to fulfil responsibilities (e.g. reporting and disclosure obligations) under the scheme**. It is a criminal offense for a person to not fulfil responsibilities under the scheme. The maximum penalties for these offenses range from a fine of 60 penalty units to six months' imprisonment, depending on the seriousness of the conduct.
- **Failure to comply with an information gathering notice** issued under section 45 or 46 of the Act.
- **Providing false or misleading information or documents in response to an information gathering notice issued under section 45 or 46 of the FITS Act**. It is an offence to give false or misleading information or documents to the Attorney-General's Department in response to an information gathering notice. The maximum penalty for this offense is three years imprisonment.
- **Destroying records in connection with the scheme**. It is an offence to damage, destroy or conceal records that are required to be kept in relation to any registration under the scheme. It is also an offence to take any action to prevent a registrant from keeping proper records related to the scheme. The maximum penalty for this offense is two years imprisonment.

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Annex C. The Foreign Influence Registration Scheme (FIRS) in the United Kingdom

Description

The establishment of a *Foreign Influence Registration Scheme* was provided for in the *National Security Bill* (Part 4) passed in the summer of 2023 in the United Kingdom (UK). The register is scheduled to come into force in autumn 2024 and detailed guidelines will be published before the scheme's requirements come into force.

It is a two-tier registration scheme – including an "enhanced" tier for activities carried out on behalf of certain foreign powers or power-controlled entities that pose a risk to UK safety and interests. The FIRS aims to "*strengthen the resilience of the UK political system against covert foreign influence*" and to "*better inform [UK citizens] about the nature, scale and extent of foreign influence in the UK* ". Like FARA and FITS, FIRS considers "*open and transparent engagement with and on behalf of foreign governments*" to be legitimate.

Scope and definitions

Actors covered

A "**foreign power**" is defined in the National Security Act 2023 (section 32) as any of the following persons:

- The sovereign or other head of a foreign State.
- A foreign government or part of a foreign government (for example, a ministry or department of a foreign government).
- An agency or authority of a foreign government, or of part of a foreign government.
- An authority responsible for administering the affairs of an area within a foreign country or territory (for example, a local government authority in a foreign country).
- A political party which is a governing political party of a foreign government. Foreign political parties that are not the ruling party of a foreign country are not foreign powers.

Types of activities, decisions and public officials covered

If a formal or informal "**arrangement**" is formed with an employee or member of one of the above entities (when acting in this capacity), it is treated as an "**arrangement with a foreign power**". An arrangement involves a "**direction**" from the foreign power to carry out "**political influence activities**" in the United Kingdom, directly or through another natural or legal person.

As with FARA and FITS, the term "**direction**" in FIRS has a broad definition even though it is not expressly defined in the *National Security Bill*. An "**direction**" is considered to be an order to act and implies some degree of control or expectation by the foreign power. These orders could be delivered in the form of a request, but only where there is a power relationship between the person and the foreign power which

adds an element of control or expectation to the request, for example through a contract, payment, coercion or promise of future compensation or favourable treatment. However, a benefit does not necessarily need to be provided for an order or instruction to constitute a "direction".

Funding from a foreign power alone does not in itself constitute a direction. For example, cultural, political, linguistic or economic institutes will not be required to register simply because they receive funds from a foreign power. It would only be considered a "direction" if the funding had conditions attached for it to be used in a particular way, or it was provided in furtherance of an expectation that it will be used in a particular way. Similarly, ownership, or part-ownership by a foreign power, does not necessarily mean that activities of such enterprises are directed by a foreign power. State-owned enterprises would only need to register where they are directed to conduct or arrange political influence activity by a foreign power in the United Kingdom.

An activity is considered a "**political influence activity**" (article 70 of the National Security Act 2023) if it meets the following two criteria:

- **Criterion 1** – the activity is one of the following:
  - A communication (for example, an email, letter or meeting) to a senior public official or politician.
  - A public communication (for example, the publication or production of an article) except where it is reasonably clear that it is made at the direction of a foreign power (for example, if an article is labelled in a way that makes this fact clear, or if the writer mentions this fact in the article itself).
  - The provision of money, goods or services to an individual or entity in the United Kingdom (for example, providing consultancy services to a UK business).
- **Criterion 2** – the purpose, or one of the purposes, of the activity is to influence one of the following:
  - An election or referendum in the United Kingdom.
  - A decision of a Minister or Government department (including a Minister or Government department of Wales, Scotland or Northern Ireland).
  - The proceedings of a UK registered political party (such as their manifesto commitments).
  - A Member of the House of Commons, House of Lords, Northern Ireland Assembly, Scottish Parliament or Senedd Cymru (when acting in their capacity as such).

Exceptions/exemptions

The scheme provides for a number of exemptions to ensure its proportionality. The Secretary of State also has a power to create additional exemptions through regulations. The following people will therefore not be required to register with the scheme:

- Those acting pursuant to an agreement to which the United Kingdom is a party (for example, those invited to participate an event by a UK government department) (both tiers).
- Individuals acting for a foreign power in their official capacity as employees (both tiers).
- Individuals to whom privileges and immunities apply in international law as provided by, for example, the Vienna Convention on Diplomatic and Consular Relations (both tiers).
- Family members who are part of the household of members of diplomatic and consular staff (both tiers).
- Those providing essential services to a diplomatic mission or consulate, e.g. catering or building services (enhanced tier).
- Lawyers providing legal services (both tiers).
- Domestic and international news publishers (political influence tier only).

- Any agreement with the Republic of Ireland will also be exempt from registration.

There is no requirement to register information that is subject to legal professional privilege or would involve the disclosure of confidential journalistic material or sources.

Disclosure regime

Types of information to disclose

Foreign powers themselves are not required to register, only people who have entered into agreements with foreign powers.

Although the precise disclosure requirements have not yet been clearly defined, the UK government has already published a "policy **statement and draft regulations**" outlining the information that it intends to require at registration.

The FIRS distinguishes between two types of influence with distinct disclosure regimes:

- **A "political influence tier",** which requires the registration of arrangements to carry out political influence activities in the United Kingdom at the direction of a foreign power. The information requested from a registrant will include a description of the activities to be undertaken, including their nature, purpose and any sought outcomes, details of the start and end dates of the activities, a description of the frequency of the activities, details of the individuals or entities carrying out these activities and details of the specified entity or foreign power who is directing the activities.
- **An "enhanced tier"**, in which the UK government will have the power to specify a foreign power, part of a foreign power or an entity subject to foreign power control, where the Secretary of State considers it necessary to protect the safety or interests of the United Kingdom. Use of the power will be subject to Parliamentary approval. Where appropriate, the government may narrow the activities requiring registration under this tier. The enhanced tier of FIRS gives the Secretary of State the power to require registration of a wider range of activities:
  - Arrangements to carry out any activities within the United Kingdom at the direction of a specified power or entity: the person making the arrangement with the specified body will be responsible for registration.
  - Activities carried out in the United Kingdom by specified foreign power-controlled entities. In these circumstances, the specified entity (not a foreign power) will be responsible for registration.

Frequency of disclosures

Under the political influence tier, all arrangements must be registered within 28 days of being made with the foreign power.

Violations and sanctions

The FIRS provides for a number of offences, including for those who fail to comply with registration requirements or respond to information notices.

The following offences under the political influence tier are punishable by up to 2 years imprisonment and/or a fine:

- Failure to register a registerable arrangement (section 69(5) of the legislation).

- Carrying out political influence activities, or arranging for others to carry out these activities, pursuant to a registerable arrangement, where registration requirements have not been met (section 71).
- Failure to update a registration within 14 days where there is a material change in the arrangement or activities registered (section 74(8)).
- Failure to comply with an information notice (section 75(8)).
- The provision of false, inaccurate or misleading information (section 77).
- Carrying out political influence activities, or arranging for others to carry out these activities, pursuant to a registerable arrangement, where false, inaccurate or misleading information has been provided (section 78(2)).

Failure to comply with obligations following an information notice, without reasonable excuse, also constitutes a criminal offense punishable by:

- Up to 5 years of imprisonment and a fine under the enhanced tier.
- Up to 2 years of imprisonment and a fine under the “political influence” tier.

For an offense to be committed, the individual must have relevant knowledge of the agreement or the parties to that agreement. When a person or entity is unaware of this information, they may avoid committing an offense.

Registry administration, compliance and enforcement

A scheme management unit will be established within the Home Office which will have both administrative and investigative functions and is still being set up at the time of writing. This unit will be authorised in particular to issue information notices to registrants or natural or legal persons who are potentially party to or acting under a registrable agreement.

Annex D. Proposed Directive of the European Parliament and of the Council establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries

Description

The proposal for a Directive of the European Parliament and of the Council establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries, announced in December 2023 as part of the European Defence Package. Democracy aims to establish harmonised transparency requirements through national registers for entities carrying out such interest activities on behalf of third countries, regardless of their legal status. It therefore aims to harmonise the laws of the Member States by ensuring a common level of transparency throughout the Union (European Commission, 2023[1]). The explanatory memorandum states that, insofar as interest representation activities are "normally provided for remuneration", the Directive is based on Article 57 of the Treaty on the Functioning of the European Union, which defines the concept of "services normally provided for remuneration", and on Article 114, which provides for the adoption of measures having as their object the establishment and functioning of the internal market.

The proposal was prepared on the basis of consultations with interested parties in 2022 and 2023, including Member State authorities, commercial entities, entities engaged in interest representation activities and civil society organisations. A public consultation was also organised in February-April 2023, and an impact assessment was carried out.

As with the systems in force in Australia, the United Kingdom and the United States, the proposal makes a clear distinction between influence from third countries, which is presented as being able to "*contribute positively to public debate*", and situations of interference, where influence is carried out covertly. In particular, the proposal seeks to avoid any stigmatisation or adverse consequences that may arise from transparency obligations. Similarly, it does not aim to prevent third countries from promoting their opinions but to ensure that this is done in a transparent and responsible manner. It does not require compulsory registration on the sole basis of foreign funded unrelated to interest representation activities carried out on behalf of third countries.

Scope and definitions

Actors covered

The proposed Directive means by "**third countries**" countries that are not members of the Union or the European Economic Area. It applies to actors who provide an interest representation service to an entity

from a third country, the definition of which is specified in Table A D.1 below. The Directive notably avoids the use of the qualification "foreign agent", in order to avoid any "assimilation to measures in force in particular in Russia, measures which unduly restrict civic space by stigmatising, intimidating and restricting the activities of certain civil society organisations."

Table A D.1. Actors covered by the Directive

	Actors covered
"Third country entity" (Chapter 1, Article 2 §4)	(a) the central government and public authorities at all other levels of a third country, with the exception of members of the European Economic Area. (b) a public or private entity whose actions can be attributed to an entity referred to in point (a), taking into account all relevant circumstances.
"Interest representation service provider" (Chapter 1, Article 2 §3)	A natural or legal person that provides an interest representation service.
" Subcontractor " (Chapter 1, Article 2 §7)	An interest representation service provider with whom a main contractor, or one of its subcontractors, concludes a contract under which it is agreed that the subcontractor performs some or all parts of an interest representation activity that the main contractor has committed to carry out.

Source: (European Commission, 2023[2])

Decisions and public officials covered

The proposed Directive covers the development, formulation or implementation of policy or legislation, or public decision-making processes in the Union or a Member State.

Types of activities covered

The proposed Directive covers both direct lobbying and the organisation of communication or advertising campaigns (Table A D.2).

Table A D.2. Activities covered by the Directive

	Definition
"Interest representation activity" (Chapter 1, Article 2 §1)	An activity conducted with the objective of influencing the development, formulation or implementation of policy or legislation, or public decision-making processes, in the Union, which could in particular be performed through organising or participating in meetings, conferences or events, contributing to or participation in consultations or parliamentary hearings, organising communication or advertising campaigns, organising networks and grassroots initiatives, preparation of policy and position papers, legislative amendments, opinion polls, surveys or open letters, or activities in the context of research and education, where they specifically carried out with that objective.
"Interest representation service" (Chapter 1, Article 2 §2)	An interest representation activity normally provided for remuneration, as referred to in Article 57 of the Treaty on the functioning of the European Union.

Source: (European Commission, 2023[2])

Exceptions

The proposal does not cover entities that receive financial support from other Member States or third country entities for purposes unrelated to interests representation. For this reason, contributions to the core funding of an organisation or similar financial support provided, for example, within the framework of a grant programme awarded by donors from a third country to a non-profit organisation, should not be

considered as remuneration for an interest representation service when they are not linked to an interest representation activity, i.e. when the entity would receive the funds in question irrespective of whether it carries out specific interest representation activities on behalf of the third country providing the funding.

Article 3 (2) of the proposal also specifies the following exclusions:

- Activities carried out directly by a third country entity, i.e. the central government and public authorities at all other levels of a third country, with exception of members of the European Economic area, that are connected with the exercise of official authority, including activities related to the exercise of diplomatic or consular relations between States or international organisations.
- The provision of legal and other professional advice in the following cases:
    - Advice to a third country entity to help ensure that its activities comply with existing legal requirements.
    - Representation of third country entities in the context of a conciliation or mediation procedure aimed at preventing a dispute from being brought before, or adjudicated on by, a judicial or administrative body.
    - Representation of third country entities in legal proceedings.
- Ancillary activities, i.e. an activity that supports the provision of an interest representation activity but has no direct influence on its content.

Disclosure regime

Types of information to disclose

The entities concerned would be registered in a national register at the latest when interest representation activities begin. The information to be declared is specified in Annex I of the Directive. It includes:

- Information on each of the third country entities on whose behalf the entity carries out the interest representation activity. This includes name, address, a description of the entity's main goals, remit and field of interest, and where available, the registration number of the third country entity in a business register or a comparable identifying code.
- The third country entity on whose behalf the third country entity is acting.
- The annual amounts covering all tasks carried out with the objective of influencing the development, formulation or implementation of the same proposal, policy or initiative, according to a range of annual amounts, for a full year of operations referring to the most recent financial year closed, as of the date of registration or the date of the annual update of the registration details.
- A description of the interest representation activity and its estimated duration, the Member States in which the interest representation activity is carried out, the legislative proposals, policies or initiatives targeted by the interest representation activity, and, where applicable, the names of subcontractors and the media service providers and online platforms where advertisements are places as part of the interest representation activity.

Frequency of disclosures

Member States shall ensure that registered entities communicate within a reasonable period of time, modifications or additions concerning the data provided on their entity, and annually modifications or additions concerning the data provided in accordance with the other information to be declared.

Registry administration, compliance and enforcement

Each Member State shall designate one or more authorities responsible for the national registers as well as one or more supervisory authorities (Article 15). The proposed Directive thus distinguishes the "**authorities responsible for the national register**", which means the public authority or body responsible for maintaining a national register as referred to in Article 9 and for processing registrations submitted pursuant to this Directive from the "**supervisory authority**", which means the independent public authority responsible for the supervision of the compliance with and enforcement of the obligations laid down in the Directive. The supervisory authority would be able to request information that could be shared with supervisory authorities of other Member States. They would also be able to request certain information from an entity to determine whether it falls within the scope of the Directive, according to very precise criteria specified in the Directive. Finally, supervisory authorities would have the possibility to receive information from whistleblowers about possible violations of the transparency requirements of the Directive, since the Directive would amend the Whistleblowers Directive.

Member States would be free to choose the administrative and supervisory arrangements, for example by choosing several supervisory authorities.

Violations and sanctions

Where the information provided for registration purposes is incomplete or contains manifest errors, the authority responsible for the national register shall ask the entity to complete or rectify its submissions. Within 5 working days of receiving a response from the entity in question, the authority responsible for the national register shall either include a corresponding entry in its national register, or refuse to make such an entry and inform the entity in question why the submission remains incomplete or contains manifestly incorrect information (Article 11(2)).

The proposed Directive then provides that only administrative fines capped at a certain amount depending on the economic capacity of the entity may be imposed by the supervisory authorities with jurisdiction over the entity concerned or by a judicial authority at the request of that supervisory authority in the event of violation of transparency obligations. The maximum amount of the financial sanction that may be imposed shall be, for undertakings, 1% of the annual worldwide turnover achieved in the preceding financial year, for other legal entities, 1% of the annual budget of the entity in accordance with the most recent financial year closed and for natural persons, EUR 1 000.

Criminal sanctions are explicitly excluded.

Reviews

Several reservations have been expressed about the proposal for a Directive, the most important of which is the full harmonisation approach. Under this approach, the schemes would be limited to administrative fines. Indeed, Article 4 of the Directive provides that "*Member States shall not maintain or introduce, for interest representation activities falling within the scope of this Directive, provisions diverging from of those laid down in this Directive, including more, or less, stringent provisions to ensure a different level of transparency of those activities*". Member States would thus not be allowed to deviate from the rules by setting broader transparency requirements or criminal sanctions.

Secondly, the proposal follows the internal market principle and therefore provides for entities to be required to register in the Member State of their principal establishment ('country of origin' principle), irrespective of the Member State(s) in which they wish to carry out their interest representation activities. Thus, registration would not be carried out in the country in which the interest representation activity is

carried out. Although this approach may strengthen the Commission's ability to enforce the Directive in Member States and provides for a mandatory exchange of information between national authorities, it could also create governance gaps conducive to the risk of interference.

Finally, several civil society organisations argued that legislative intervention should encompass all forms of interest representation activities, extending beyond activities on behalf of third countries, and should be unified under a framework on lobbying. They also underlined the risks of stigmatisation of civil society organisations and the potentially negative consequences of the Directive on their activities (Civil Society Europe, 2023[3]; Civil Society Europe, 2023[4]).

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Strengthening the Transparency and Integrity of Foreign Influence Activities in France

A TOOL FOR TACKLING FOREIGN INTERFERENCE RISKS

This report analyses the legislative and institutional framework in France relating to the transparency and integrity of foreign influence activities. It identifies concrete policy measures adapted to the French context to make foreign influence activities more transparent, discourage foreign interference attempts, notably through opaque lobbying and influence activities, and ensure that the control over movements of certain public officials and civil servants between the public and private sectors takes better account of this risk.

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