

Closing note on the Strategic Initiative with the European Commission to improve the Transparency Register (SI/7/2016/KR)

Correspondence - 27/06/2019

Case SI/7/2016/KR - Opened on 26/05/2016 - Decision on 27/06/2019 - Institution concerned European Commission |

The Transparency Register was set up by the European Commission and Parliament in 2011 to allow the public to monitor the activities of interest representatives (or “lobbyists”) who seek to influence the formulation and implementation of EU legislation and policy. Overall, the Register has been successful and while there are gaps, it is improving over time.

In 2016, the Commission organised a public consultation on several proposed reforms aimed at improving the Transparency Register.

In this context, the Ombudsman opened a ‘strategic initiative’, to contribute to this important debate and to monitor developments by writing to the Commission on the issue.

In January 2018, inter-institutional negotiations began between the Parliament, the Council of the EU and the Commission on the Commission’s proposal to revise and improve the Transparency Register. These negotiations have not yet led to a successful outcome.

The Ombudsman encourages the incoming Parliament, the Council and the incoming Commission to renew their efforts to improve the Transparency Register given the importance of this matter for public trust in the EU.

1. Background

1. The purpose of the Transparency Register [1] is to allow the public to monitor the activities of interest representatives (or “lobbyists”) who seek to influence the formulation and implementation of EU legislation and policy. It was set up by the European Commission and the European Parliament in 2011 [2] .

2. On 1 March 2016, the Commission launched a public consultation on the Transparency Register. One of the main issues discussed was whether signing up to the Transparency



Register should be 'mandatory' (not, however, legally mandatory on lobbyists), and whether it should be extended to cover lobbying of the Council of the EU.

3. On 26 May 2016, the Ombudsman, by means of a strategic initiative, wrote to the Commission with suggestions to improve the Transparency Register [3] .

4. On 28 September 2016, the Commission put forward a proposal for an 'Inter-institutional Agreement on a mandatory Transparency Register' [4] . Discussions have taken place since then between Parliament, Council and Commission.

5. In the hope that discussions on this matter will resume in the coming months, the Ombudsman considers that it is now an appropriate time to report on her initiative.

2. Strategic Initiative

6. Discussing policy issues with 'interest representatives' can help EU public representatives and civil servants inform themselves about the real world impact of the work they do, and indeed is essential to any modern public administration.

7. There can be a risk, however, that certain well-connected, well-resourced and well-organized groups may dominate such interactions. If it is the case that a certain policy was excessively influenced by certain interests, citizens should be in a position to know.

8. The Ombudsman welcomed the Juncker Commission initiative to create a rule whereby no senior meetings with the Commission would take place with interest representatives unless they are listed on the Transparency Register [5] . The Ombudsman also welcomed in general the Commission proposal [6] , however expressed some concern about the scope of lobbying activity covered (see Annex I, point 12). The Ombudsman then made a number of suggestions for further improvement, which can be summarised as follows:

- The Transparency Register should become the '**central transparency hub**' for all EU institutions and agencies;
- Interest representatives that lobby EU institutions should be fully transparent about **how they are funded** ;
- Information on the Transparency Register should be accurate;
- The institutions should monitor the Transparency Register and impose effective measures to ensure compliance with its rules;
- Lobbying of **Member States' officials** regarding EU policies needs to be regulated;
- Organisations that employ former EU officials to lobby EU institutions should be suspended from the Transparency Register unless they ensure that the "**revolving doors**" [7] rules are respected;
- Law firms that lobby must declare who their clients are;
- All meetings with **tobacco lobbyists** should be proactively published [8] ;
- The right to complain to the Ombudsman should be included in the Interinstitutional Agreement.



9. To complement her suggestions to improve the Transparency Register, the Ombudsman published practical advice for EU civil servants on their interactions with interest representatives [9] . This 'Dos and Don'ts' guide was drafted in consultation with the EU institutions. The Commission subsequently distributed and applied the practical recommendations throughout the institution, and uses them for training purposes. Parliament has also advised its staff to follow the practical recommendations. [10]

10. The Ombudsman monitored progress in the negotiations between the Parliament, Council, and Commission. She noted, in particular, the following:

- On 15 June 2017, Parliament adopted its negotiating mandate for the inter-institutional negotiations [11] . On 6 December 2017, the Council agreed on its negotiating mandate [12] .
- At the beginning of 2018 the inter-institutional negotiations on the Transparency Register started.
- On 31 January 2019, Parliament adopted amendments to its Rules of Procedure to further boost transparency by specifying that rapporteurs, shadow rapporteurs and committee chairs shall publish online, for each report, all scheduled meetings with interest representatives falling under the scope of the Transparency Register. [13]
- On 4 April 2019, the First Vice-President of the Commission stated that " *the three institutions' negotiators agreed to continue discussions on the technical aspects of the package of instruments regarding the Transparency Register, in order to achieve a political agreement as soon as possible. The technical work continues to that end, but ultimately progress will depend on all three institutions accepting the 'not on the Register, no meeting with decision-makers' principle in a meaningful way* " [14] .

11. The Ombudsman welcomes the steps that have been taken so far to further boost transparency in this important area of EU lobbying [15] . She notes with regret, however, that the negotiations between the Parliament, Council and Commission have not yet reached a successful outcome.

12. The Ombudsman is convinced that greater openness as regards the EU's interaction with interest representatives is of importance to the legitimacy of, and public trust in, the work of the EU. She encourages the Parliament, Council and Commission, to renew their efforts to make transparent the activities of interest representatives insofar as they interact with EU decision-makers and EU civil servants.

Annexes

Annex 1 - Follow-up to the Ombudsman's suggestions



This annex lists the Ombudsman's suggestions (in bold) and the parts of the Commission's proposal for an Interinstitutional Agreement on a mandatory Transparency Register [16] that reflect these suggestions.

1) The Transparency Register should be a 'central transparency hub' for all institutions/agencies

The Commission's proposal encourages voluntary involvement of other EU institutions, bodies, offices and agencies, including making interactions with interest representatives conditional upon registration (Article 12 IIA).

The Commission's proposal calls on registrants to include information on membership of expert groups, Parliament intergroups and industry forums in the data they provide (Article II B Annex II, same wording as the current IIA).

2) Full funding transparency of all interest groups [17]

The Commission's proposal calls on registrants to provide financial information related to the activities covered by the register. For 'not-for-profit' organisations this includes the main sources of funding by category and each contribution exceeding ten percent of their total budget. (Article II C Annex II)

The Commission's proposal calls for an obligation to list all costs from lobbying through intermediaries (Article II C Annex II) [18] .

3) Accuracy and comparability of data should be improved, including guidelines on the methodology for calculating declarations

The Commission's proposal calls for more detailed information on the annual costs for activities covered by the register. (Annex II Article II C).

There are, however, no guidelines for calculating declarations.

4) Monitoring and sanctioning should be improved, including increase in resources

The Commission's proposal states that investigations may be carried out following complaints received or at the Joint Transparency Register Secretariat's (JTRS) own initiative (Article 7 IIA). Tasks of the JTRS include monitoring the content of the register with the aim of achieving an optimal level of data quality in the register, carrying out investigations, removing registrations and adopting disciplinary measures (Article 9 IIA).

The Commission's proposal states that institutions need to ensure that the JTRS has at its disposal the human, administrative and financial resources required for the proper implementation of its tasks (new provision) (Article 11 IIA).

The Commission's proposal states that disciplinary measures would remain largely similar [19] , namely: a) a formal warning; b) suspension of individual or multiple types of interaction available to the registrant (between 15 days and one year); or c) removal of the registration from the register (between 15 days and two years) (Article 10 Annex IV).

5) Lobbying of Member States' officials needs to be governed

The Commission's proposal states that interactions with the Ambassador/deputy Ambassador of the current or forthcoming Presidency of the Council of the EU should be conditional upon registration (Article 5 IIA).



The Commission's proposal states that Member States' permanent representations may, on a voluntary basis, make use of the Transparency Register (Article 13 IIA).

6) Suspend any organisation that breaks 'revolving doors' rules

The Commission's proposal contains similar obligation as under the present IIA for registrants to respect the obligations of former MEPs, members of the Commission or staff of the institutions to abide by the rules applicable to them after leaving the institution if employing them (Article H Annex III).

The Commission's proposal states that suspension is an option for breaching the code of conduct under Annex IV (as before).

7) Law firms that lobby must declare their clients

The Commission's proposal includes a similar "classification section for registrants" that are law firms (Article I Annex I).

The Commission proposal includes similar (although slightly fewer) exemptions of legal activities not covered by the register (when comparing Article 3 of the IIA proposal and Article 10 of the present IIA).

The Commission proposal calls on law firms to declare *"all clients, on behalf of whom activities covered by the register are carried out"* and *"[a]ny current clients that are not covered by the most recent financial year closed [...] separately by name"*, as per Annex II, Article II C of the proposal.

8) Publish all meetings with tobacco lobbyists

Not covered by the proposal.

9) Right to complain to Ombudsman should be included in IIA

The Commission's proposal contains a right to complain about a decision by the Management Board (which deals with requests for review of JTRS decisions) to the Court or the Ombudsman (Article 12 Annex IV).

10) Incentives to register should be made so attractive that the only sanction that matters is to be suspended or removed from the Transparency Register.

The proposed IIA recognised the need to establish a mandatory Transparency Register by making registration a 'de facto precondition' for interest representation (Recital 6 IIA).

The proposed IIA included new interactions conditional upon registration for Council and Parliament (for Parliament: MEPs, the Secretary-General, Directors-General and the Secretaries-General of political groups; for Council: the Ambassadors and their deputies of the current and forthcoming Presidency, Council's Secretary-General and Directors-General (Article 5 IIA).

11) Extend obligations downwards to Directors and Heads of Units in particular, and for the names of interest representatives in these meetings also to be published.

Not covered.

12) Scope of lobbying activity covered [20]

The scope in terms of activities covered by the proposed IIA, seemed more limited.



Proposed IIA:

“This agreement applies to activities which promote certain interests by interacting with any of the three signatory institutions, their members or officials, with the objective of influencing the formulation or implementation of policy or legislation, or the decision-making process within these institutions, unless an exception defined in paragraph 2 or in Article 4 applies”.

Current IIA:

The scope of the register covers all activities, other than those referred to in paragraphs 10 to 12, carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and the decision-making processes of the EU institutions, irrespective of where they are undertaken and of the channel or medium of communication used, for example via outsourcing, media, contracts with professional intermediaries, think tanks, platforms, forums, campaigns and grassroots initiatives.

[1] See: <http://ec.europa.eu/transparencyregister/public/homePage.do> [Link].

[2] The Transparency Register is governed by an agreement signed between the Commission and Parliament, see:

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.277.01.0011.01.ENG&toc=OJ:L:2014:277:T
[Link]

[3] See <https://www.ombudsman.europa.eu/en/correspondence/en/67708> [Link].

[4] See: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52016PC0627> [Link].

[5] This principle is described in Article 5 of the Commission’s proposal, entitled “Interactions conditional upon registration”.

[6] While the Ombudsman welcomed the proposal, she also expressed her view that the EU institutions should work towards legislation underpinning the Transparency Register, as this would ensure that the mandatory register would be legally binding on interest representatives (unlike an Inter-Institutional Agreement, which is only binding on the institutions that participate in it).

[7] A term used to describe the situation when EU public representatives and EU civil servants leave the EU civil service to take up positions externally, for example in the private sector, or individuals join the EU civil service from outside, and in particular the private sector. Such moves are often described as going through the “revolving door”.

[8] Such transparency will help ensure compliance with Article 5.3 of the UN Framework Convention on Tobacco Control, which controls lobbying by tobacco companies related to the



setting and implementation of health policies.

[9] See: <https://www.ombudsman.europa.eu/en/correspondence/en/79435> [Link].

[10] See page 29 of EP ethics guide launched June 2019

[11] See:

<http://www.europarl.europa.eu/legislative-train/theme-union-of-democratic-change/file-inter-institutional-agreement-c> [Link], which also provides a helpful time-line.

[12] See:

<https://www.consilium.europa.eu/en/press/press-releases/2017/12/06/transparency-register-council-agrees-mandate> [Link].

[13] The changes also require interest representatives to register in the Transparency Register in order to participate in intergroup or other unofficial group activities organised on Parliament's premises.

[14] See:

https://g8fip1kplyr33r3krz5b97d1-wpengine.netdna-ssl.com/wp-content/uploads/2019/04/Reply-FVP-_Teixeira-02_0

[15] See the annex to this note for an overview of the Ombudsman's suggestions, and how these were reflected in the Commission's proposal.

[16] For more information, see the Commission proposal:

<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52016PC0627> [Link]; and summary fact sheet: http://europa.eu/rapid/press-release_MEMO-16-3181_en.htm [Link].

[17] The Ombudsman suggested "[t]he level of detail provided to the Register should be increased, especially on the critical question of who is funding interest representatives. The use of 'front groups' is of particular concern and should be made subject to greater public scrutiny".

[18] Similar wording as Article 8 of the present IIA.

[19] Although in the existing IIA (Annex IV) "Publication of [disciplinary] measure in the register" in case of "*[R]epeated and deliberate non-cooperation or repeated inappropriate behaviour and/or serious non-compliance*" is included. This is not foreseen in the proposal.

[20] The Ombudsman suggested the "[Transparency Register's] goal is to give the public a picture that is as accurate as possible and as complete as possible of who is trying to influence the EU institutions, on what issues and how"; "even under the current scope law firms that are not directly lobbying but indirectly lobbying should register."