

Information by the European Commission on the action taken by the Secretariat of the Transparency Register in relation to the European Ombudsman’s suggestions for improvement made in her Decision of 7 February 2024 on how the Secretariat of the EU Transparency Register handled complaints concerning the information provided by two entities on the Register

– Complaint by M [REDACTED], ref. 532/2023/FA

I. SUMMARY OF THE FACTS

On 1 July 2022, the Secretariat of the Transparency Register (hereinafter ‘the Secretariat’) received two complaints concerning the alleged non-observance of the code of conduct set out in Annex I to the Interinstitutional Agreement of 20 May 2021 between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register¹ (hereinafter ‘IIA’) by two interest representatives registered in the Transparency Register. The complaints were lodged pursuant to point 2.1 of Annex III to the IIA by the same person on behalf of the same organisation.

In particular, the complainant alleged that the registrants concerned had failed to declare in their respective registrations on the Transparency Register, first, their relevant relationship with each other and, second, their relevant links with other organisations and individuals, which stemmed from that relationship. On that basis, the complainant claimed a breach by both registrants of points (a), (b), (c), (d), (f) and (j) of the code of conduct. The complainant also argued that the registrants’ alleged non-compliance caused harm to the complainant’s organisation and that it was intentional.

Upon receipt of the complaints, the Secretariat deemed both of them admissible. Consequently, the Secretariat opened investigations and suspended both registrations as a precaution pursuant to points 1.3 and 3.1 of Annex III to the IIA. On 7 July 2022, the Secretariat notified the complainant and the registrants concerned accordingly, asking the latter to provide their responses in accordance with point 3.2 of Annex III to the IIA, which it received on 7 and 14 July 2022 respectively.

As per point 3.3 of Annex III to the IIA, the Secretariat took into account the registrants’ responses, gathered relevant information and drafted reports on its findings. In particular, the Secretariat acknowledged the written explanations provided by the registrants and the updates carried out by them in their registrations, finding them compliant with the code of conduct.

As a result, the Secretariat declared the registrants eligible to remain on the Transparency Register and closed the investigations pursuant to point 3.5 of Annex III to the IIA. It notified the complainant and the registrants concerned of its decisions on 12 July and 28 July 2022 respectively for each investigation, pursuant to point 7.1 of Annex III to the IIA.

¹ OJ L 207, 11.6.2021, p. 1.

II. THE COMPLAINT TO THE OMBUDSMAN

By letter of 25 April 2023, addressed to the President of the Commission, the Ombudsman informed the Commission about the receipt of a complaint about how the Secretariat carried out the said investigations. The complaint was lodged by the same person who had previously filed the above complaints with the Secretariat and on behalf of the same organisation.

The Ombudsman mentioned that she had also informed the President of the European Parliament and the Secretary-General of the Council of that complaint, and communicated her decision to open an inquiry with the aim to better understand how the Secretariat had both handled the complaints in question, and assessed the information provided by the registrants concerned.

III. THE OMBUDSMAN'S INQUIRY

By informing the Commission about her decision to open an inquiry, the Ombudsman summarised the content of the complaint and asked the Commission to enable her to inspect all documents related to the matter at stake, in particular the reports and reasoned opinions drawn up in relation to the Secretariat's investigations, as well as the Secretariat's relevant assessments and correspondence between the complainant, the Secretariat and the registrants.

The Ombudsman also proposed that a meeting between her inquiry team and relevant representatives of the Secretariat would be held, allowing the former to address any questions on the documents which were to be inspected and on the complaint procedure itself. The Ombudsman informed the Commission that a non-confidential version of a meeting and inspection report would be shared with the complainant, as well as published on her website. Besides, the Ombudsman enclosed a copy of the complaint for the Commission's information.

On 15 May 2023, the Commission provided – on behalf of the Secretariat – the documents requested by the Ombudsman. Upon their inspection, the Ombudsman, by letter of 12 June 2023, transmitted to the Commission a list of specific points to be raised by her inquiry team at the preannounced meeting with representatives of the Secretariat.

The meeting between the Ombudsman's inquiry team and representatives of the Secretariat was held on 20 June 2023 at the Commission's premises. A non-confidential report of that meeting was subsequently published² on the Ombudsman's website.

By letter of 7 February 2024, addressed to the President of the Commission, the Ombudsman informed the Commission about the outcome of her inquiry. She explained that the European Parliament and the Council were also to be informed accordingly.

The Ombudsman's conclusion from the closed inquiry was the following:

'There was maladministration in how the Secretariat of the Transparency Register carried out the investigations into the two complaints.'

² Available at: <https://www.ombudsman.europa.eu/en/doc/inspection-report/en/172516>

Moreover, the letter listed the following suggestions that the Ombudsman considered useful to be made:

‘The Secretariat should ensure the following when it carries out investigations into complaints concerning alleged breaches of the code of conduct:

(a) that it carries out a thorough and meaningful investigation, including seeking additional information from registrants;

(b) in case of doubt as to the veracity of the information provided, it should seek to verify the information from independent and/or publicly available sources;

(c) that it clarifies its guidance concerning the concept of ‘affiliates’ in order to ensure that it captures all elements needed to enable public scrutiny of registrants’ activities;

(d) where elements of the complaint do not fall within the remit of the Secretariat’s investigative powers, this should be clearly communicated to the complainant with explanations provided.’

Notably, the Ombudsman asked that the Secretariat inform her by 7 August 2024 of any action it would have taken in relation to those suggestions.

Finally, the Ombudsman enclosed her decision on the matter, which she had also shared with the complainant and subsequently published³ on her website.

IV. THE COMMISSION’S REPLY

The Commission hereby submits the requested information on the action taken by Secretariat to address the Ombudsman’s suggestions for improvement.

Regarding the suggestion that the Secretariat ‘*carries out a thorough and meaningful investigation, including seeking additional information from registrants*’

The Secretariat processes complaints with a view to establishing a registrant’s continued eligibility and observance of the code of conduct annexed to the IIA. When handling complaints and investigations according to the procedure laid down in Annex III to the IIA, it does carry out ‘*thorough and meaningful*’ investigations, and actively seeks ‘*additional information from registrants*’, as suggested by the Ombudsman.

Indeed, the Secretariat does the same when processing applications for which doubts regarding eligibility appear. In addition to the consultation of a considerable number of publicly available sources (see remarks below), the Secretariat applies Article 6(8)(a) of the IIA, which provides that a registrant shall present, if requested ‘*supporting material demonstrating that the information relating to their registration continues to be accurate*’.

³ Available at: <https://www.ombudsman.europa.eu/en/decision/en/181765>

The evidence thus obtained (articles of association, statutes and other corporate or business documents, correspondence, etc.) is cross-checked against the publicly available information.

The Secretariat has continuously worked towards consolidating its practices when handling complaints since the entry into force of the 2021 IIA. It regularly seeks additional information from registrants or, indeed, complainants. The Secretariat engages in extensive written and in-person exchanges (as set out in points 5.1 and 5.2 of Annex III to the IIA) and requests supporting evidence and detailed clarifications in order to complete its investigations and seek to ensure that accurate and complete registrations feature on the Transparency Register.

Regarding the suggestion that the Secretariat, ‘*in case of doubt as to the veracity of the information provided, [...] should seek to verify the information from independent and/or publicly available sources*’

The Secretariat checks information against all means available to it, within the limits of the powers conferred to it under the IIA. On this understanding, and in addition to any evidence submitted by the complainant, the Secretariat uses all publicly available information sources. Complaints and monitoring are handled on a case-by-case basis, and each raises different and specific issues. For this reason, the list of sources used by the Secretariat is not exhaustive; depending on the case, the Secretariat looks into any available and relevant sources of information that can be used to verify information provided by applicants and registrants, being mindful of the differing degrees of reliability and accuracy of publicly available information.

For that purpose, the Secretariat, where necessary, goes beyond the usual and commonly used search engines for cross-checking information and makes regular use of public official databases listing information on entities. For example, entities headquartered or with offices in Belgium, which constitute a considerable part of the overall population of registrants in the Transparency Register, may be checked against relevant information in *Le Moniteur Belge*, *Banque Nationale de Belgique* and *Banque-Carrefour des Entreprises*. Similarly, the equivalent national databases are consulted as necessary, bearing in mind that the information available publicly will depend on the applicable national legislation. In addition, some investigations or monitoring presenting a particularly high degree of technical complexity can lead the Secretariat to reach out to other services of the EU institutions.

Regarding the suggestion that the Secretariat ‘*clarifies its guidance concerning the concept of “affiliates” in order to ensure that it captures all elements needed to enable public scrutiny of registrants’ activities*’

The Secretariat has accepted this suggestion and carried out an update both of its guidelines for applicants and registrants, and of the registration form available to applicants and registrants on the Transparency Register website.

The Secretariat agrees that the notion of ‘affiliation’ is a complex one and, in an ever-evolving landscape, some further clarity of its guidelines could help applicants and registrants

identify the kind of information that they are expected to provide. Pursuant to points (h) and (i) of Part I of Annex II to the IIA, applicants and registrants are required to provide information concerning: *‘(h) organisations of which the registrant is a member and entities with which the registrant is affiliated’; (i) registrant’s members and/or affiliation with relevant networks and associations’* (emphasis added).

For that purpose, the Secretariat has revised its guidelines for applicants and registrants as regards the information under Heading 12 ‘Membership and affiliation’, as well as the same heading in the registration form, reflecting better the structure of the relevant above-mentioned provisions of the IIA (points (h) and (i) of Part I of Annex II). By clarifying the concept of ‘affiliation’, the Secretariat expects that applicants and registrants will be able to have a good understanding of the information that is required from them, in particular the relevant connections between interest representatives and a more accurate capture of the other types of relations that applicants and registrants may have with other natural and legal persons.

The updates will be published on the website of the Transparency Register as soon as all necessary translations are available.

Regarding the suggestion that ‘where elements of the complaint do not fall within the remit of the Secretariat’s investigative powers, this should be clearly communicated to the complainant with explanations provided’

The Secretariat has taken full ownership of the suggestion, which has become an established practice. To this end, when handling complaints, the Secretariat communicates clearly the admissibility criteria under Annex III to the IIA, including, where applicable, the admissible and inadmissible parts of the complaint. Moreover, the Secretariat communicates clearly to the registrant(s) concerned and when it has doubts concerning the veracity of the information provided, it engages in a constructive cooperation and provides clear instructions with a view to removing any ambiguities and ultimately to increasing the quality of the information provided on the register.

Moreover, the annual priorities for the Transparency register in 2025⁴ include a specific reference to improving communication on complaints handling, with the purpose of inviting more meaningful cooperation from registrants and allowing the register to continue to stand up to public scrutiny. This goes beyond the admissibility criteria and spans over the entire complaint investigation cycle and will be incorporated in the process of ongoing codification of the Secretariat’s internal handling procedures.

⁴ Adopted by the Management Board at its meeting of 19 April 2024 and available at: https://transparency-register.europa.eu/document/download/1660e33f-f379-4b93-90cd-922e9c00b629_en?filename=7a_DRAFT%20TR%20MB%20Annual%20priorities%202025.pdf

V. CONCLUSION

The Commission welcomes the Ombudsman's interest in the functioning of the Transparency Register and in the work of its Secretariat, demonstrated during her inquiry. In particular, the Commission appreciates the relevant suggestions for improvement made by the Ombudsman in relation to how the Secretariat carries out investigations concerning alleged non-observance of the code of conduct by registrants. The Commission trusts that it hereby provides the Ombudsman with all appropriate and necessary information on the concrete actions taken by the Secretariat in order to address each and every one of her four suggestions.

For the Commission
Věra JOUROVÁ
Vice-President

