



European Ombudsman

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European Ombudsman

Mr Jean-Claude Juncker
President
European Commission

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Re: Efforts to improve the EU Transparency Register

Summary of suggestions

- Register should be 'central transparency hub' for all institutions/agencies
- Full funding transparency of all interest groups
- Accuracy of data should be improved
- Monitoring and sanctioning should be improved
- Lobbying of Member States' officials needs to be governed
- Suspend any organisation that breaks 'revolving doors' rules
- Law firms that lobby must declare their clients
- Publish all meetings with tobacco lobbyists
- Right to complain to Ombudsman should be included in IIA

Dear President Juncker,

On 1 March 2016, the Commission launched a public consultation on the EU Transparency Register and on its future evolution towards a 'mandatory' scheme covering the European Parliament, the Council of the EU and the European Commission.¹ I very much welcome your timely efforts to further develop and improve the standards of lobbying transparency for the EU institutions. While lobbying plays an important role in functioning democracies, transparency is key to ensuring that welcome input from interest

¹ http://ec.europa.eu/transparency/civil_society/public_consultation_en.htm



groups does not become undue influence. The public needs to be aware of how, by whom and for which purposes influence has been brought to bear.

The EU institutions are arguably leading the way in regulating lobbying transparency in Europe.² With more than 9 000 registrants, it is safe to say that the Transparency Register is indeed working, particularly bearing in mind that such registers have been attempted at national and regional level in EU Member States with varying degrees of success. At this point in its evolution, I welcome the Commission's intention to table a proposal for a 'mandatory' Transparency Register covering the Parliament, Council and Commission, albeit via an Interinstitutional Agreement. I do however continue to believe that the institutions should work towards legislation underpinning the Transparency Register, as a real mandatory register should be legally binding on interest representatives, unlike an Interinstitutional Agreement, which is only binding on the institutions that participate in it.

Given that my Office has conducted inquiries on the general subject of lobbying transparency, I would like to take this opportunity to reiterate a number of conclusions drawn from my inquiries. I would also like to draw your attention to points raised as part of a recent consultation of the **European Network of Ombudsmen (ENO)**³ concerning public officials' contact with interest representatives. I trust that these points will prove useful to the Commission, above and beyond the many submissions you will receive in response to this important consultation.

a) Ensuring meaningful regulation of lobbying activity

The following are some suggestions for improving the Transparency Register, focused on ensuring that the system is robust enough to give the public an accurate picture of lobbying today in the EU:

- The 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.
- The comparability and accuracy of data in the Register should be improved. Guidelines on the methodology for calculating declarations could ensure greater data accuracy and comparability, as well as legal certainty and less complexity for registrants.
- The monitoring and sanctioning capacity of the Joint Transparency Register Secretariat (JTRS) should be improved. Proper monitoring and enforcement could ensure compliance, as well as deter and detect breaches. The JTRS also clearly needs an increase in resources.

² In most of the 15 countries that responded to a recent consultation carried out by the European Ombudsman (see footnote 3 below), specific provisions regulating lobbying, coupled with guidance for public officials do not exist.

³ The European Network of Ombudsmen includes the national and regional ombudsmen and similar bodies of the EU Member States, the candidate countries for EU membership, and other European Economic Area countries, as well as the European Ombudsman and the Committee on Petitions of the European Parliament. The report on the consultation is available at: <http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/67521/html.bookmark>



- Complaints and alerts to the JTRS⁴ make a valuable contribution to effective implementation of the Register and should be welcomed as an opportunity to enhance the accuracy of the information it contains.
- The new Interinstitutional Agreement should mention the right to complain to the European Ombudsman if an organisation disagrees with how its alert or complaint has been dealt with by the JTRS, about how it has been treated in the context of a JTRS investigation or, more generally, about how the Transparency Register is functioning. This would help address concerns that have been raised about the fact that the JTRS administers the Register and, at the same time, is responsible for investigating complaints and deciding on the appropriate sanctions.
 - In the context of the current regime, the incentives to register should be made so attractive that the only sanction that matters is to be suspended or removed from the Transparency Register. Limiting meetings with EU staff and decision-makers is particularly relevant in this regard.

Responses to our recent ENO consultation signalled the need for lobbying rules to entail real obligations and for the system to be implemented effectively in practice in order to regulate lobbying in a meaningful way. The Austrian Ombudsman Board noted that despite being in principle mandatory, the country's transparency register has so far had little impact, among other things because specific obligations for registrants and a clear enforcement mechanism for violations of rules do not exist. In Hungary, an act on lobbying was repealed because the provisions were not implemented in practice and an insignificant number of activities were reported. A more promising initiative may be the recently introduced Irish rules, which require any lobbyist contacting an official to report the interaction on a mandatory lobbying register via submissions three times a year.

b) Obtaining a better picture of lobbying activity

The Transparency Register is not an end in itself and of course can never be a 'silver bullet' for boosting public trust. Its 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.

A number of my inquiries have touched on the importance of ensuring that the institutions' efforts in one area are not undermined by failing to acknowledge how other activities equally involve influencing policy and legislation. The progress achieved under the Transparency Register should not be undermined by failing to grasp fully how influence is brought to bear.

In my ongoing strategic inquiry into the functioning of the Commission's expert groups, I welcomed the Commission's announcement that it will require registration in the Transparency Register for appointment to expert groups of organisations falling within the scope of the Transparency Register and self-employed individuals representing a common interest shared by stakeholders. The Commission also agreed to link organisations falling within the scope of the Transparency Register and self-employed individuals appointed as representatives of a common interest shared by stakeholders, who are members in expert groups, to their profile in the Transparency Register. I

⁴ See Section VII ('MEASURES IN THE EVENT OF NON-COMPLIANCE WITH THE CODE OF CONDUCT') and Annex IV ('PROCEDURES FOR ALERTS AND FOR THE INVESTIGATION AND TREATMENT OF COMPLAINTS') of the present Interinstitutional Agreement.



have further asked the Commission to commit to using the Transparency Register's categorisation to categorise, in the expert groups register, expert group member organisations falling within the scope of the Transparency Register and to see to it that the JTRS further improves and intensifies its systematic checks of incoming new registrations as regards the correct section of registration.

In sum, my view is that the Transparency Register should constitute the central transparency hub, with other registers, such as that established for expert groups, linking to it. Going forward, it should be possible, from the Transparency Register, to get a comprehensive picture of how exactly a particular organisation tried to wield influence – what expert groups it sat on, who its representatives met and when, what public consultations they contributed to, what hearings they attended, and so on.

As influence is not only brought to bear on the Parliament, Council and Commission, more might be done to ensure that other parts of the EU administration rely on the Transparency Register. This is foreseen in the existing Interinstitutional Agreement and I understand that a number of agencies, including the European Supervisory Authorities, the European Chemicals Agency and the EU's Intellectual Property Office use it in their interactions with stakeholders.

c) Guidelines for public officials in their contacts with interest representatives

I welcomed the Commission's announcements in 2014 that its top officials will only meet with representatives of registered entities and that details of those meetings shall be published online⁵. While this was a very positive step forward by the new Juncker Commission, I again call for the obligations to extend downwards to Directors and Heads of Units in particular, and for the names of interest representatives in these meetings also to be published.

I have at the end of 2015 recommended the Commission to go further as regards contacts with **tobacco industry lobbyists** and to require the publication online of all the policy meetings its staff, irrespective of the seniority of the official concerned, have with tobacco industry representatives and the minutes taken of those meetings. I am also of the view that the names of all those involved in such meetings should be disclosed. These are requirements under Article 5.3 of the WHO Framework Convention on Tobacco Control, and the implementing guidelines.

Publishing information about meetings and contacts gives the public a good picture of who Commissioners and EU officials are meeting. A complaint I received on 19 January 2016 on alleged overrepresentation of business representatives in the lobbying contacts of high level Commission officials is worth mentioning in this context. The NGO complainant claimed that the Commission should actively promote and achieve a balance in its stakeholder contacts. Even though I did not find grounds to inquire into this complaint at the time, I was encouraged by the fact that greater transparency is allowing the

⁵ According to the working methods of the new Commission, Members of the Commission must not, as a rule, meet professional organisations or self-employed individuals which are not registered in the Transparency Register. Since 1 December 2014, meeting agendas of Commissioners, their cabinet members, as well as of Directors-General, with organisations or self-employed individuals on issues relating to policy-making and implementation in the Union are made public.



public to see and to ask questions about who the Commission meets with, how often and on what issues. On this aspect, the Commission is arguably the leading EU institution in terms of lobbying transparency. I also noted, in this regard, meetings apparently hosted by the Commissioner responsible for Digital Economy and Society with the business and technology community as part of the 'Europa Forum Lech' event⁶ in the Austrian Alps. The current Interinstitutional Agreement signals that lobbying activities are covered by the Register irrespective of where they are undertaken and of the channel or medium of communication used. The Commission's working methods define the meetings with interest representatives that should be disclosed as bilateral encounters to discuss an issue related to policy-making and implementation in the Union. In situations where it is not entirely clear whether it is necessary to disclose a particular encounter, I would urge Members and staff of the Commission to err on the side of disclosure to avoid any problems of public perception. As the relevant calendar of the Commissioner in question has not been updated since March 2016, this may well be the intention.

More generally on this issue, the ENO consultation revealed that there is arguably room across Europe for more practical guidance or rules for public officials on contacts with lobbyists. I will explore this with my ENO colleagues at our upcoming ENO Conference in June during our session on lobbying transparency⁷.

d) Contacts with EU Member State representatives

One of the reasons for my consulting national ombudsmen on this subject is that there are obvious limitations of focusing only on lobbying in Brussels.⁸ At the EU level, valid questions have been asked about how lobbying of EU Member State representatives, in Brussels and in national capitals, can best be governed.

EU institutions, Member States and interest representatives need to be more aware of differing or competing lobbying rules at the national and EU level. National practices identified in the ENO consultation reveal that officials covered by the Irish lobbying provisions include Irish MEPs and top officials of the Permanent Representation of Ireland to the EU. The Austrian Lobbying Act similarly covers officials at the Austrian Permanent Representation.

I trust that in the negotiations on the Interinstitutional Agreement, these questions will be explored in depth with the Member States in the Council.

e) Lobbying activities by law firms

Research suggests that the legal profession often plays a significant role in assisting interest groups to make their case to policy makers who are necessarily concerned to ensure that what they do is well grounded in law. A tendency to overlook lawyers as also potential lobbyists seems to exist at the national level, as the registers brought to my attention included very few, if any, law firms.

⁶ http://europaforum.lech.eu/draft_pro/Participants.pdf

⁷ <http://www.ombudsman.europa.eu/en/activities/calendarevent.faces/en/1063/html.bookmark>

⁸ The Council of Europe has also launched a public consultation in relation to its draft recommendation of the Committee of Ministers to Member States on the legal regulation of lobbying activities in the context of public decision-making. See http://www.coe.int/t/dghl/standardsetting/cdcj/lobbying/lobbying_EN.asp?



Even though law firms are obliged to declare their clients if they are lobbying for them under the Transparency Register, a 'grey' area arguably exists as regards where legal advice ends and lobbying activity begins. It would be useful to know how the JTRS checks that law firms are, in fact, complying with this obligation to declare their clients. In addition, even under the current scope law firms that are not directly lobbying but indirectly lobbying should register.

f) Lobbying by former Commissioners and EU officials

In my 2015 correspondence with you on the proactive publication of decisions on post term-of-office activities of former Commissioners, as well as opinions of the Ad hoc Ethical Committee, I urged you to consider proactively publishing the (redacted) opinions of the Ad hoc Ethical Committee⁹. This Committee performs a vital role in ensuring public trust and the assessment it has carried out should be available for public scrutiny in order to demonstrate that the system the Commission has put in place is robust and working well, including as regards any restrictions on lobbying by former Members.

As regards officials, the EU Staff Regulations prohibit former senior officials, for 12 months after leaving the service, from engaging in lobbying or advocacy vis-à-vis staff of their former institution for their business, clients or employers on matters for which they were responsible during the last three years in the service. EU officials at Head of Unit level do not in the normal course fall under the definition of 'senior official'. I took note, however, of recent Heads of Units, who had important roles, leaving the EU civil service for the private sector. It could serve the Union's best interests for the Commission to reflect on how it can further tackle this very difficult challenge, to ensure no conflicts of interest occur.

This issue is also closely linked to the question of how the current Transparency Register Code of Conduct for interest representatives is enforced. For example, if employing former EU staff, the Code of Conduct requires that interest representatives respect these employees' obligation to abide by the rules which apply to them. If such rules are broken by an organisation that hires a former EU official, or broken by that former official in his/her new role, suspension from the Register should be an option.

Conclusion

I would like to thank you once more for the important work you are doing, together with the European Parliament, to improve lobbying transparency in the EU. I trust that the remarks above can help the Commission to meet its commendable goal to fulfil the Transparency Register's full potential as a meaningful tool governing relations between the EU institutions and interest representatives.

Yours sincerely,

Emily O'Reilly

⁹ <http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/61417/html.bookmark>