

EU Transparency Register: new rules on lobbying in the European Parliament and Commission

Executive summary

On 11 May 2011, the European Parliament (the 'Parliament') [voted](#) to set up a joint register of lobbyists that would combine the existing registers of the Parliament and the European Commission (the 'Commission'). The Council has for the moment decided not to participate. The register will cover all private sector organisations involved in activities that are captured by the definition as well as non-commercial organisations such as academic institutions, think tanks, organisations representing churches and religious communities. The register remains voluntary because there is no clear legal base for making it mandatory.

The new register will be known as the Transparency Register and takes elements from both the Commission and Parliament registers such as the annual access passes for the Parliament, but will include additional information such as the number of individuals involved in any activities relating to the register and any EU funding or support received by the registrant. There is also a new procedure for handling complaints and imposing sanctions.

According to the Parliament, '[a] joint register of the two institutions will enhance transparency [...] as citizens will find in one place all the information on people and organisations that are in contact with the EU institutions.'

In separate developments, the Parliament voted in favour of a 'legislative footprint' which will in future be annexed to parliamentary reports, listing all exchanges between lobbyists and the lead MEP (or *rapporteur* as they are known). The Parliament also decided that MEPs should from now on update their financial declarations in real time, rather than simply once a year.

The inter-institutional agreement will come into force on 23 June 2011, although in practice new annual passes will not be granted by the Parliament until after the summer.

Background

The establishment of a new Transparency Register builds on two existing registration systems set up by the Parliament in 1996 (the register of accredited lobbyists) and the Commission in 2008 (the register of interest representatives). The Commission register includes a requirement to sign a code of conduct and disclose financial information relating to turnover and proportion of turnover linked to lobbying activities; the Parliament's register also requires the signature of a code of conduct and – in return – grants annual access badges for the Parliament's buildings in Brussels and Strasbourg.

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Through the agreement adopted on 11 May, the Parliament and Commission will develop a common register to promote greater transparency and guarantee *'the consistent integrity of the public administration of the European Union and the strengthening of its institutional rules.'* Although both institutions hoped that the Council would join the Register, it has chosen to remain outside for the time being. It has, however, indicated that it would become a party to the agreement in the future.

The provision of an annual pass to access the premises of the Parliament has always provided a strong incentive for registration and this has therefore been maintained in the new Transparency Register.

Scope of activities and entities covered

The scope of the register is intentionally broad and not clearly defined. It covers *'all activities [...] 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 the channel or medium of communication used, for example outsourcing, media, contracts with professional intermediaries, think-tanks, platforms, forums, campaigns and grassroots initiatives.'*

Activities covered *inter alia* include:

- contacting Members of the European Parliament (MEPs), officials or other staff of the EU institutions;
- preparing, circulating and communicating letters, information material or discussion papers and position papers;
- organising events, meetings or promotional activities and social events or conferences, invitations to which have been sent to MEPs, officials or other staff of the EU institutions; and
- voluntary contributions and participation in formal consultations on envisaged EU legislative or other legal acts and other open consultations. This last point is likely to capture the largest number of organisations.

The following activities, however, are exempted from the scope of the Transparency Register:

- the provision of legal and other professional advice in so far as they relate to the exercise of the fundamental right of a client to a fair trial, including the right of defence in administrative proceedings, such as carried out by lawyers or by any other professionals involved. This is not restricted to competition law; in so far as a company and its advisers are involved as a party in a specific legal or administrative case or proceeding, any activity relating directly to that case which does not seek as such to change the existing legal framework does not fall within the scope of the register;
- the participation of the 'social partners' (trade unions, employers associations, *etc.*) in the social dialogue **when performing the role assigned to them in the Treaties**; and
- direct and individual requests from EU institutions or MEPs such as *ad hoc* or regular requests for factual information, data or expertise and/or individualised invitations to attend public hearings or to participate in the workings of consultative committees or similar forums.

According to the agreement, organisations and self-employed individuals covered by the Transparency Register include:

- *Professional consultancies/law firms/self-employed consultants* carrying on, pursuant to contract, activities involving lobbying, promotion, public affairs and relations with public authorities;
- *In-house lobbyists and trade/professional associations* such as companies and groups of companies, trade, business, and professional associations, trade unions, and other similar organisations;
- *Non-governmental organisations, platforms and networks* such as not-for-profit organisations, political parties or commercial organisations, charities, foundations, *etc.*;
- *Think tanks, research and academic institutions* dealing with activities and policies of the European Union;

- *Organisations representing churches and religious communities;*
- *Local, regional and municipal authorities* such as legal entities, representation offices, associations or networks set up to represent those authorities. (The Permanent Representations of the EU Member States in Brussels are not expected to register.)

Information requested

According to the agreement, information to be provided by the registrants includes:

- the name and contact details of the registrant;
- the identity of the person legally responsible for the organisation;
- the name of the managing partner or director;
- the names of persons for whom passes to access the Parliament are requested;
- the number of persons involved in activities falling within the scope of the register;
- the goals, fields of interest and activities of the registrant;
- the number of members (individuals and organisations) of the registrant if applicable (*e.g.*, if the registrant is a trade association, a trade union or a civil society organisation); and
- financial figures for the most recent fiscal year at the date of registration. For professional consultancies and law firms, those figures should reflect the turnover attributable to activities covered by the register; for in-house lobbyists and trade associations they should be an estimate of the costs of relevant activities; and for non-governmental organisations, think tanks, academic institutions *etc.* they should be the overall budget and a breakdown of the main sources of funding. Double counting is not excluded; *i.e.*, the financial declaration made by professional consultancies and law firms does not exempt their clients from including those contractual activities in their own declarations.

	Commission register of interest representatives	Parliament's register of accredited lobbyists	Joint transparency register
Type of register	Voluntary	Voluntary	Voluntary
Date of entry into force	2008	1996	23 June 2011
Who registers?	Organisation	Individual lobbyists (from private, public, or non-governmental organisations)	Both (organisation and individual lobbyists)
What activities are covered?	Activities the objective of which is to influence the policy formulation and decision-making processes of the institutions, <i>i.e.</i> , contacting MEPs or EU officials, preparing, circulating and communicating letters, information material or position papers, organising events, meetings or promotional activities in support of an	N/A anyone wishing to enter the Parliament buildings regularly applies for an annual access pass	Activities 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, <i>i.e.</i> , participating in public consultations, contacting MEPs or EU officials, preparing, circulating and communicating letters, information material or

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	objective of interest representation		position papers, organising events, meetings or promotional activities and other events to which invitations have been sent to MEPs or EU officials
Exemptions	Lawyers in connection with the exercise of the fundamental right to a fair trial of a client, social partners as actors in the social dialogue and activities in response to Commission's direct request, and public authorities of any level or geographical origin	None; anyone applying for an annual access pass for the Parliament is invited to register	Lawyers in connection with the exercise of the fundamental right to a fair trial of a client and social partners as actors in the social dialogue and activities in response to Commission or Parliament's direct request
What registration delivers	Details of organisation listed on public register	Annual access pass to Parliament	Details of organisation listed on public register, potential to obtain annual access pass to Parliament
Consequences of non-registration	Submissions to public consultations listed as individual rather than representative of the organisation	No annual access passes to Parliament granted	Submissions to public consultations listed as individual rather than representative of the organisation, no annual access passes to Parliament granted
Code of conduct	Annex to Commission's Communication on a 'European Transparency Initiative: A framework for relations with interest representatives (Register and Code of Conduct)	Article 3, Annex X of the Rules of Procedure of the European Parliament	Annex 4 to the Inter-Institutional Agreement on a common Transparency Register between the Parliament and the Commission
Sanctions for non-compliance	Temporary suspension from the register for a set period or until correction of the situation Exclusion from the register in case of severe and persistent failure to comply with the code of conduct	Withdrawal of the annual pass issued to the persons concerned and, if appropriate, their organisations	Written notification acknowledging the facts and their correction Temporary suspension for up to six months or until rectification of information Removal from the register ranging from one

	Commission register of interest representatives	Parliament's register of accredited lobbyists	Joint transparency register
			to two years Withdrawal of access pass to Parliament
Financial disclosure	<p>Financial figures are required in order to complete registration and should be based on latest annual accounts</p> <p>For professional consultancies and law firms, figures reflect the turnover attributable to activities covered by the register and the portion attributable to each client on whose behalf they have been lobbying (in brackets of €50,000 or in percentages in brackets of 10%)</p> <p>For in-house lobbyists and trade associations figures are an estimate of the costs of relevant activities</p> <p>For non-governmental organisations and think tanks, figures cover the total budget of the organisation with an indication of the main sources of funding</p>	None	<p>Registrants must provide financial figures for the most recent fiscal year at the date of registration</p> <p>For professional consultancies and law firms, figures reflect the turnover attributable to activities covered by the register</p> <p>For in-house lobbyists and trade associations figures are an estimate of the costs of relevant activities</p> <p>For non-governmental organisations, think tanks, academic institutions <i>etc.</i> figures cover the overall budget and a breakdown of the main sources of funding</p>

Officials responsible for implementation

A secretariat will be set up to implement the new register, and then monitor and enforce compliance with its rules. The Joint Transparency Register Secretariat will be made up of officials from the Secretaries General of the Commission and Parliament. The Joint Transparency Register Secretariat will operate under the coordination of a Head of Unit in the Secretariat General of the European Commission.

Code of conduct

Registrants must sign and abide by a set of rules set out in a code of conduct in all their dealings with the Commission and the Parliament. The code of conduct provides *inter alia* that registrants shall:

- always identify themselves by name and by the entity or entities that they work for or represent;

- declare the interests, objectives or aims promoted and, where applicable, specify the clients or members whom they represent;
- not obtain or try to obtain information, or any decision, dishonestly, or by use of undue pressure or inappropriate behaviour;
- ensure that the information provided upon registration is complete, up-to-date and not misleading;
- not induce MEPs, EU officials or other staff to contravene the rules and standards of behaviour applicable to them; and
- if employing former officials or other staff of the EU, respect the obligations of such employees to abide by the rules and confidentiality requirements that apply to them.

Complaints

Complaints can be submitted through a standard form that will be published on the website of the Transparency Register and managed by the Joint Transparency Register Secretariat. Complaints will include:

- information about the registrant being complained about;
- name and contact details of the complainant;
- details about the complaint, including the clause(s) of the code of conduct which are alleged to have been breached (complaints about the information entered in the register are treated as allegations of infringement of point (d) of the code of conduct); and
- material to support the complaint.

The Joint Transparency Register Secretariat decides on the admissibility of the complaint. If admissible, the complaint is registered and a deadline of 20 working days is imposed for a decision on the validity of the complaint.

For admissible complaints, registrants are granted 10 working days in which to respond.

If - after investigation - the complaint is deemed by the Joint Transparency Register Secretariat to be unfounded, the complainant and registrant are informed.

Measures in case of non-compliance with Code of conduct

Measures have been agreed by the Commission and Parliament in the event of non-compliance with the Register's code of conduct.

A range of sanctions are available in the event a complaint is upheld, including temporary suspension from the Register and withdrawal of an access badge.

A draft decision on the sanction to be applied shall be prepared by the Joint Transparency Register Secretariat and forwarded for a final decision by the Secretaries General of those institutions. The competent Vice Presidents of both institutions will be informed.

Entry into force and transition period

The new Register will become operational on 23 June 2011. There will be a transition period of twelve months from that date for the switchover from the existing registers and a freeze on annual access passes to the Parliament is in place until after the summer. Organisations and individuals currently registered in either of the two registers will be invited to renew their registration in the Transparency Register.

What now?

- *For those organisations that have already registered with either the Parliament or Commission:* after 23 June 2011, organisations will need to switch their existing registration to the new Transparency Register. This can be at a date of their choice, but should be no later than the day of renewal of the Commission registration, or in the case of the Parliament, no later than the end of a twelve-month period from the last registration for/renewal of an access pass.
- *For those organisations that are not yet registered with either the Commission or Parliament:* if the organisation and its activities fall within the scope of the Transparency Register, careful consideration should be given to the pros and cons of registering. These are likely to differ from one organisation to another and factors to bear in mind include: the frequency of submissions to public consultations and meetings with EU officials or MEPs, the level of involvement in think tank activities, the costs associated with the activities captured by the register and the rules on lobbying activities in other jurisdictions in which the organisation is active.

For further information, please contact a member of the Clifford Chance EU Public Policy practice.

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