

EU Transparency Register

SUMMARY

Widespread lobbying in the EU institutions has led to criticism regarding the transparency and accountability of the EU's decision-making process. In response to these concerns, the Parliament set up its transparency register in 1995, followed by the Commission in 2008. The two institutions merged their two instruments in a joint European Transparency Register (TR) in 2011 on the basis of an Inter-Institutional Agreement (IIA). So far, the Council has remained only an observer to the system.

The TR is a voluntary system of registration for entities seeking to directly or indirectly influence the EU decision-making process. It has grown at a rate of around 1 000 organisations a year, to reach over 7 000 organisations today. While it is very difficult to make estimates on the actual coverage of the register, a recent academic study (2013) found the register to cover 60-75% of lobbying organisations active at EU level. In line with the IIA, a political review of the system took place in 2013-14. As a result, a new improved registration system will be introduced in January 2015.

Parliament has been calling for a mandatory register for lobbyists active within the EU institutions since 2008. It has argued that a mandatory register would ensure full compliance by all lobbyists with the code of conduct. The topic has become increasingly prominent, especially since Commission President Jean-Claude Juncker put the issue on the political agenda, committing to introduce a proposal for a mandatory system by 2016, as requested by Parliament. Furthermore, from 1 December 2014 onwards, the Commission publishes information on meetings of Commissioners, members of their cabinets and Directors-General with lobbyists.

The laws in Member States vary with regard to lobbying regulation. Mandatory registration systems exist only in Lithuania, Poland, Slovenia, Austria and the UK. The Irish Parliament is currently working on legislation introducing such a regime. Voluntary registration systems exist in Germany, France and the Netherlands.



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What is the Transparency Register?

Widespread lobbying in the EU institutions has led to criticism regarding the transparency and accountability of the EU decision making process. In response to these concerns, the Parliament set up its transparency register in 1995, and the Commission then set up its own register in 2008. The two institutions then set up a joint [Transparency Register](#) (TR) following [an Inter-Institutional Agreement](#) (IIA) between the Commission and Parliament in 2011. It remains a **voluntary system of registration for interest representatives** seeking to **directly or indirectly influence** the EU decision-making process. The TR has grown at an average rate of 1 000 registrants per year, and now includes over 7 000 organisations. It covers all organisations and self-employed individuals, irrespective of their legal status, engaged in activities falling within the scope of the Register, including in-house lobbyists,¹ trade and professional associations, professional consultancies, law firms, self-employed consultants, think-tanks, research and academic institutes. The recently adopted [review](#) of the IIA enters into force on **1 January 2015**, and will be followed by an update of the system.

Legal framework for lobbying in the EU

Definition of lobbying

The term 'lobbying' comes from the word 'lobby' which designates a hallway where members of parliament can be approached before or after debates. It is essentially understood as a 'concerted effort to influence policy formulation and decision-making, with a view to obtaining some designated result from government authorities and elected representatives'.² Lobbying thus falls within the broader scope of 'interest representation', but is limited to its legislative and executive aspects.³

The IIA on the Transparency Register does not use the term 'lobbyist' but refers to 'organisations and self-employed individuals engaged in EU policy-making and policy implementation'. The Agreement uses an **activity-based definition** (i.e. whether an entity is a lobbyist depends on what the organisation does, and not on its legal status). Lobbying activities therefore cover '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 [...]'.⁴ The EU definition of lobbying, which also covers indirect lobbying, has a very broad scope when compared to other similar systems.⁵

Lobbying and transparency in primary EU law

The transparency of lobbying is not regulated in the Treaties. However, reference is made to the importance of consultation under Article 11(1) TEU, whereby the EU institutions are obliged to 'give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action'. Under point (2) of that Article, the institutions 'shall maintain an **open, transparent and regular dialogue with representative associations and civil society**'.

The IIA gives the following **non-exhaustive examples** of lobbying activity:

- **contacting** Members, officials or other staff of the EU institutions;
- preparing, circulating and **communicating** letters, information material or discussion and position papers;
- **organising events**, meetings or promotional activities and social events or conferences, to which Members, officials or other staff of the EU institutions have been invited;
- voluntary **contributions** and participation in formal **consultations** on envisaged EU legislative or other legal acts and other open consultations.

Furthermore, the Commission is specifically obliged to 'carry out **broad consultations** with parties concerned in order to ensure that the Union's actions are **coherent and transparent**.' A specific Treaty article covers dialogue with religious groups (Art. 17(3) TFEU). Therefore, lobbying activity in itself – understood as participation of interest representatives in dialogue with the EU institutions – has a clear legal basis in the Treaties as an element of participative democracy.

The transparent character of this dialogue is explicitly formulated in Article 11(1) TEU ('open, transparent and regular dialogue'). Furthermore, the question of transparency is addressed in Article 15 TFEU, requiring that all EU institutions 'conduct their work **as openly as possible**' to ensure the accountability of the EU institutions and thus the possibility for democratic control. Some argue, therefore, that there is a tension between the principle of transparency (requiring the disclosure of all contacts) and the principle of openness (requiring unfettered access to officials and members of the institutions).⁶

Evolution of the Transparency Register

Situation prior to 2011

Initially, lobbying the EU institutions was not regulated at all. It was only in 1995 that the **EP launched its register of lobbyists accessing Parliament**. This register was in fact a list of interest representatives granted long-term access to EP premises. By May 2011, some 4 000 individuals were on the register, but not all of them were actually verified lobbyists. The only information on the register at the time were the names of the individuals and the organisations represented.

The **Commission introduced a voluntary register of lobbyists in June 2008** after adopting a code of conduct for interest representatives a month earlier. The Commission's register was part of a wider [European Transparency Initiative](#) (ETI). Its register grew to list over 3 900 organisations by 2011.

Joint Transparency Register (since 2011)

In a [resolution of 8 May 2008](#) the EP called for the establishment of a mandatory Transparency Register which would cover all the EU executive and legislative institutions (Commission, Parliament and Council). As a result, on 23 June 2011 an [Inter-Institutional Agreement](#) on a Transparency Register was signed. **Registration remains voluntary**, but more data are required from lobbyists than with the previous registers. Registrants need to provide an estimate of the annual costs related to activities covered by the Transparency Register and the number of people involved in those activities, as well as disclose any EU funding they receive. The legislative proposals they

2016-2017

2nd Review of the TR;
proposal for a mandatory TR
to be submitted

1 April 2015

Deadline for all registrants to
comply with the new system

January 2015

Launch of new TR website

15 April 2014

EP & Commission sign new IIA

March 2014

Gualtieri report (AFCO)

June-December 2013

1st Review of the IIA on TR by
High Level Working Group
(Wieland/Šefčovič)

23 June 2011

IIA on TR signed and TR
launched

23 June 2008

Commission sets up its register
of interest representatives

8 May 2008

EP resolution (Stubb/Friedrich)
calling for a common and
mandatory TR

2006

Commission Green Paper on
European Transparency
Initiative

1996

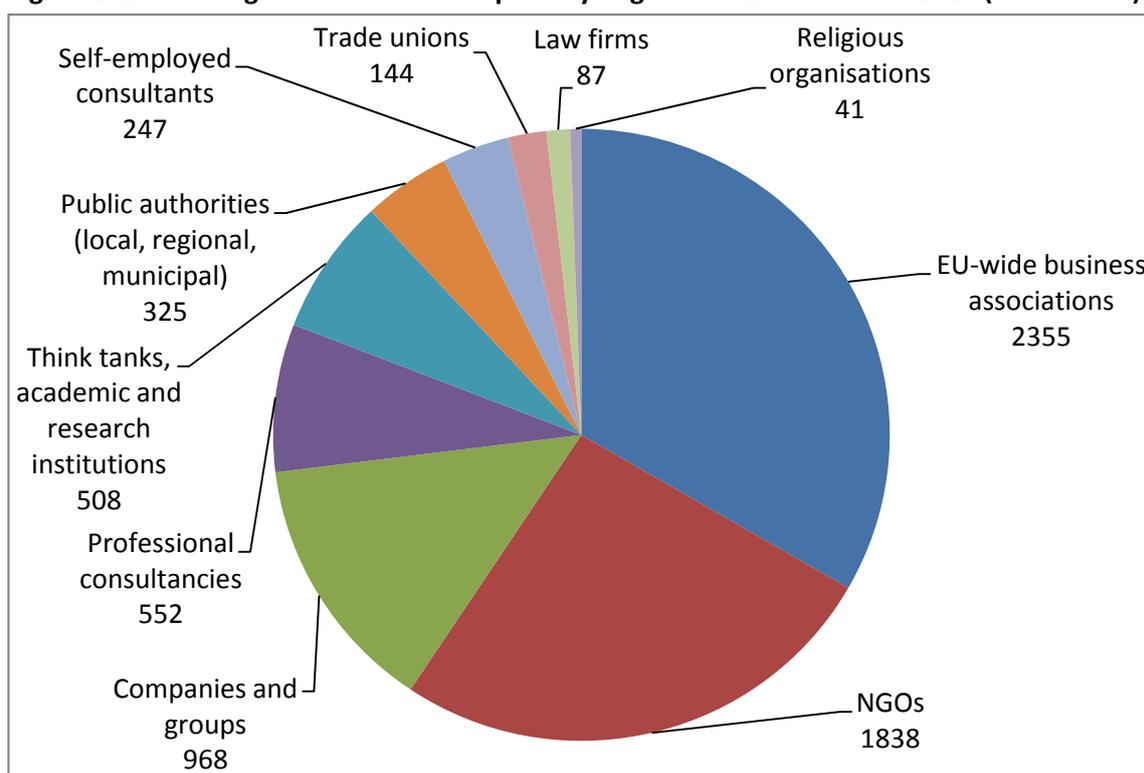
EP sets up its register for
accredited lobbyists

are following should also be specified. Registration on this public database is done [online](#), and registrants have to update their data on an annual basis. There is a procedure for introducing complaints against registrants who do not abide by the Code of Conduct for registrants.

The IIA comprises a [code of conduct](#) which registrants must undertake to respect. Its 12 points cover aspects such as the duty to identify themselves in relations with officials and members of the institutions, by disclosing their name and the organisation represented, as well as the interests, objectives and aims being promoted and, if applicable, disclose their clients. Registrants also undertake not to obtain or try to obtain information or any decision in a dishonest manner, not to induce officials and members to contravene the rules and standards that are binding upon them, and to ensure that former EU staff employed as lobbyists respect duties of confidentiality.

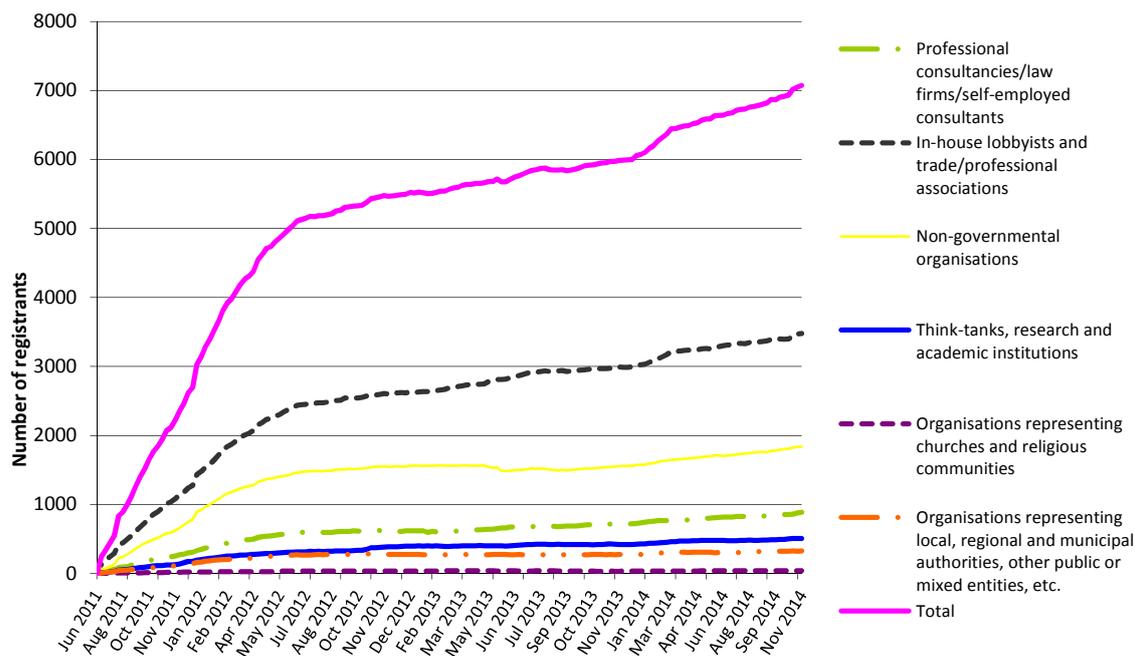
The Register is run by the [Joint Transparency Register Secretariat](#). It monitors the entire database through a system of random checks to verify the correctness of data, and currently undertakes around **800 checks a year**. Registrants who do not provide the updates required, or do not cooperate are barred from the system. The JTRS [publishes](#) annual reports, the last one from [2013](#), providing statistics and an overview of activities.

Figure 1: Entities registered in the Transparency Register on 19 November 2014 (total: 7 065)



As figure 1 shows, there are currently over 7 000 organisations and self-employed lobbyists [registered](#) in the Transparency Register. Figure 2 shows the development in registrations since the joint register was launched in June 2011.

The Transparency Register is available [online](#) and can be freely consulted and downloaded in open government format. The database can be searched and information filtered according to type of organisation, its representatives and whether they have access to the EP, whether they operate a Brussels office, and so on.

Figure 2: Evolution of registrations in the Transparency Register since its launch

2013 revision of the Transparency Register

High-level working group

A joint EP/Commission high-level working group⁷ reviewed the IIA, adopting a [draft provisional text](#) in December 2013 with recommendations for technical and political revision. The main recommendations included clearer definitions (e.g. **direct and indirect influence**), a new provision whereby an entity is already expected to register when the relevant activities are **under preparation**, more detailed provisions on relevant activities, provisions on **incentives to register**, new provisions on **alerts and complaints**, provisions requiring **more detailed information from lobbyists** (e.g. membership in high-level groups, consultative committees, expert groups, membership or participation in EP intergroups or industry forums, other EU supported structures and platforms, etc.). Finally, amendments have been made to the **Code of Conduct to apply its principles to all representatives, not only to those registered**.⁸

The code of conduct lays down precise rules aimed at preventing situations in which lobbyists could undermine the appropriate conduct of members and staff of the institutions. In particular, lobbyists undertake to respect, and avoid any obstruction to the implementation and application of all rules, codes and good governance practices established by EU institutions. They may not induce members or staff to contravene the rules and standards of behaviour applicable to them. Furthermore, if employing former officials or other staff (or assistants or trainees of members), lobbyists must respect the obligation of such employees to abide by the rules and confidentiality requirements which apply to them. Finally, lobbyists must observe any rules laid down on the rights and responsibilities of former members of the two institutions.

The Gualtieri report

An [EP report](#) on modification of the IIA, discussed in the AFCO Committee (rapporteur: Roberto Gualtieri, S&D, Italy), was adopted by plenary on 15 April 2014, with the EP **approving the revised IIA**. Simultaneously, it reiterated its **call for a mandatory register**, asking the Commission to submit a proposal for a regulation by end-2016. The EP also highlighted the notion of a **'legislative footprint'** to be annexed, on a voluntary basis, to reports drafted by MEPs detailing all the lobbyists who had a substantial impact on them.

The Transparency Register beyond 2015

The revised IIA will be applicable as of 1 January 2015 and all registrants will be required to update their data accordingly. The new system aims to substantially improve the quality of data – through requesting more precise and up-to-date information, providing more targeted monitoring of the database and raising awareness of both the TR and the new requirements among stakeholders.

The institutions have decided to **strengthen the system through incentivisation**, in order to encourage registration of all relevant interest representatives. The main incentives until now have been the possibility for registrants to request access to the EP (there are currently over 4 900 individuals with accreditation to enter the EP) and receive alerts from the Commission on upcoming roadmaps and public consultations. Further incentives are being introduced. From the **Commission side** this includes differential treatment of registered organisations during public consultations as part of expert groups or advisory committees. Commission staff are encouraged to ask stakeholders whether they are registered before their meetings, and Commissioners, members of their *cabinets* and Directors-General will only meet with registered entities, when their activities fall under an obligation to register on the TR. Commission patronage will only be awarded to registered entities, again when their activities fall into such a category.

Direct vs. indirect lobbying

The revised IIA on the TR includes a clear definition of direct and indirect lobbying (influencing policy-making):

- **'directly influencing'** means influencing by way of a **direct contact or communication** with the EU institutions or other action following up on such activities
- **'indirectly influencing'** means influencing through the use of **intermediate vectors** such as media, public opinion, conferences or social events, targeting the EU institutions.

Parliament's Bureau has already introduced a new rule⁹ providing that speakers at EP Committee hearings must be from registered organisations when their activities would require registration in the TR. Furthermore, the accreditation procedures will be streamlined and improved, and a further package of incentives is due to be introduced in spring 2015.

Towards a mandatory transparency register for EU institutions?**Criticism of the current system**

The current system is voluntary; therefore **it is not illegal to lobby the EU institutions without registering**. According to [recent research](#), the TR covered approximately 75% of business-related organisations and 60% of NGOs active in lobbying the EU institutions.

The EP has called for the establishment of a mandatory register in [2008](#), [2011](#) and [2014](#).

Numerous stakeholders support this call, among them the [European Public Affairs Consultancies' Association](#) and [Transparency International](#). However, the OECD whilst emphasising the importance of transparency and the need for enforcement, [does not unequivocally recommend](#) the introduction of mandatory registers.

Political will of the Juncker Commission

Commission President Jean-Claude Juncker [promised](#) that the Commission would lead by example on transparency, and [entrusted](#) First Vice-President Frans [Timmermans](#) with preparing a proposal for an IIA creating a mandatory lobby register covering the Commission, the Parliament and the Council. As of 1 December 2014, the Commission has undertaken to publish information regarding the meetings of the Commissioners, members of their cabinets and Directors-General with lobbyists.¹⁰

Problem of legal basis

The EU may enact laws imposing duties on citizens and businesses only if it has an explicit competence to do so. **Article 298(2) TFEU** allows the Parliament and Council to establish, using the ordinary legislative procedure, provisions ensuring that the EU institutions carry out their missions with the support of an open and independent European administration. However, this would allow the EU to regulate the issue of transparency only with respect to EU officials, not with regard to lobbyists.

Therefore, the only legal basis which could be used is the flexibility clause of **Article 352 TFEU**. It provides that if EU action is necessary in order to attain one of its objectives, and there is no specific legal basis in the Treaties, the appropriate measures may be adopted using a special legislative procedure (unanimity in Council, EP consent). The objective of the EU to be pursued would be that of transparency (Articles 1 and 15 TFEU, 10 and 11 TEU). It remains to be seen what a mandatory system would look like based on an IIA, as suggested by Commission President Juncker, as opposed to a mandatory system based on a regulation.

Transparency of lobbying in the Member States

Most Member States do not have any kind of lobby register. **Mandatory** transparency registers for lobbyists currently exist in four EU countries (Austria, Lithuania, Poland, Slovenia). Such a register is soon to be introduced in the UK, and it is expected in Ireland in 2015.¹¹ Three countries have **voluntary** registers (Croatia, Germany, and Romania).

Table 1: Lobbying regulation in EU Member States

Member State ¹²	Legislation on lobbying	Code of conduct for lobbyists	Transparency register for lobbyists
Austria	Yes, since 2013	Yes, by legislation	Yes, mandatory
Croatia	No	No	Voluntary, self-regulated
Czech Rep.	No	Self-regulation	No
Denmark	No	Self-regulation	No (existed in 2012)
Finland	No	Self-regulation (2012)	No
France	National Assembly rules of procedure (1/1/2014)	Approved by National Assembly bureau	Yes, voluntary
Germany	Bundestag's rules of procedure	No	Voluntary register for Bundestag lobbyists
Ireland	Registration of Lobbying Bill 2014 (pending)	Will be introduced by Lobbying Act	Will be made mandatory under Lobbying Act
Italy ¹³	No	Self-regulation	No
Latvia	No	Self-regulation (2012)	No
Lithuania	Lobbying Act 2001	Lobbyist's Code of Ethics	Yes, mandatory
Netherlands	Parliamentary rules of procedure (since 2012)	No	Mandatory register of entities accessing parliament
Poland	Legislation (7.3.2006)	No	Yes, mandatory
Romania	No	Self-regulation (2010)	Yes, voluntary
Slovenia	Legislation (2011)	Self-regulation	Mandatory by legislation
Spain	No	Self-regulation	No
Sweden	No	Self-regulation (2005)	No
United Kingdom	Transparency of Lobbying Act 2014	No	Mandatory (upcoming)

Main references

- Copeland N. [Review of the European Transparency Register](#), EP Library Briefing (2013)
- Greenwood J. & Dreger J. '[The Transparency Register: A European vanguard of strong lobby regulation?](#)', *Interest Groups & Advocacy* 2 (2013): 139–162.
- Zibold F. [Lobbying the EU institutions](#), EP Library Briefing (2013)
- Nettesheim M. [Interest representatives' obligation to register in the Transparency Register: EU competences and commitments to fundamental rights](#), EP Policy Department C Study (2013)

Endnotes

- ¹ 'In-house lobbyists' means companies or groups of companies (with or without legal status) carrying on in-house, for their own account, activities involving advocacy, lobbying, promotion, public affairs and relations with public authorities.
- ² Council of Europe, doc. 11937, 5 June 2009, 'Lobbying in a democratic society (European code of conduct on lobbying)'.
- ³ M. Nettesheim, [Interest representatives' obligation to register in the Transparency Register: EU competences and commitments to fundamental rights](#), EP Policy Department C Study (2013), p. 11.
- ⁴ Article 7, IIA.
- ⁵ J. Greenwood & J. Dreger '[The Transparency Register: A European vanguard of strong lobby regulation?](#)', *Interest Groups & Advocacy* 2 (2013): 139–162, p. 3.
- ⁶ Cfr. Nettesheim, *op.cit.*, p. 8.
- ⁷ The group was composed of Vice-President Rainer Wieland (EPP, Germany), Anni Podimata (S&D, Greece), Edward McMillan-Scott (ALDE, UK), Isabelle Durant (Greens/EFA, Belgium), Oldřich Vlasák (ECR, Czech Republic), Jiří Maštálka (GUE/NGL, Czech Republic) and EC Vice-President Maroš Šefčovič.
- ⁸ The revised code reads: 'The parties hereto consider that all interest representatives interacting with them, whether on a single occasion or more frequently, **registered or not**, should behave in conformity with this code of conduct.'
- ⁹ Rules on Public Hearings – Bureau Decision of 18 June 2003, last amended on 16 June 2014. PE 422.597.
- ¹⁰ See Commission Decisions of 25.11.2014 on the publication of information on meetings held between [Members of the Commission](#) and organisations or self-employed individuals, C(2014) 9051 final, and between [Directors-General](#) of the Commission and organisations or self-employed individuals, C(2014) 9048 final.
- ¹¹ A government [bill](#) is now being discussed by Parliament.
- ¹² The remaining Member States – Belgium, Bulgaria, Cyprus, Estonia, Greece, Luxembourg, Malta, Portugal and Slovakia – have no legislation, code of conduct or register. Hungary did have legislation on lobbying and a register, but this has no longer been in place since 2011.
- ¹³ In Italy, certain rules on lobbying exist at regional level, with Regione Toscana having a register of lobbyists.

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