

# New lobbying law in France

## SUMMARY

Since 1 May 2018, France's new lobbying law is fully implemented. Part and parcel of recent legislation on transparency (Sapin II package), it was adopted on 9 December 2016, providing a regulatory framework for lobbying activities and establishing a mandatory national register ('le repertoire') for lobbyists. In a step-by-step process, first, the repertoire, in which all active interest representatives must sign up, was created on 1 July 2017. After registering by 1 January 2018, interest representatives were then under the obligation to report their lobbying activities in this repertoire by 30 April 2018. The repertoire, with just over 1 00 registrants to date, is overseen by the 'Haute Autorité pour la Transparence de la Vie Publique' (HATVP). In France, the cultural acceptance of lobbying as a profession has been slow, and the new law will make a huge difference in terms of making lobbying activities public, with a regulation closely following the Irish example. The Sapin II package aims for a general increase in public accountability and transparency of the decision-making processes. Some incremental steps in this direction had been taken previously, primarily with the establishment of the HATVP in January 2014 as an independent body to oversee the integrity and transparency of the national public institutions.

## A mandatory register: 'le repertoire'

France is the EU Member State which has most recently introduced national lobbying regulation. Interest representatives active in France are now legally required to register their organisation in a public electronic register or '[repertoire](#)' created on 1 July 2017 (phase 1, in Figure 1). The requirements of the law have been introduced incrementally, in order to facilitate its implementation and give those concerned the necessary time to comply. While it has been mandatory (phase 2, in Figure 1) since 1 January 2018 to be registered as an organisation performing lobbying activities vis-à-vis the French public authorities, the first round of declarations detailing the activities performed the previous year needed to be registered by 30 April 2018 (for the period 1 July-31 December 2017). The repertoire, with over [1 600](#) registrants on 1 July 2018, is overseen by the [Haute Autorité pour la Transparence de la Vie Publique](#). The HATVP is tasked with informing interest representatives of their obligations and overseeing the declarations and compliance with rules. The authority is further charged with handling alerts and complaints and may obtain any document on request, or

Figure 1: Phased implementation



Source: HATVP.

is overseen by the [Haute Autorité pour la Transparence de la Vie Publique](#). The HATVP is tasked with informing interest representatives of their obligations and overseeing the declarations and compliance with rules. The authority is further charged with handling alerts and complaints and may obtain any document on request, or

with a court order, and by inspection on site. Where legal requirements have not been met, and the registrant does not comply with an injunction of the HATVP, sanctions may go up to a €15 000 fine and one year's imprisonment.

While the repertoire in its shape and content largely resembles the [EU Transparency Register](#), one fundamental difference remains: **registration is mandatory by law**. The law applies to all organisations who lobby, with a blanket exception for public bodies. It includes foreign entities and any individuals who are remunerated for interest representation activities, who perform activities falling under its scope.<sup>1</sup> An exception was recently voted in Parliament, with regard to any religious organisations.<sup>2</sup> The data contained in the repertoire is publicly accessible and published in open data format since 2018.<sup>3</sup>

## Registration requirements

The lobbying activities to be reported under the French system must relate to the 'principal' or 'regular' activities of the interest representative concerned. A principal lobbying activity is defined as one being pursued for more than 50 % of the time, while a regular one means more than 10 contacts<sup>4</sup> per year. Activities covered are those which aim to influence a public decision, notably a law or regulatory act, by a communication with a public official covered by the law,<sup>5</sup> at the initiative of the interest representative. In sum, any legal or natural person, whose main or regular lobbying activity consists of contacting public officials in order to influence the public decision-making process, needs to register.

Precise definitions with regard to the types of public officials and public decisions covered under the scope of the law are detailed in the annexes to a government [decree](#).<sup>6</sup> While communication is not defined in the law, it is [interpreted](#) by the HATVP<sup>7</sup> as meaning: a physical encounter, phone call or video conference, electronic message, correspondence, e-mail or even private message. The use of social media where the public official is named, is also covered. Public officials covered by the law, according to the decree, are: members of the government and members of ministerial cabinets and the President's cabinet, Members of Parliament and the Senate, and the Presidents of these houses and their cabinets. The list also includes all other officials of the two houses, and high-level officials in a number of public bodies as well as the directors-general, secretaries-general and their deputies of all public bodies concerned. In their declarations, however, lobbyists are not required to name the person they communicated with. The declaration requires rather that the registrant provide general information about the type (or level) of public official concerned (i.e. minister, cabinet official, etc.) The final phase (phase 3, in Figure 1) of implementation was originally intended to start in the second half of 2018, when the scope of the law would be extended to cover lobbying of any regional and local public officials across the country. This extension was pushed back until 1 July 2021, in a vote in the French Parliament on 26 June.<sup>8</sup>

## Declaration requirements

While registrants must report each communication made, they need only provide the type of public decision concerned (not the actual decision itself), and the type of contact made (i.e. letter, meeting, event, etc.), as well as the level of public official contacted. The length and detail of declarations varies greatly. With regard to the financial information to be declared, registrants must select a cost-band for each activity. In addition, consultancies and law firms must name any clients that were

### The new lobbying law

[Loi N°2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique](#) is more commonly known as 'Loi Sapin II', in reference to the original anti-corruption law of 1993, of which [Michel Sapin](#), then Minister of Finance, was the author. The law provides numerous anti-corruption measures to be introduced in the financial sector and the economy, and aims to improve transparency of public decision-making in general. It provides, for example, a legal framework for whistleblowers, and creates a mandatory lobby register, with an accompanying Code of Conduct. The law also creates a new and enforced Anti-Corruption Agency. Title II of the law regulates the transparency of relations between interest representatives and the public authorities. The precise definitions of activities, public officials and the public decisions covered under the scope of the law are listed in the annex of a [government decree](#).

represented. The declarations are annual, for all lobbying activities of the previous year, and must be reported at the latest three months after the closure of the financial year, or by the deadline of 30 April of the following year. The first deadline for reporting was thus 30 April 2018 for lobbying activities in the second half of 2017 (phase 2, in Figure 1).

To be able to take on board as much input as possible about how the new system will affect interest representatives concerned, the HATVP held several [public consultations](#) which have fed into the [guidelines for registrants](#), published in January 2018.

Figure 2: Elaboration of the guidelines as a collaborative exercise



Source: HATVP.

## The HATVP

The [Haute Autorité de la Transparence pour la Vie Publique](#) (HATVP) was created in January 2014, replacing the previous commission for financial transparency in public life and given more powers and means of oversight than its predecessor. It was founded as an independent administrative authority acting in full autonomy, in order to pursue a number of different tasks, such as:

- Auditing the assets of public officials;
- Preventing conflicts of interest;
- Counselling and training public officials on ethical principles;
- Promoting transparency in public life.

The primary task of the HATVP is to collect the financial assets and interest declarations of over 15 000 public officials, including members of the government and of the National Assembly and Senate, and to investigate any possible breaches of rules or omissions. Declarations of assets of Members of the government are published online. Declarations of interests of members of the government, MPs, MEPs and local elected officials are also published online.

Some months after its establishment, former President of the French Republic [François Hollande](#) requested the HATVP to provide a general evaluation of the state of play on ethics and transparency laws in France with regard to the national public service. An extensive report was published in April 2016 by the President of HATVP, [Jean Louis Nadal](#), entitled '[Renouer la Confiance Publique](#)'. The report made 20 proposals for change to improve transparency in French public life, based on four main themes:



### Haute Autorité Pour la Transparence de la Vie Publique

Set up as an [independent body](#), the HATVP is composed of nine members responsible for decision-making. In addition to its president, appointed by the President of the French Republic, there are six members of France's highest administrative bodies, along with two members appointed by the speakers of both houses of Parliament, after advice from the relevant committees. The High Authority's current president is [Jean-Louis Nadal](#), former general prosecutor of the Court of Cassation. Its members are all appointed through collegial votes to avoid individual considerations. They serve a non-renewable and non-revocable six-year mandate, and can neither receive nor seek orders or instructions from the government. On 1 January 2018 the HATVP had 50 remunerated agents, although only a handful of these are so far dedicated to running the repertoire for interest representatives.

- I - Public officials' compliance with ethical standards
- II - Information and involvement of civil society
- III - Guaranteeing proper use of public funds
- IV - Improving sanctions to ensure exemplary standards in the public service.

One of these 2016 proposals was to create a mandatory register for interest representatives, since the [voluntary option that was in place](#) had not provided satisfactory results.

## Voluntary lobby registration

Previously, registers were in place for those interest representatives wanting to access either of the houses of Parliament, set up in 2009. These were often criticised by public watchdogs as unsatisfactory,<sup>9</sup> since the number of registered interest representatives was considered too low to be realistic. Calls were made for a single reliable register with mandatory registration.

Following an initiative of the Bureau of the National Assembly, [Christophe Sirugue](#), then vice president of the National Assembly, set up a working group on transparency and drafted a report on how to improve the rules on transparency and ethics applicable to interest representatives.<sup>10</sup>

Three main principles emerged for policy change: increased transparency of interest representation, a code of ethics for interest representatives and the possibility for increased public scrutiny. The result was a broader scope for the voluntary public register in the National Assembly, where information provided by interest representatives would include the clients represented and the costs associated with lobbying activities.<sup>11</sup>

Registration in this system allowed individual representatives of a public or private interest to obtain an access pass to the premises of the Palais Bourbon (home of the National Assembly), in exchange for signing up to a [Code of Conduct](#). The following year, the Senate introduced similar improvements to its register. However the numbers of registrants still did not increase dramatically.

In parallel, and in a similar vein to the European Parliament, a legislative footprint was introduced: Members could draw up, on a voluntary basis, a list of interest representatives they had heard from in conjunction with their legislative reports. Other propositions by Mr Sirugue's working group included a ban on practising law by parliamentarians while in office.

## The French transparency debate

It was essentially the 'Cahuzac Affair' (2013) that triggered the new transparency legislation package in France. The case related to non-disclosure of financial assets abroad of the then Minister for the Budget [Jérôme Cahuzac](#)<sup>12</sup> which led to calls for proper independent oversight of the French political system. In this context, the independent body, HATVP, was set up to audit the financial assets and interests of public officials, including government members.

New public notice and control procedures were introduced, placing higher ethical demands on public officials,<sup>13</sup> while work began on the anti-corruption law (Sapin II package). This was two years in the making<sup>14</sup> and went through considerable amendments, notably regarding its recommendation for a mandatory lobbying register, with press reports pointing to sporadic [weakening of obligations](#) for interest representatives.

In its [opinion](#) of April 2017 on how to implement the law, the HATVP had recommended including a requirement for all speakers at public hearings and members of expert groups to register, which was not part of the final decision. [Debates continue](#) as to some of the mandatory aspects of the system, for example with regard to religious organisations, or whether public officials at regional level are to be designated public officials under the rules.

## Comparison between the EU Transparency Register and the French repertoire for interest representatives

Parameter	EU Transparency Register	French Repertoire
<b>Legal basis</b>	The EU register is based on an Inter-institutional Agreement (IIA) between the European Parliament and the European Commission from 2011/2014. The IIA sets out the rules and principles of the EU system and includes a code of conduct which lobbyists agree to respect on signing up.	Application of article 18(1) and 18(3) of Loi Sapin II – or officially the revised law n°2013-907 of 11 October 2013 (Loi Sapin) & its implementing decision n° 2017-867 of 9 May 2017.
<b>Scope of register</b>	<p>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 where they are undertaken and of the channel or medium of communication used.</p> <p>The EU system uses an activity-based definition and covers all organisations and self-employed individuals engaged in activities covered by the register, irrespective of their legal status or geographical location.</p>	<p>Defines activities covered as 'influence on a public decision, notably the content of a law or regulation, by entering into contact' with public officials, on the initiative of the interest representative.</p> <p>The activity is to be registered irrespective of where the organisation/representative is based when performed regularly or as a principle activity, but the channel or medium of communication is defined as: meeting, telephone or video-conference conversation, letter/email or private electronic communication. While opinion polls and demonstrations, as well as monitoring of public decisions are not considered to be activities covered, these should nonetheless be listed under annual reporting by registrants.</p>
<b>Exemptions</b>	Contains exceptions, namely for certain legal and professional advice, activities of the social partners as participants in social dialogue, requests for factual information, data or expertise, churches and religious communities and their participation in religious dialogue (Article 17 TEU), political parties, third countries' governments, international intergovernmental organisations and their diplomatic missions.	Public bodies, chambers of agriculture; Individual persons representing their own interests, or acting on a non-professional or pro-bono basis.
<b>Mandatory/ Voluntary</b>	<p>The EU Transparency Register is a voluntary system of registration for entities seeking to directly or indirectly influence the EU decision-making process.</p> <p>Nevertheless, registration is necessary for certain privileges, such as access to the premises of the institutions. Interinstitutional negotiations are starting in 2018 to discuss the introduction of a mandatory register.</p>	<p>Mandatory registration in order to communicate with relevant public officials, listed as:</p> <ul style="list-style-type: none"> <li>- Members of the government, members of ministerial and/ or the presidential cabinets;</li> <li>- Members of Parliament,</li> <li>- Senators and their assistants, - President of Parliament and of the Senate and members of their cabinets;</li> <li>- Directors-general,</li> <li>- Secretaries-general and their deputies, of the public bodies listed in the decree of 9 May 2017.</li> </ul>

<p><b>Disclosed elements</b></p>	<p>One phase of registration only:</p> <ul style="list-style-type: none"> <li>- Name and contact information,</li> <li>- legal status, person with legal responsibility,</li> <li>- person in charge of EU relations,</li> <li>- goals / remit,</li> <li>- specific activities which are covered by the register,</li> <li>- number of persons involved in activities covered by the register,</li> <li>- participation in EU structures and platforms,</li> <li>- persons with accreditation to the EU Parliament,</li> <li>- fields of interest,</li> <li>- membership &amp; member organisations,</li> <li>- financial estimate of costs related to activities covered by the Register,</li> <li>- turnover related to activities covered by the Register (for registrants in section I),</li> <li>- clients (for registrants in section I),</li> <li>- funding received from the EU,</li> <li>- breakdown of funding amounts and sources (for Sections III-VI).</li> </ul>	<p>For the first step of the registration process:</p> <ul style="list-style-type: none"> <li>- identity of the organisation/ self-employed person;</li> <li>- identity of the director of the organisation;</li> <li>- identity of those representatives of the organisation performing relevant activities (i.e. 50 % of their time or at least 10 contacts within the past year);</li> <li>- areas/sectors of activity;</li> <li>- membership;</li> <li>- clients for whom activities were performed during the past 6 months.</li> </ul> <p>A registrant must sign up within two months of performing any relevant activity. Any changes must be declared within one month of the change. An activity report must be made by the latest three months after the closure of a financial year. As of 1 May 2018, an activity report should include:</p> <ul style="list-style-type: none"> <li>- type of public decision targeted;</li> <li>- type of action performed;</li> <li>- issues raised;</li> <li>- level of public official contacted;</li> <li>- clients or members represented;</li> <li>- estimate of costs of activity/ turnover of activity.</li> </ul>
<p><b>Code of conduct</b></p>	<p>The IIA contains a <a href="#">code of conduct</a> which interest representatives agree to respect on signing up and which governs their relations with the EU institutions.</p>	<p>Registrants must respect the Codes of Conduct applicable in the <a href="#">National Assembly</a> and <a href="#">Senate</a>, governing their relation with the public institutions as well as the <a href="#">ethical rules</a> defined in the Sapin II law.</p>
<p><b>Privileges linked to registration</b></p>	<p>The European Commission and European Parliament have introduced various incentives in order to promote registration. On the Parliament's side, registrants may apply for accreditation allowing them access to the EU Parliament premises and may be invited to speak at committee public hearings. The Commission has also introduced various incentives, which since November 2014, includes meetings with European Commissioners or members of their cabinets, as well as directors-general. Registrants are also granted further incentives such as lists of the membership of expert groups and the opportunity to receive notifications about public consultations on topics of interest.</p>	<p>Access to the public officials in question. Any contact on the initiative of the public institutions (i.e. public hearings, consultations or requests for expertise or public tender procedures) are activities not covered by the Repertoire.</p>
<p><b>Administration and enforcement</b></p>	<p>The EU Transparency Register is run by the Joint Transparency Register Secretariat (JTRS), officials from Parliament and the Commission. It operates under the coordination of the Head of Unit of the Transparency Unit in the Secretariat-General of the European Commission.</p>	<p>The Repertoire is administered by the HATVP, which is planning to continue consultation with stakeholders in 2018 for experience-sharing with regard to modalities for declaring lobbying activity reports for 2017.</p>

<b>Sanctions</b>	In cases of non-compliance with the code of conduct, the secretariat must investigate and may impose certain limited sanctions on registrants. This can include removal from the register and associated incentives. While a registrant can re-register if the grounds leading to removal have been remedied, a more egregious violation of the Code of Conduct may entail a suspension from the register for 1-2 years in the most serious instance, including a publication of the decision on the register's website.	If the HATVP becomes aware (by its own initiative or via a third party) of any breach of the code, the registrant concerned will receive formal notice and be asked to respond to the allegations. The formal notice can be made public. Any repeat of a breach during a 3-year period can lead to up to 1 year's imprisonment and a €15 000 fine.
<b>Rules on updating</b>	Registrants are obliged to update their data at least once a year and can be suspended and removed from the register for failure to do so. While not mandatory, a 3-times yearly update of the registration is recommended practice. Registrants must cooperate with the secretariat when asked to update.	Registrants are obliged to declare activities for the previous year, do an annual update and can be suspended and ultimately removed from the register for failure to do so.
<b>Number of registrants</b>	11 785 (on 1 July 2018)	1 605 (on 1 July 2018)

## ENDNOTES

- <sup>1</sup> L'article 18-2 de la loi No 2013-907 du 11 octobre 2013 relative à la transparence de la vie publique
- <sup>2</sup> <https://transparency-france.org/actu/transparence-lobbying-transparence-international-preoccupe-premiers-detriticotages-de-loi-sapin-2/>
- <sup>3</sup> Pages 64-65 - <https://www.etalab.gouv.fr/wp-content/uploads/2018/04/PlanOGP-FR-2018-2020-VF-FR.pdf>
- <sup>4</sup> Contact is not defined in the law, but a communication is [interpreted](#) by the HATVP as meaning: a physical encounter, phone call or video conference, electronic message, correspondence, email or even private message. The use of social media, where the public official is named, is also covered.
- <sup>5</sup> L'article 18-2 de la loi No 2013-907 du 11 octobre 2013 relative à la transparence de la vie publique
- <sup>6</sup> Décret d'application No 2017-867 of 9 May 2017
- <sup>7</sup> Lignes directrices /HATVP/ Janvier 2018
- <sup>8</sup> [https://www.senat.fr/espace\\_presse/actualites/201802/etat\\_au\\_service\\_dune\\_societe\\_de\\_confiance.html#c637991](https://www.senat.fr/espace_presse/actualites/201802/etat_au_service_dune_societe_de_confiance.html#c637991)
- <sup>9</sup> [http://www.communication-publique.fr/wp-content/uploads/PDF/policypaper\\_lobbying\\_en.pdf](http://www.communication-publique.fr/wp-content/uploads/PDF/policypaper_lobbying_en.pdf)
- <sup>10</sup> Rapport présenté par Christophe Sirugue, Président de la délégation chargée des représentants d'intérêts et des groupes d'études, Au nom du Groupe de Travail sur les lobbies à l'Assemblée Nationale, ([http://www.assemblee-nationale.fr/representants-interets/rapport\\_bureau\\_2013.pdf](http://www.assemblee-nationale.fr/representants-interets/rapport_bureau_2013.pdf))
- <sup>11</sup> [http://www2.assemblee-nationale.fr/14/representant-d-interets/repre\\_interet](http://www2.assemblee-nationale.fr/14/representant-d-interets/repre_interet)
- <sup>12</sup> At the time, Jérôme Cahuzac, Budget Minister, in charge of the Treasury, had failed to disclose his ownership of foreign bank accounts. Once these accounts were discovered, he continued to deny their existence and was accused of both evading taxes and hiding money, which he had previously received in return for granting special treatment to pharmaceutical industries.
- <sup>13</sup> ACT No 2013-907 of 11 October 2013 on transparency in public life
- <sup>14</sup> <https://www.forbes.com/sites/riskmap/2016/12/14/will-the-sapin-ii-anti-corruption-law-shepherd-france-into-a-new-era-of-transparency/#604827a448f0>

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