

**Proposal for an Interinstitutional Agreement on a mandatory Transparency Register
COM (2016) 627**

European Parliament negotiating mandate

adopted by the Conference of Presidents on 15 June 2017

Introduction

First Vice-President Mr. Timmermans, responsible for transparency, presented on 28 September 2016 a Commission proposal for a new Interinstitutional Agreement (IIA) on a mandatory Transparency Register (TR). On 27 October 2017, the Conference of Presidents appointed Ms Sylvie Guillaume, Vice-President responsible for the Transparency Register, and Ms Danuta Hübner, Chair of AFCO Committee, as lead negotiators, tasking them with drafting Parliament's negotiating mandate. The draft negotiating mandate is to be submitted to the Conference of Presidents for decision, following endorsement by the Contact Group.

The Transparency Register was set up as a voluntary scheme by means of an IIA of the Parliament and the Commission. It was revised in 2014 when the Council became an observer. The objective, to show what interests are being pursued at the European level, by whom and with what budgets, has largely been achieved. The online database, dependent on the cooperation of interest and stakeholder groups, has evolved steadily to now include well over 11,000 entities, from professional consultancies and law firms to citizen platforms advocating a particular interest, and covering a very wide range of actors who aim to influence EU level decision-making.

As EU Institutions seek to take further steps to increase the transparency of interest representation, a guiding principle remains: to enable citizens to participate more actively in the democratic life of the EU, with a transparent and open decision-making process. For its part, the European Parliament has committed itself to this through different tools, amongst them the implementation of a voluntary legislative footprint. The proposed new IIA should seek to further enhance institutional transparency, as set out in the Treaties, and help to foster public trust in the Institutions' decision-making processes.

The purpose of the draft mandate is to define Parliament's priorities for negotiations with the other Institutions at political level, which reflect Parliament's previous calls for a mandatory Transparency Register¹, its experience from five years in the current joint structure, and the deliberations among the members of the Contact Group on the Transparency Register. At the end, a significant added value needs to be achieved, compared to the current situation.

General principles and approach

This draft negotiating mandate sets out the framework for negotiations according to three main principles, which should ensure that Parliament's negotiating goals are fully met, while building on and improving the current scheme so that it may function effectively.

¹ [European Parliament decision of 15 April 2014 on the modification of the interinstitutional agreement on the Transparency Register \(2014/2010\(ACI\)\)](#); paragraph 29 ff. [European Parliament resolution of 28 April 2016 on public access to documents \(Rule 116\(7\)\) for the years 2014-2015 \(2015/2287\(INI\)\)](#)

The three principles are:

- I. The widest possible scope of application for EU Institutions and other bodies, including meaningful participation of Council;
- II. A comprehensive and clear framework, without weakening the current system, for the regulation of interest representation activities;
- III. Structures and resources that guarantee an effective implementation.

At its core, the draft mandate retains and draws a very clear distinction between conditions and incentives as regards registration by interest groups. In this way, it departs from the Commission's proposal - which duplicates the model already implemented for Commissioners, their Cabinets and Directors General, moving from a system of incentives to a system of "conditions" and makes registration unavoidable for certain interlocutors of the Institutions.

The draft mandate proposes that incentives be retained as a benefit of registration but that certain interactions should be made conditional on registration. It would be for each Institution to determine the range of incentives and conditions it would apply to registrants. Such a two-tier approach would provide a number of advantages:

- an inclusive transparency policy;
- the possibility to maintain the wider definition of lobbying, covering both direct and indirect interest representation (as with the current system);
- the possibility of better scrutiny with regard to certain lobbying activities, according to each Institutions' needs;
- more flexibility in respect of Institutions' roles and structures;
- respect MEPs' independent mandate;
- in line with measures and provisions already adopted by the EP (thus easy to implement).

Any applicability to Intergroups, political groups and unofficial groupings organised by Members should be determined by the Parliament after it received a full opinion of the legal service on those issues.

A legal opinion by Parliament's legal service may provide further guidance for the negotiators in the course of the negotiations.

I. The widest possible scope of application for EU institutions and other bodies, including meaningful participation of Council

The IIA should reinforce and improve the accountability of the EU Institutions to citizens, by way of a common commitment of the Parliament, Council and the Commission to increase the transparency of their relationships with interest representatives.

Negotiating goals:

- Meaningful participation of the Council, to include current and forthcoming Presidencies; coverage of the General Secretariat of the Council alone would be considered insufficient;
- A clear preference to widen the scope of coverage to "participating institutions", notably to include the European Council; a need to clarify legal principles besides 295

TFEU legal basis (such as right of EU institutions to organise their cooperation) that can bind other signatory institutions;

- The agreement to cater for other institutional actors who voluntarily want to adhere to the Register, such as regulatory agencies or Member State Permanent Representations;
- Applicability to political groups to be determined by Parliament;
- The IIA not to impinge on the competences or prerogatives of its signatories in terms of their respective internal organisational powers, with each Institution and body able to determine how to implement the scheme. The IIA will provide a framework for coordination.

II. A comprehensive and clear framework, without weakening the current system, for the regulation of interest representation activities

As with all EU decisions, legal certainty and clarity is of the essence for effective application. The Commission proposal comes in the form of a new IIA, despite Parliament's calls for a legislative text. An IIA based on Article 295 TFEU would be binding on the three Institutions and not on interest representatives themselves, leaving the title "mandatory Transparency Register" open to misleading interpretations and making it difficult, if not impossible, to impose obligations on third parties.

A. Definition of activities covered

Negotiating goals:

- All organised interests to be able to register their lobbying activities targeting EU decision-making, while taking into account how these organisations are regulated under national laws if appropriate;
- Keeping a wide scope of the Register on the basis of a regulatory framework, to include both direct and indirect interest representation;
- Precise and reliable definitions, including but not limited to a) activities covered; b) activities not covered; c) interaction; d) decision-making of the EU Institutions covered or not, notably internal decision-making;
- Certainty that the proposed scope of IIA will not hamper internal decision-making procedures, for example with regard to tenders nor create unnecessary bureaucratic burdens.

B. Principles of conditionality and incentives

While the Parliament favours a wide and inclusive approach to interest representation, it also welcomes the introduction of a stricter requirement for registration under certain conditions. The Parliament recognises that interest representation towards the EU Institutions can take place on two levels. It therefore supports the need to move to a two-tier registration process, where only certain activities would become conditional upon prior registration. A system providing both conditions and incentives would be in line with Parliament's preference to keep a wide definition of lobbying activities. Each Institution would determine what benefits it would provide to registrants and what interactions would be made conditional upon registration.

Commitments with regard to Members of the European Parliament, political Groups or Members' staff, relating to their meetings with interest representatives, are to be determined by Parliament. Furthermore, while the Parliament's rules of procedure already recommend to Members to meet registered interest representatives, it is clear that the Members' independence of mandate, as provided under primary law, cannot be compromised by such rules, *nor* by an IIA.

Negotiating goals:

- No requirement of registration for certain public services that the Parliament provides;
- Any conditions introduced to fully respect the Institutions' and their members' respective roles, as provided for under the Treaties; this shall include in case of the Members of European Parliament respect for the provisions of the Statute which sets out independence of the mandate²; consequently applicability to Intergroups and unofficial groupings organised by Members should be determined by the Parliament;
- Each Institution to be able to identify which interactions with interest representatives to be conditional on registration and which would be more appropriate as incentives;
- Application of current Parliament rules which make access to its premises and the participation as speakers at its committee public hearings conditional upon prior registration for individuals or organisations covered by the scope of the register; speakers invited to provide evidence to the committees of inquiry and who do not fall under the Transparency Register rules, should be exempted only for that purpose;
- Meetings of EU officials with interest representatives in participating Institutions from Head of Unit level to the Secretaries-General to be conditional upon prior registration;
- Identification of additional areas by Parliament of interaction with interest representatives, to be made conditional upon prior registration;
- Insistence that the Commission continue to make membership of its expert groups conditional upon prior registration in the Transparency Register;
- Insistence that the Commission identify other areas of interaction to be made conditional upon registration, notably with regard to events attended by the Commission;
- Insistence that the Council identify both incentives and conditions applicable for its relations with interest representatives.

C. Exemptions

Negotiating goals:

- Clarity with regard to "bodies not covered" by the IIA and "activities not covered". While some actors are regular dialogue partners of the institutions (e.g. Article 17 TFEU for religious organisations or Article 152 TFEU for social dialogue), which are activities outside the scope of the Transparency Register, these same actors may still have interests which do fall under its scope. Article 4 should provide more clarity on if and when the bodies listed may be covered;
- Revision of the classification of registrants in line with the wide approach.

² Decision of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament, (2005/684/EC, Euratom)

D. Quality of data

The Parliament recognises a need for more precise and better quality data in the Transparency Register to allow for improved reliability and comparability. However, it also recognises the difficulty for the Institutions to guarantee the quality of the entire content of a voluntary Register.

Negotiating goals:

- Ensure the best possible quality of data and comparability, including by improving the registration form;
- More precise information from registrants on the nature of the activities being performed and the exact subject, without creating excessive new requirements; intermediaries should provide a link between the subject matter and the client concerned;
- Increased monitoring, at regular intervals, of the data provided by any entity registering for conditional interaction, on the basis of established criteria;
- Requirement for more information on the sources of funding, in order to increase the transparency of membership and donations/sponsorship of organisations;
- A proactive approach by the Institutions to provide clearer guidance for registrants and a common communication strategy to raise awareness of the Register, its scope and its requirements;
- Clarity to be provided to registrants on the activities that are to be made conditional.

E. Code of conduct and complaints

Negotiating goals:

- Recognition of the right to remedies of any registrant subject to an administrative procedure in the framework of the Transparency Register, namely the roles of the Ombudsman and the Court of Justice;
- Each Institution to retain control over its own internal organisational powers, notably with regard to decisions affecting access for registrants to certain types of interaction with the Institution (or from entering its premises). Any such decision, when taken unilaterally, will be communicated to the other parties;
- Require registrants to cooperate with Parliament when summoned to a hearing or committee meeting or co-operate with its committees of inquiry, or face sanctions;
- Additional legal clarity in the Code of Conduct (notably with regard to the terms “inappropriate behaviour” and “sincere and constructive” co-operation).

III. Structures and resources that guarantee an effective implementation

The Parliament is committed to building on the existing scheme with the Commission and the Council and to making it an effective tool for increased transparency of the EU decision-making process. A new IIA, including the Council, must fully respect each Institution’s role and keep the Institutions on an equal footing with regard to decision-making in the framework of the common scheme. This mandate does not cover the financial aspects and will need to be complemented by a decision by the budgetary authority to this end.

Negotiating goals:

- Any decisions on the structure and resources to be taken as part and parcel of the negotiations (nothing is agreed until everything is agreed);
- Sufficient resources (human, administrative, technical and financial) as a prerequisite for the efficient functioning of the scheme;
- Both political and administrative oversight to be ensured by each Institution, in order to steer the evolution of the scheme;
- The management structure of the Transparency Register to benefit from an independent observer to ensure equal and fair treatment of all registrants and its proper implementation, as well as a rotating chair of the Management Board;
- A common Secretariat at operational level, where co-ordination is ensured on a rotating basis by the Parliament, Council and Commission to allow for balance, rather than the Commission's proposal to take on operations alone;
- Decision-making at all levels should be based on consensus;
- Review of the IIA to be undertaken within one year after the election of the Parliament's Bureau;
- Reiterates its longstanding call to back up the EU Transparency Register through a legislative act.