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# DISCUSSION PAPER

## The EU Transparency Register: on the right path, but not quite there yet

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The transparency of EU institutions' interactions with interest representatives is again very much the talk of the town in Brussels. The occasion is the European Commission's recent proposal for a third revision of the Transparency Register, based on an Interinstitutional Agreement (IIA) between the Commission, the European Parliament (EP), and the Council of the EU.

The proposal aims to move from the current voluntary system to one where registration becomes a precondition for interest representation in the European Union (EU) by making certain interactions with decision-makers in all the main EU institutions conditional upon registration. This is complemented with a strengthened code of conduct, which sets out the rules for all those who register and the underlying principles for standards of behaviour in all relations with EU institutions. The Transparency Register aims to regain the trust of EU citizens in the Union and gives them an insight into which organisations or people seek to influence EU law-making. Through the register, the public can see who is lobbying, who they represent, and how much money they spend on their lobbying activities. The registration of lobbies is, however, not by itself a panacea for avoiding undue lobbying influence, but it is a step in the right direction to make the European Union more transparent about whom EU decision-makers consult.

Overall, the Transparency Register can be regarded as a success since it was first introduced in 2008, at least if one observes the exponential growth in registrations and how external stakeholders use it as part of their good corporate citizenship. However, there is room for improvement.

In this paper, we suggest avenues for further strengthening the register. We also emphasise that regulating the conduct of lobbies is only one side of the transparency coin. The other side of the coin – the rules governing EU decision-makers – is equally important to increase transparency and to avoid conflict of interest. We focus the last part of the paper on how the EP's rules governing Members of the European Parliament (MEPs) and EU officials can be strengthened in line with the rules applied for European commissioners. Before doing so, we take a brief look back on the story of the register thus far.

### **A short history of the Transparency Register**

The introduction of the Transparency Register in 2008 reflected a desire to improve the EU's image in the eyes of citizens and respond to the criticism levelled against it as being opaque. The register seeks to increase transparency regarding the interaction of external stakeholders with the EU institutions.

The first phase of the register (2008-2011) only covered the European Commission, although it would have been ideal, but politically unfeasible at the time, to include all EU institutions. When the register was reformed in 2011, the EP was included. Now in 2016, the plan is to expand it to the Council of the EU as well.

The register's success, in terms of the number of registrants, depends on whether or not it has come to be seen as a necessity to register in order to be seen as an 'accepted operator' in Brussels. From the early days of the Transparency Register, the feeling that registration is not only the right thing to do to be considered as an ethical operator, but also a necessity to gain access to meetings in the Commission and the Parliament gained currency. Being registered largely follows the logic of appropriateness, promoted by several large corporations, such as Microsoft, who signed up for the register in its early days and used it to boost their image. Furthermore, several registrants demanded that registration on the Transparency Register was a condition for membership of professional associations and think tanks.

The media has also helped in promoting registration by naming and shaming those who are not on the register. In many ways, it has been the 'spirit of transparency' that has contributed to the growth in registrants rather than strict rules and sanctions. The number of registrants over time highlights the success in securing increased registration. In May 2011, when Parliament and the Commission launched their Joint Register, there were 244 registrants. Today the register includes over 10,000 registrants, with an average of 50 organisations signing up for the register every week.

The EP and the Commission offer certain practical incentives linked to registration. For instance, long-term access passes to the EP's premises are only issued to individuals representing, or working for registered organisations, and guests invited to speak at a hearing need to be registered. In the Commission, only registered entities get automatic alerts about consultations and commissioners, cabinet members and directors-general are only supposed to meet with interest representatives who have signed up to the Transparency Register.

## **Avenues for improvements**

The Commission's recent proposal is a step in the right direction in further strengthening the register. The current proposal for reforms of the rules suggests expanding it to the Council and to make all meetings with EU decision-makers inside the institutions contingent upon registration. The proposal also clarifies the scope of activities covered, and strengthens the monitoring and enforcement of the register's code of conduct for lobbyists. We suggest to further strengthen the register by expanding the scope of actors covered, increasing the information required by registrants, and by improving the sanctions for breaking the rules.

### ***Expanding the scope***

We suggest expanding the interactions conditional upon registration in terms of the EU actors covered. Table 1 shows the actors currently included in the Commission's proposal and our suggestions for improvement. The Commission's policy of not meeting unregistered lobbyists should be extended to cover all officials involved in EU legislation. This would ensure the coverage of approximately 30,000 individuals in the Commission and over 9,000 individuals in the EP. This expansion would include those with high interactions with lobbyists and those with serious input into the policy drafting process. The current Joint Transparency Register Secretariat, which is running and monitoring the compliance with the register, could be put in charge of also monitoring this. The secretariat monitors the entire transparency register database through a system of random checks to verify the correctness of data.

**Table 1: Expansion of EU officials covered by the Transparency Register**

	<i>The Commission's proposal include</i>	<i>Our suggestions</i>
The European Commission	Commissioners, their cabinet members & directors-general	Cover all Commission officials, including the European External Action Service
The European Parliament	MEPs, the Secretary-General, directors-general, and secretaries-general of political groups	All EP officials and assistants
The Council of the EU	Ambassadors, Anticis and Mertens of the current or forthcoming Council presidency, the Council's secretary-general, and directors-general	All permanent representations and officials in the Council secretariat
The European Council	None	President Donald Tusk, members of his cabinet, and staff from the secretariat

Institutions should check whether visitors entering their premises fall within the scope of the Transparency Register and only allow registered individual access. Furthermore, EU officials, MEPs, and commissioners should only participate in events of registered interest representatives.

The EU institutions should be much stricter in their dealings with organisations/companies that are not in the register. This could mean, for example, that commissioners and MEP's would not accept invitations to address events organised by unregistered organisations.

We suggest to make registration conditional on meeting with EU decision-makers in a professional capacity. The Commission, Parliament, and the Council should make it difficult for interest representatives to meet with EU decision-makers without signing up to the register. Much of this hinges on the EU officials and politicians' willingness to embrace the rules. On 13 December 2016, MEPs voted to improve the Parliament's rule of procedure, including the MEPs' code of conduct. The revised rules recommend that MEPs only meet with registered interest representatives (Rule 11, point 1a).<sup>1</sup> This change was only supported by a slim qualified majority as almost all EPP MEPs voted against the proposal due to concerns of potential limitations put on the meeting between MEPs and their constituents.<sup>2</sup> One should note, however, that signing up to the register does not by itself ensure the inability of lobbies to influence EU decisions behind the scenes.

### ***Position as a base for influence***

Since its early days, the Transparency Register has focussed on financial resources. In the registration process, interest representatives must provide an estimate of the annual costs related to activities covered by the register from the most recent financial year closed (including staff costs, office and administrative expenses, representation costs, in-house operational expenditure, outsources activity costs, membership and related fees).<sup>3</sup> The cost estimate is subject to discussion. This is probably not too big a problem, as a figure that appears too small would stand out as unreasonable.

However, more importantly, financial resources are not the only aspect of lobbying. The focus on the financial resources of registrants is probably linked to the fairly conventional view that money buys influence – a view often advanced by non-governmental organisations (NGOs). However, influence can also be based on holding a variety of posts in associations, think tanks, and other organisations, including perhaps advisory committees of the EU institutions. The register should, therefore, also demand information about the composition of governing and advisory bodies and make it possible not only to follow the 'money stream' but also the 'knowledge stream' to see if particular persons are in a position that can facilitate influence across institutions. This is in itself not wrong, but the principles of transparency should also be applied to these cases.

We, therefore, suggest that the register should take into account the 'organisational structure' of registered entities by requiring information about the various positions registrants hold in other organisations/companies. This would give

a more comprehensive picture of the various interests registrants have and the (potential) views and interests they represent when interacting with EU decision-makers.

### ***Sanctions should be used more effectively***

The present system for dealing with alerts and complaints could be improved. Currently, the only real sanction available is removal from the register. Although this is an important sanction, it can only be applied in limited circumstances. Under the current rules, those who have submitted inaccurate information face no real penalty and can maintain their EP access passes or hold meetings with commissioners. Submitting inaccurate and/or misleading information must be specified as an offence and new sanctions should be introduced such as the temporary suspension from the register and the privileges that come with it.

The names of organisations that breach the code of conduct should be published online, in addition to being suspended from the Commission's expert groups and losing access to the EU institutions for up to two years.

So far the official sanctions have been far too weak, while the public and media debate about organisations violating the rules has been rather harsh. The reporting of organisations/persons breaking the rules in the press provide for an indirect police control of the register. However, it is not an excuse for the EU institutions to not introduce stricter rules.

### **The Transparency Register is only one side of the coin**

The Transparency Register focuses its attention on regulating the behaviour of interest representatives by applying the same rules across EU institutions. While this is certainly important and much needed, less attention is devoted to streamlining the rules governing EU decision-makers. Different rules on cooling-off periods, the ability to undertake paid work outside the EU institutions, the requirement to provide information on meetings with interest representatives, and code of conducts exist between commissioners, EU officials, and MEPs.

However, the code of conduct for MEPs is much weaker than the one governing commissioners. The guiding principle of the EP's code of conduct for MEPs is transparency. It requires MEPs to declare their paid activities outside the EP and functions that might constitute a conflict of interest. In contrast, commissioners are prohibited from engaging in any paid activities outside their parliamentary mandate.

Similar to commissioners, the MEP's code of conduct also sets out the provisions for accepting gifts, remunerations, and invitations offered to MEPs by third parties. Members are required to refuse any gift or benefit of a value exceeding EUR 150 received during the performance of their duty. Reimbursement of direct costs are not regarded a gift, provided that the event is attended further to an official invitation.

Penalties can be imposed on MEPs breaching the code of conduct. An MEP may be sanctioned with a reprimand, a forfeiture of the daily allowance from two up to ten days, temporary suspension from the EP's activities for a maximum of 10 days (excluding the right to vote), and the loss of the role of rapporteur or other roles within Parliament. Penalties are announced by the President in plenary and published on the Parliament's website for the remainder of the parliamentary term.

Despite these advances, the code of conduct for MEPs still contains gaps, notably in five areas:

1. The Advisory Committees, set up to advise MEPs on compliance with ethics rules, are not independent from the EP.
2. MEPs can undertake paid remunerated activities outside the EP. This stands in sharp contrast to European commissioners, who must not engage in any other professional activity.
3. No cooling-off period exists for outgoing MEPs, while former commissioners and senior EU officials have a cooling-off period of 18 and 12 months respectively.
4. MEPs are currently able to take up key posts in the EP (e.g. rapporteur, shadow rapporteur, coordinator, and committee chair) in areas where they are directly engaged with outside interests, while commissioners are prohibited from doing so.

5. Unlike directors-general in the Commission, MEPs are not required to provide information on the meetings held with interest groups.

These points suggest that there is room for improving the MEPs' code of conduct by introducing reforms that address the above shortcomings.

### ***Set up an independent advisory committee***

The advisory committee, set up to advise MEPs on compliance with ethic rules, needs to be independent from the EP. It currently consists of five sitting MEPs, who deal with issues as they arise, rather than proactively monitoring compliance by conducting detailed checks on MEPs' declarations. As a minimum, the members of the advisory committee chosen among MEPs should be complemented by a majority of externally appointed experts in the field of ethics regulation following an open call. The new committee needs to continuously monitor compliance through thorough checks of the MEPs' declarations rather than acting reactively.

### ***Prohibit outside remunerated activities and improve MEPs' declarations***

MEPs can undertake paid remunerated activities outside the EP without declaring it, as long as it amounts to less than EUR 5,000 per year, whereas commissioners are not allowed to engage in any other professional activity, whether gainful or not. It seems paradoxical that different rules apply to MEPs and commissioners. Similar to commissioners, MEPs should be prohibited from engaging in any paid activities outside their parliamentary mandate.

Furthermore, MEPs' declaration of their professional activities and financial interests should appear in a more professional format and in numerous languages. Currently, many of them are handwritten and only appear in the language of the MEP in question. Rarely do MEPs give an extensive account of their external parliamentary activities. The declaration could also include the professional activity and financial holdings (financial interests and assets) of MEPs' spouses whenever it may entail a conflict of interest, similar to spouses of commissioners. The declarations should appear in at least four languages (their own language, plus English, French and German). The recent revision of the EP's rule of procedure in December 2016, prepared by Richard Corbett (S&D, UK), goes some ways in improving MEP's financial declarations. As of 16 January 2017, MEPs shall notify the President of any changes that have an influence on their declaration by the end of the month following each change occurring (Annex I, rule 2 of MEPs' code of conduct).<sup>4</sup>

### ***Time for MEPs to cool off***

MEPs' code of conduct should be amended to provide for a cooling-off period during which MEPs are prohibited from engaging in lobbying work in the area of their previous parliamentary responsibilities. It could also be considered to apply this cooling-off period to all EP assistants involved in the drafting of EU legislation (i.e. working for rapporteurs and shadow rapporteurs).

In the past month, a lot of attention has been paid to ex-commissioners moving from the public sphere into commercial roles and the potential conflicts of interest this may pose with their previous EU positions. There is a certain irony in MEPs calling for an extension of the cooling-off period for former commissioners, clearer sanctions for infringements of the rules, and for the Commission's Ad Hoc Ethics Committee to be made an independent body while no such measures exist for MEPs.<sup>5</sup>

Currently, the EP can only prohibit former MEPs from using the Parliament's premises to coordinate their lobbying work, while there are no rules in place regarding revolving doors. This means that MEPs can use insider information they have gained during their parliamentary mandate if they take up new roles in the private sector following their mandate. In the worst case scenario, a lack of rules governing revolving doors risks making MEPs vulnerable to undue influence when they are still serving their parliamentary mandate. A cooling-off period helps prevent the risk of conflicts of interest that may arise from post mandate service activities. The revised parliamentary rule of procedure, adopted on 13 December 2016, does, however, require former MEPs to inform Parliament when they take a new job as a lobbyist and may not, throughout the period in which they engage in

those activities, benefit from the facilities granted to former Members under the rules laid down by the Bureau to that effect (Annex I, rule 6).<sup>6</sup>

Rules on cooling-off periods are inconsistent and disjointed within and across the EU's institutions. Cooling-off periods are in place for former commissioners (18 months), former members of the Court of Justice (36), and all senior EU civil servants (one year). MEPs should start practicing what they are preaching. It is difficult to see why parliamentarians should be treated as another kettle of fish. Even in the US (another division of powers system the EU is sometimes compared with), the vast majority of US states have cooling-off periods in place for legislators.<sup>7</sup>

### ***Prohibit MEPs from taking up key posts if they have a conflict of interest<sup>b</sup>***

MEPs should be prohibited from taking up key EP posts (i.e. committee chair, rapporteur, shadow rapporteur, and coordinator) when there is a potential conflict of interest. MEPs ought to declare any actual or possible conflict of interest, and should not become rapporteurs or shadow rapporteurs in areas where they are directly engaged with outside interests affected by the legislation. Should MEPs, for instance, be allowed to sit on the board of a bank or an industry forum, while at the same time being able to take on key parliamentary roles, such as rapporteur or shadow rapporteur? The question feeds into the heated debate of what constitutes a lobbyist. One could argue that MEPs themselves are, indirectly, acting as lobbyists when they are engaged with specific interests in their external parliamentary activity.

Evidently, if MEPs or their assistants sit on the board of a company, they are likely to have an interest in promoting the views of the specific company and to act as its conduit. Should MEPs not represent the people who voted for them rather than a specific industry, company, NGO or any other interest organisation? The answer is not unequivocal. Politicians are often drawn into politics because they want to fight for the interest of a specific sector. 'Second jobs' or other external parliamentary activities also provide MEPs with the opportunity to gain more specialised expertise on specific issues on which they are regulating. However, it becomes problematic when MEPs are too involved with the outside interests they are meant to regulate. One possible solution could be to prohibit MEPs from taking up key posts in Parliament (rapporteur, shadow rapporteur and coordinator) in areas where they are directly engaged with outside interests (e.g. either doing paid or voluntary work for a specific interest).

### ***Introduce a mandatory legislative footprint and 'lobbying contact reports'***

One of the key priorities of the Juncker Commission is to increase transparency of EU decision-making to increase citizens' trust in the EU's institutions. This has manifested itself in various ways, most notably the intention to make the Transparency Register mandatory and the publication of meetings held with lobbyists by commissioners, cabinet members, and directors-general of the Commission. Since late 2014, these actors have provided information on the date of the meeting, which organisations and self-employed individuals they talked to, the location, the name of the director-general in question, and the subject of the meeting.<sup>9</sup>

There are currently no rules in place to compel MEPs to record and disclose their meetings with interest representatives, although some MEPs do it on a voluntary basis.<sup>10</sup> There have long been calls inside the EP for introducing a so-called 'legislative footprint' in the EP's report, where rapporteurs provide a list, as an annex to a committee report, of the stakeholders they have sought advice from during the preparation of their report (see for instance, EP, 2008a; 2015). The first initiative for a legislative footprint came from former EPP MEP Alexander Stubb in a 2007 own-initiative report (2007/2115(INI)) and the latest attempt to introduce a mandatory footprint has been put forward by Green MEP Sven Giegold (2015/2041(INI)). So far, the use of the legislative footprint remains voluntary and attempts to make it mandatory have faced an uphill battle. The recent overhaul of Parliament's rule of procedure, approved by the plenary on Tuesday 13 December 2016, enables rapporteurs to attach a 'legislative footprint' to their reports on a voluntary basis. Amendments for a 'lobbying contact reports' requiring the publication of all meetings with interest representatives were rejected. While a majority of MEPs supported such provisions, it fell short of reaching a qualified majority to be carried. The EPP and ALDE opposed to the initiative, while all periphery groups were in favour of the online publication of all MEPs' meeting with lobbyists (ECR, EFDD, GUE-NGL and Greens/EFA) and the S&D was split.<sup>11</sup>

Perhaps, the scrutiny of the Commission's proposal for a revised Transparency Register will provide the impetus needed for the EP to reconsider a mandatory legislative footprint for rapporteurs/shadow rapporteurs and their assistants. A mandatory legislative footprint would bring additional transparency to the EP's policy process and make it possible for MEPs' constituents to see which stakeholders their MEPs have consulted and may help to detect potential conflict of interest.

## Both sides of the coin should be part of the transparency mix

The Commission's proposal for a reformed Joint Transparency Register aims to create a more robust and credible transparency regime in the EU, which would make it more difficult for lobbies that are not on the register to meet with EU decision-makers. Registration is, however, not a bulwark against undue influence, but at least it makes it possible to identify who is lobbying the EU's institutions. If the current proposal is adopted and abided by, it is a significant step forward in strengthening the EU's lobbying rules and the institutions covered. There is, however, room for improvement, most notably concerning the scope of the register, the information required to register, and the sanctions imposed on interest representatives breaking the rules.

The renewed debate for an improved Transparency Register might also provide a window of opportunity to streamline the rules governing EU decision-makers, which are subject to differing codes of conduct, depending on which institution they belong to. For instance, different rules apply to cooling-off periods, the ability to undertake paid work outside the EU institutions, the requirement to provide information on meetings with interest representatives, and code of conducts. As the rules governing interest representatives are applied in an equal fashion across the EU's main institutions, perhaps now is also the time to place the rules governing EU decision-makers under scrutiny and seek to converge those too.

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- 1 European Parliament decision of 13 December 2016 on the general revision of Parliament's Rules of Procedure (2016/2114(REG)), available from: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0484+0+DOC+XML+V0//EN&language=EN> (last accessed 14 December 2016).
- 2 VoteWatch Europe, Briefing: Take-aways from yesterday's vote on transparency in the European Parliament, 14 December 2014, available here: <http://www.votewatch.eu/blog/briefing-take-aways-from-yesterdays-vote-on-transparency-in-the-european-parliament/> (last accessed 14 December 2016).
- 3 For more on how to calculate the cost estimate, please see the Transparency Register Implementing Guidelines, 5 October 2015, available here: [http://ec.europa.eu/transparencyregister/public/staticPage/displayStaticPage.do?locale=en&reference=INTER\\_INST\\_AGREEMENT](http://ec.europa.eu/transparencyregister/public/staticPage/displayStaticPage.do?locale=en&reference=INTER_INST_AGREEMENT) (last accessed 1 December 2016).
- 4 European Parliament decision of 13 December 2016 on the general revision of Parliament's Rules of Procedure (2016/2114(REG)), available from: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0484+0+DOC+XML+V0//EN&language=EN> (last accessed 14 December 2016).
- 5 European Parliament (2016). MEPs call for Commissioners' code of conduct to be tightened up, press release, 4 October 2016, available from: <http://www.europarl.europa.eu/news/en/news-room/20160930IPR44738/meps-call-for-commissioners%E2%80%99-code-of-conduct-to-be-tightened-up> (last accessed 7 November 2016).
- 6 European Parliament decision of 13 December 2016 on the general revision of Parliament's Rules of Procedure (2016/2114(REG)), available from: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0484+0+DOC+XML+V0//EN&language=EN> (last accessed 14 December 2016).
- 7 National Conference of State Legislators (2015). Revolving door prohibitions. Rules against legislators lobbying state government after they leave office, October 2015, available from: <http://www.ncsl.org/research/ethics/50-state-table-revolving-door-prohibitions.aspx> (last accessed 7 November 2016).
- 8 Part of this section has also appeared in one of the author's previous writings: Rasmussen, Maja Kluger (2011). Lobbying the European Parliament: A necessary evil, CEPS policy brief, No. 242, May 2011, p. 5.
- 9 European Commission (2014). Commission decision of 25.11.2014 on the publication of information on meetings held between Directors-General of the Commission and organisations or self-employed individuals, C(2014) 9048 final, Brussels: European Commission.
- 10 For example, German Green MEP Sven Giegold, Independent Austrian Hans Peter Martin, and British Conservative MEPs publish the list of interest representatives they have met with on either their personal or political party website.
- 11 VoteWatch Europe, Briefing: Take-aways from yesterday's vote on transparency in the European Parliament, 14 December 2014, available here: <http://www.votewatch.eu/blog/briefing-take-aways-from-yesterdays-vote-on-transparency-in-the-european-parliament/> (last accessed 14 December 2016).

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