The EU Transparency Register, an effective tool or a sham?

Master Thesis
European Union Studies

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1. Introduction

Transparency is an important issue in the EU and her member states. In 2014, the European Commission and the European Parliament have agreed on new rules regarding the Transparency Register on lobbying in the EU. These new rules are operative since January 2015. The changes that were made with these new rules should make the regulation of lobbyists and lobbying practices even more transparent. Even though these new adoptions were made, making further regulations, or even legislation, to regulate lobbying is still on the agenda of the new Commission. The new Juncker Commission intends to create a proposal in 2015, that will at least make the register mandatory, so that all lobbyists who want to access and meet with officials from at least the European Commission and the European Parliament have to be registered.¹ That the Commission is creating further legislation on the Transparency Register, indicates how important transparency in the EU is right now.

Lobbying is the act of communicating with decision-makers or advisors to influence their decisions. So a lobbyist or an interest group is an individual or organisation that tries to influence the decision making process. An interest group can range from corporations, to NGO’s and all have different interests.² Also, private actors, like companies, delegate the representation of their interests to professional lobby offices.³ Since the Single European Act of 1986, competences started shifting more and more from the member states, to the EU. Because of this shift, lobbying in the EU has become more interesting and appealing for lobbyists.⁴

Even though lobbyists are more and more interested in the EU and studying lobbyists and interest groups is very relevant to be able to fully understand the functioning of democracy, lobbying has not yet been studied that much in political science. However, the field is getting more popular to research, with more emphasis on empirical research techniques.⁵

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³ Irina Michalowitz, 'EU Lobbying - Principals, Agents and Targets: Strategic interest intermediation in EU policy-making', Münster: Lit Verlag 2004, p. 18
⁵ Jan Beyers , Rainer Eising & William Maloney, ‘Researching Interest Group Politics in Europe and Elsewhere: Much We Study, Little We Know?’, West European Politics, vol. 31:6 2008, pp. 1103-1128
In May 2006 the Commission adopted the Green Paper on the European Transparency Initiative to regulate the lobby practices in the EU. The initiative was about how the process of lobbying is not open enough, and therefore the influence the lobbyists have is not clear either. The Commission stated that the lack of transparency was hurtful for the democratic legitimacy of the EU, because the citizens don’t feel like they know what’s going on and therefore feel like they are no part of the entire thing. This damages the democratic legitimacy of the EU. In the Green Paper, a system was proposed in which the lobbyists could voluntary register. With registering, the lobbyists have to be open about who they represent, who funds their organisation, what their main aim is, etc. The register also contains a voluntary code of conduct.6

But how successful has the voluntary register been in the past? Does the register actually make the process of lobbying more transparent? Will the register work better if it is fully mandatory or even only partially mandatory? These questions still remain when looking at the literature about the Transparency Register. That is why the research question of this thesis will be:

Is the Transparency Register a sufficient method to regulate lobbying in the EU or should the EU create further legislation, and if so; what form should the further legislation/regulation be?

First, it is important to determine what Transparency is. Schnackenberg and Tomlinson created a definition of transparency by analysing how the word was used in different scientific publications. They stated that transparency is about sharing information. Also, the information should be shared intentionally and the quality of this shared information is important. If a lot is shared, but the quality is bad, it is still not transparent.7 So, transparent policymaking is when the information is intentionally shared broadly during the policymaking process by the players. The quality of the shared information should be sufficient to get a clear view of how the process went.

To be able to write anything about regulating lobbying in the EU, there should be an introduction to lobbying regulations in the first place. This is researched and explained in this

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first chapter, as well as the general theory on transparency. The second chapter of this thesis is a description of the Transparency Register until now. It is a short historical overview on lobbying regulations and an explanation of how the Transparency Register works. To answer the research question, the new proposed regulations and the implementation has to be explained. This is also in the second chapter. The third chapter starts by explaining the methodology that was used in this thesis. The parties that were researched are introduced and their opinions on the Transparency Register are explained. The final part of chapter three is a description of what the outcome of the research was. The fourth chapter is the concluding chapter. The general opinions of the researched parties are discusses. This thesis ends with the answer to the research question and there are recommendations made to the European Commission.

**General Theory on Lobbying**

As stated before, lobbying has not been studied that much, although the research of lobbying is crucial for understanding democracies and politics. A challenge of researching lobbying, is that researchers all use different definitions for lobbying or lobbyist. The EU has also defined lobbying in the Inter Institutional Agreement (IIA) that created the Transparency Register. The definition is as followed: “The scope of the register covers all activities carried out with the objective of directly influencing the formulation or implementation of policy and the decision-making processes of the EU institutions.” The EU also describes that it doesn’t matter which channel or medium was used to exert this influence. Because the regulations of the EU are studied in this thesis, this will be the definition that has been used.

Many people associate lobbying with corruption and secrecy and definitely not with transparency and being helpful for policymakers. However, lobbyists play a very important role in the policymaking process. Lobbyists provide policy makers with expert knowledge and information that government officials don’t have. Lobbyists also hold the government

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8 Jan Beyers, Rainer Eising & William Maloney, ‘Researching Interest Group Politics in Europe and Elsewhere: Much We Study, Little We Know?’, *West European Politics*, vol. 31:6 2008, 1103-1128
10 ibid
accountable by explaining the government’s actions and monitoring them, this helps making legislation as effective as possible.¹¹

Sometimes, lobbyists are even seen as the solution to the democratic deficit it has been struggling with. The democratic deficit is an issue the EU has been dealing with for over 30 years. Since the start of the EU, the participation in the elections of the European Parliament has gone down gradually every year. Because of this, the democratic legitimacy of the EU is in danger.¹² When there is a democratic deficit, there is a lack of democratic control and legitimacy by the voting citizens.¹³ This means that there is a lack of control by citizens in the EU and that leads to citizens feeling detached from the EU. According to Kohler-Koch and Finke, the EU use lobbyists to compensate for the democratic deficit. According to them, lobbyists represent the diffuse opinions of the European population. However, Scientists question whether the lobbyists actually represent the opinions of the European citizens, or if they just represent the opinion of a small group of citizens. Lobbyists try to achieve their own goals or the goals of their clients and they will most likely not always take into account the general public opinion.¹⁴ It is not necessarily bad that lobbyists represent the smaller group, however, it’s wise to take that into account when meeting with lobbyists to use them as citizens’ representatives.

**Transparency in the EU**

Not only the definition of lobbying has proven to be very diffuse, the term transparency has also been used differently by many scientists. By examining multiple scientific publications, professional books and more practical books, Schnackenberg and Tomlinson came with a definition of transparency. As explained before in this introduction, transparency is about sharing information that has a good quality. The sharing of information should be intentional.

Transparency is one of the democratic principles of the EU. According to article 11 (2) of the Treaty of the European Union (TEU), the institutions have to be open and transparent. That transparency is mentioned in the Treaties proves how important transparency is in the EU.

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However, the EU has been criticised for not being transparent enough and for being too technocratic. The EU has also realised this problem. At the Laeken European Council, the Laeken Declaration was signed in 2001. This declaration stated, amongst other things, that the EU needed to improve and monitor democratic legitimacy and transparency. This indicates that the EU understood that something needed to be done and the transparency issue needed to be dealt with.\(^{15}\)

Not only the Transparency register was created to make the EU more transparent, there were also instruments created that do not focus on lobbying. These instruments should make the EU more transparent and should make European legislation easy accessible for all citizens. Although the focus of this thesis is the Transparency Register for lobbyists, it is still useful to mention these transparency initiatives. Because the thesis focusses on the register, they will only be mentioned and explained briefly. The first is the Transparency Portal that was created in 2012 by the Commission. The second is a website on Ethics and Transparency, created by the European Parliament in 2013.\(^{16}\) The Transparency Portal is a website that gives citizens easy and direct access to different information. This makes it easier for citizens to understand and follow European affairs. The website contains links to different information. For example direct links to legislation, information on who receives EU money and links to different registers, like the Comitology Register, a register of internal Commission documents and the Transparency Register.\(^ {17}\) The Ethics and Transparency website is part of the general website of the European Parliament. Like the Transparency Portal, it contains multiple links. There are links to the codes of conducts of MEPs and the code of conduct of civil servants and employees of the European Parliament. It also links to a register of documents and the Transparency Register.\(^ {18}\) Transparency is a topic that is being discussed in the EU right now. The EU is not only trying to make lobbying processes more transparent, but transparency is a topic that the EU is working on in more fields.

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\(^{15}\) Adam Jan Cygan, *Accountability, parliamentarism and transparency in the EU the role of national parliaments*, Cheltenham: Edward Elgar Publishing Limited 2013, pp. 7 - 14  
2. The Transparency Register

As stated in the introduction, competences started shifting from the member states to the EU after the Single European Act (SEA) came into effect in 1987. Representation in the EU became more interesting for companies as well as for NGO’s. It is difficult to find exact statistics about the amount of lobbyists in the EU, because not all lobbyists are officially registered or they are registered under a different registry. On 16-02-2015, there were 7792 individuals and organisations registered in the Transparency Register. However, because not every lobbyist is registered, it is likely that there are much more lobbyists active in the EU. This chapter looks at the Transparency register as it is right now. It first gives a historical overview of lobby regulations and how the Transparency Register started off. Then this chapter explains how the Transparency Register works and what the weaknesses of the Register are, what the proposal of the Commission is and about the legal basis of the Transparency Register.

Historical overview

The EU was not the first political system that created lobbying regulation. The United States (US) has the longest history of regulating lobbying of all other political systems that regulated lobbying now. In the US, lobbying has been an important issue since the Civil War. In this time, railroad lobbyists were lobbying very aggressively. The US government tried to create a lobbying register in 1876, but the attempt failed. Since 1911, Congress spoke about regulating lobbying almost every session. However, regulations never came about and the regulation of lobbying was unsuccessful. Then, the governments of states started to regulate lobbying. In the 1950s, 38 states had created lobbying regulations. The Federal Regulation of Lobbying Act of 1946 was the first general law on the regulation of lobbying in the US. However, this act didn't cover much of the lobbying aspects. It was about the registration of persons who were hired for the purpose of lobbying and creating reports on the financial aspects of lobbying. So it only focussed on third party lobbyists, the in-house lobbyists were not included in this regulation. This piece of legislation was seen as a failure, because it only covered lobbying at Congress, but it still remained until 1995 when it was replaced by the Lobbying Disclosure Act. The Lobbying Disclosure Act tightened the rules that were created

in the Federal Regulation of Lobbying Act. The definition of a lobbyist was now changed to include more lobbyists and types of lobbying acts and there were stricter rules on who needed to register. Also, the rules on the information the lobbyists have to provide are stricter. The changes in the regulation made the process more transparent. The European system and the American system on regulating lobbying don’t have the same background. Where lobbying law in the US has been discussed for a very long time, this is not the case in the EU.

In the early ‘90’s, there was still no formal regulation of lobbying for the European Commission. However, there were some unofficial rules how Commissioners were supposed to behave. In 1993, the Commission published an announcement about the will to create a code of conduct and to regulate lobbying. The Commission stated that there was aggressive lobbying going on, as well as disturbing behaviour by lobbyists. For example, lobbyists were selling official EU documents and got access to institutions of the EU by using access passes that were meant for press, not for lobbyists.

For the European Parliament, the first rules on lobbying were created in 1996. The Quaestors became responsible for issuing the permanent access passes for lobbyists who frequently lobbied at the Parliament. The European Parliament elects Quaestors. These selected people are responsible for the administrative and financial issues of members of Parliament.

According to the Rules of Procedure, rule number 9 of the European Parliament, the Quaestors only give these passes to those who sign a register and the code of conduct. The same rule is now rule 11 of the Rules of Procedure. So the European Parliament made a mandatory register for lobbyists who wanted to enter the European Parliament building in 1996. This was the first regulation of lobbying in the EU. The Commission, The Council and all other EU institutions did not regulate lobbying yet. When the Council is discussed in this thesis, actually the secretariat of the Council is discussed, because the regulation of lobbying

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national ministers is done on the national level and EU lobbying regulations don’t count there.

The Commission created the first rules to regulate lobbying in 2001. In the 2001 White Paper, the Commission again stated that there was a need for more transparency and openness. A voluntary database was created for the civil society organisations. However, almost no one signed up because there was no incentive in registering. Even the Commission stated that the register had no actual meaning. It was eventually closed.27 After some attempts of regulating lobbyists through self-regulatory registers, for example by the Society of European Affairs Practitioners (SEAP), the Joint Transparency Register of the European Commission and the European Parliament was created by the European Commission and the European Parliament in 2011. This register replaced all other self-regulatory registers. While the European Parliament already made registering mandatory to get a permanent access pass, this register was still voluntary. However, in the Inter-Institutional Agreement (IIA) that created the Joint Transparency Register, the will to reflect this voluntary status after a year was included.28

**How the Transparency Register works**

As stated in the introduction of this thesis, the Transparency Register is a register with voluntary registration for all organisations or individuals that carry out activities to directly or indirectly influence the decision making process.29 But why is the register voluntary in the first place? The Commission once stated that they wanted to trust the profession of lobbyists and that this trust should first be tested, before it was necessary to create binding regulations. The creation of more binding legislation was also seen as a problem. The Commission explained that they then needed to start the legislative procedure with all institutions. This could result in a more narrow definition of lobbyists, because they needed to reach an agreement with all institutions. The Commission feared other institutions would want the definition to be less broad, so during the negotiations the definition would be watered down. A less broad definition would create, in the Commissions own words, “loopholes”. This

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28 Justin Greenwood & Joanna Dreger, ‘The Transparency Register: A European vanguard of strong lobby regulation?’, *Interest Groups & Advocacy*, nr. 2 2013, pp. 139–162
roughly means that some lobbyists would fall out of the scope of the regulation, which would actually make the playing field more uneven. There was a one-year trial in place for the European Commission and European Parliament to test if the voluntary register should be made mandatory.\(^{30}\)

Anyone who voluntary decides to registers has to fill in some compulsory information. The information are obviously personal and contact information, but also their spending on lobbying and their goals in the EU. There is a possibility to add extra information, but information about the lobbyists' network or answering questions about their earlier lobbying practices is not necessary to complete the registration. When a party sends in their information, it is immediately published on the website, without a review by any of the EU institutions.\(^{31}\)

This doesn't mean the information in the register is not checked at all. The Commission and the Parliament created a Joint Transparency Register Secretariat. They are responsible for checking the data, they administer the filed complaints and if necessary, impose sanctions on those who registered, but don't comply with the rules of the register. However, these checks are not regular and they don't check every entry. The Secretariat does not have the resources to regularly check all the entries.\(^{32}\) Of course, this is a concern. A company could possibly enter untruthful information and get access to government officials. Everyone would trust them, because they would be able to find them in the register.

Those who have registered, need to sign and comply with the code of conduct that's attached to the register. Part of the code of conduct is, for example, that lobbyists will always identify themselves as a lobbyist and that unfair practices or using force to get certain information or to be part of the decision making process, is not accepted. If a company has not complied with the code of conduct, anyone can file a complaint through the website of the register. The Joint Transparency Register Secretariat will look into the complaint and if the code of conduct has been breached. If the registrant repeatedly behaved inappropriately or if the breach of the code of conduct was very serious, that party could be removed from the registry.

\(^{30}\) Raj Chari, John Hogan and Gary Murphy, *Regulating lobbying: A global comparison*, Manchester: Manchester University Press 2010, pp. 56 - 57


for a year or two years. It will also be mentioned in the registry if a party has breached the code of conduct in the past.33

The Secretaries-General of the European Parliament and the European Commission present an annual report on the register to the Vice-president of the European Parliament and the Vice-President of the European Commission. In the annual report is the factual information of the register and there also is a section with the evolution of the register.34

The weaknesses of the Transparency Register
This thesis will look at the opinion of professionals who work with the Register, however, scientists have also written about the weaknesses of the Transparency Register. The most common opinion amongst scientists is that the Transparency Register in this form is not a sufficient method to protect transparent and effective policymaking. For example, Godowska states that the voluntary aspect of the register is a weakness. Lobbyists have to register for the sake of their reputation and as stated before, the register is mandatory for the lobbyists who want permanent access to the European Parliament. But because the registry is voluntary, there are still lobbyists who don’t register and keep lobbying in backrooms. These lobbyists might have something to hide and are the ones for whom the registry was created. So the fact that the registry is not binding, is a weakness.35 Of course, the plans of the new Commission for mandatory registering to get access to the Commission could change that. However, it would still be possible to lobby via unofficial channels. It could be discussed if that is a positive or negative aspect of a register as the method to regulate lobbying.

Godowska also states that business lobbyists, with a lot of corporate funding, are preferred over NGO’s by the EU policymakers.36 Persson also states that corporate lobbyists and companies are better represented in the EU than other interest groups, at least in the field of chemical policy.37 Klüver confirmed Persson’s findings. Not only in the field of chemical

36 Ibid
policy, Klüver concluded that 66.5% of the 2696 researched lobby groups were lobbying for businesses or were part of a corporation. However, Klüver also concluded that although the companies are the largest lobby group in the EU, this does not automatically translate into more success for the companies. Having more resources also does not automatically lead to more lobbying success. Therefore, Klüver concluded that there is no systematical bias.

So even though there are different opinions on this issue, some scientists think there are issues with lobbying other than only the transparency issue, however, some issues are linked to transparency. Because the Transparency Register only focusses on the transparency aspect of lobbying, different types of issues are unaccounted for, like the overrepresentation of corporate lobbyists that was just explained. The Organisation for Economic Co-Operation and Development (OECD) questions the usefulness of the registry. They state, that the information that lobbyist have to provide in the registry, is useful for those who asses the lobbying process, but they question how much need there is for it. This information is often available through other sources and the lobby registry only collects the information in one place. Also, the register does not include information on the lobbying practices in the EU. Therefore, the actual influence certain lobby groups have, is still uncertain. Another weakness of the register, is the possibility to check the entered information. As stated earlier in this chapter, the Secretariat does not have the resources to check all entries. Therefore, it is not possible to be certain if an entry is truthful or not. The quality of the information in the register can’t be guaranteed.

The new Commission is planning on including more information in the register and already more information needs to be included since the alteration in January 2015, as discussed in the introduction of this thesis. Since January 2015, more information needs to be disclosed on

the exact budget for lobbying and on the lobbying goals of the registered stake holders.\textsuperscript{44} It can be questioned how useful adding more information is.

Although most scientists don’t think the lobby registry is sufficient to protect democratic and transparent lobbying, there are also parties that are positive about the Transparency Register. Some scientists think the Transparency Register is a step in the right direction, like Greenwood and Dreger. In their article they conclude that, even though the register still has some flaws that need to be dealt with, it has brought more openness to EU lobbying and the quality of the information in the registry has improved over the years.\textsuperscript{45} The proposal the Commission is working on, could possibly deal with these flaws and further improve the quality of information and openness. Also, the Society of European Affairs Professionals (SEAP) explained to EUobserver, an independent online news site on the EU, that the SEAP actually thinks the voluntary registration is needed and that the registry doesn’t need more restrictions, but needs more incentives. An incentive could be, for example, access to the negotiation table or speaker time at events for parties that register themselves. \textsuperscript{46}

**Proposing new Transparency regulations**

The first time the Juncker Commission spoke of transparency, was in the political guidelines of the President of the European Commission, Jean-Claude Juncker. He wrote that he wants it to be open for all citizens to know who the politicians and employees of all institutions are meeting with to discuss policy issues. Juncker has expressed the will to create an Inter-institutional Agreement between the Commission, the Parliament and the Council to make the register mandatory for all institutions.\textsuperscript{47}

As discussed already in this thesis, the first changes in the register have already been made and since January 2015, these changes became active. Lobbyists have to enter more information in the register, like a specification of the budget for lobbying and their lobbying goals in the EU. This is supposed to make lobbying more transparent already. However, the European Commission is still working on a proposal that is planned for 2015, to make the

\textsuperscript{44} Interinstitutional Agreement L 277/11, Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation

\textsuperscript{45} Justin Greenwood & Joanna Dreger, ‘The Transparency Register: A European vanguard of strong lobby regulation?’, *Interest Groups & Advocacy*, nr. 2, 2013, pp. 139–162

\textsuperscript{46} SEAP in EUobserver, ‘Transparency Register: keep it voluntary, add incentives’, retrieved from http://euobserver.com/stakeholders/123177, on 02-11-2014

Transparency Register of lobbyists mandatory for not only the Commission, but also for the European Parliament and possibly the Council.

Two decisions have already been adopted in 2014 that will make the EU more transparent. The first is the publication of information on meetings with Commissioners or their employees. The second is that the European Commission has decided to only meet with those who are in the Transparency Register, like the European Parliament already decided since the beginning of the joint regulation of lobbying.\(^{48}\)

**Inter-Institutional Agreement**

The Transparency register is based on an Inter-Institutional Agreement (IIA) between the European Parliament and the European Commission. Juncker proposed to create a new Inter-Institutional Agreement to reform lobbying regulations. Inter-Institutional Agreements are an agreement between two or more EU institutions. The agreements are fully informal or for the most part informal. IIAs are used instead of creating legislation for different reasons. One is to fill gaps within the Treaties. Sometimes, an issue is not sufficiently dealt with in the treaties, but it is necessary to deal with this issue to be effective. The institutions can then choose to fill the gap with an IIA. Another reason is to use IIAs as the first step towards more formal legislation.\(^{49}\) However, is an IIA the right legal basis for mandatory regulations on lobbying? Because it’s an agreement between the institutions, in the case of the Transparency Register these institutions are the European Parliament and the European Commission, these institutions are the only ones who are bound to the regulations. Because lobbyists are not bound to the register, it is not possible to sanction them when they breach the rules of the register or the code of conduct. Does that mean that an IIA is not a fitting legal basis for the register? Sven Giegold, a member of European Parliament, addressed this issue and asked Frans Timmermans if he would be willing to change the legal basis so that it would be possible to sanction lobbyists. To answer this question, Timmermans told him he was a pragmatic man. If there was a need for a different legal basis, the Commission would be willing to consider that.\(^{50}\)

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\(^{50}\) Sven Giegold and Frans Timmermans, ‘Giegold asks Timmermans about transparency’, retrieved from https://www.youtube.com/watch?v=pJzANXxD2Uk on 26-05-2015
It has been questioned how the voluntary register could be transformed into a mandatory one and it was not clear what the legal basis of a mandatory register would be. Therefore, the lack of a legal basis was one of the most used arguments against a mandatory register. Markus Krajewski researched the possibility of a legal basis for a mandatory register. He found out that it is possible to base the mandatory register on the European Treaties. Krajewski stated that article 298 (2) TFEU, combined with the implied powers doctrine, could be the legal basis, created through the ordinary legislative procedure. Article 298 (2) gives the European institutions the right to create regulations about administrative procedures, if this makes the EU more efficient and open. However, article 298 has not yet been used, so there is no example of how this would work out yet. The implied powers doctrine gives the EU institutions the right to take action, even if there is no legal basis in the treaties. This means the mandatory register would be possible if the member states or the Council agree with it. This proves that a mandatory register could be possible within the legal framework of the EU.

**Regulating lobbying in the member states**

The EU and the US are not the only political systems that have regulated lobbying. Because the regulations of the EU don’t cover the systems of the member states, some member states created their own system to regulate lobbying. The first member state that regulated lobbying was Germany. Germany regulated lobbying even before the EU did. The first discussions on the regulation of lobbying emerged in the 70’s. Germany eventually created a public list or register, that is partially mandatory. However, there are issues with this register too, while Germany chose a very narrow definition of a lobbyist. Because of this, there are too many loopholes and the playing field is too uneven.

There are more member states that have regulated lobbying in the EU in different ways. Transparency International has researched 18 European countries and the EU. The EU and European Countries perform relatively poorly in regulating lobbying. None of the countries that were studied had a system that really protected transparency. The European Commission and Slovenia were the only systems that scored more than 50 percent. Only seven of the examined countries have laws or regulations that specifically regulate lobbying. However,

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these regulations don’t actually deal with their purpose.\textsuperscript{53} Although the regulation of lobbying in the member states is still not up to par, there is a growing awareness that the regulation of lobbying is important and that it’s not working as it is right now. For example in the Netherlands, the labour party has proposed an initiative to further regulate lobbying in the Dutch political system. They concluded that the system that is created now is insufficient and further measures are needed. One of the ideas is to make a Transparency Register that is stricter and goes further than their current register. But the plan goes further than only a register. They also want to make the agendas of high ranked officials public and they have further plans to make the policy making process more transparent.\textsuperscript{54} So even though the member states have the EU as an example, they do not only copy the European model. That raises the question if the member states also doubt if the European Transparency Register works. Maybe that is the reason that, for example, the Netherlands took a Transparency Register as part of their plans and also create measures that go further than only a register.

\textbf{What we now know}

So the EU became more interesting for lobbyists over the years, because of the shift of powers from the member states to the EU institutions. The EU was not the first system with lobbying regulations. The US already wanted to regulate lobbying in 1876, although this attempt failed. The first federal regulations on lobbying were created in 1946. However, there were still issues with the regulation. In 1995, a new Act, the Lobbying Disclosure Act, replaced the first regulations on lobbying. This Act is still in place and the issues with the first Act were mostly dealt with.

The EU has only recently started to regulate lobbying. The European Parliament first started regulating lobbying in 1996. It decided to only grant permanent access passes to lobbyists who registered and signed a code of conduct. The Commission started with regulations in 2001. The Commission again stated that the regulation of lobbyists was necessary. Therefore, the Commission created a voluntary database that eventually failed and was closed. Finally, in 2011, the Joint Transparency of the European Commission and the European Parliament was created as an Inter-Institutional Agreement.


\textsuperscript{54} Lea Bouwmeester, 'Samen voor een transparante lobby', retrieved from http://www.pvda.nl/berichten/2015/05/Samen+voor+een+transparante+lobby on 09-06-2015
The register is voluntary for all organisations or individuals that carry out activities to directly or indirectly influence the decision making process. The register is voluntary because the European Commission stated that they first wanted to trust the profession and see if that would work out. The Commission also feared that making the register more binding could lead to a more narrow definition of a lobbyist. The Commission was afraid that other institutions would want a more narrow definition. To reach an agreement with all institutions, negotiations on the definition would water it down. This would create loopholes, because some lobbyists would have to register while others don’t. The playing field for lobbyists become more uneven.

When registering, certain information needs to be filled out. A code of conduct also has to be signed. If anyone thinks the code of conduct has been breached, it is easy to file a complaint via an online form. The Joint Transparency Register Secretariat checks the received information, checks the incoming complaints and impose sanctions on those who do not comply with the code of conduct. However, the Secretariat does not have the resources to regularly check all entries, which could be problematic.

There are scientists that have concerns about the Transparency Register and have found some weaknesses to the register. The first is the voluntary aspect. There is no way to monitor the lobbyists who choose to not to register. However, these lobbyists are the ones you probably want to keep an eye on. Also, the register only deals with mapping the active lobbyists, however, other issues, like for example the overrepresentation of corporate lobbyists, are not dealt with.

President of the Commission, Jean-Claude Juncker has expressed the will to further regulate lobbying, by making an Inter-Institutional Agreement. However, it is questioned if an IIA is the right legal basis for the regulation of lobbying. Because an IIA is only binding for the institutions themselves, which make it impossible to sanction anyone who is not part of the institutions, like the lobbyists.

Since the start of the new Commission, changes have been made already. The first became active in January 2015. Lobbyists now have to enter more specified information. For example, their exact budget on lobbying. Other decisions to make the EU more transparent have been made in 2014. The higher Commission officials now only meet with lobbyists who are registered and they also publish information about the meetings they had. That now the Commission as well as the European Parliament only try to meet with registered lobbyists, is
a very big incentive for registering. If a lobbyist wants to have any impact on policy making and doesn’t want to register, the Council might now be the only option. This might make the register unofficially mandatory. However, it should be taken into account that lobbying in more informal settings and unofficial occasions is still possible. A lobbyist does not necessarily need an access pass to either the Commission or the European Parliament to be able to lobby.

Interesting issues that were mentioned for the next part of this thesis, are for example the question of mandatory versus voluntary. Another issue is the quality of the information in the register. Is it actually useful? Finally, the issue of an IIA or legislation will be discussed further in this thesis.

In this chapter, we have seen that there are questions and doubts about the functioning of the Transparency Register. But what is the opinion of people who actually work with the Transparency Register? This is discussed in the next chapter.
3. The opinions of professionals on the Transparency Register

The first part of this thesis has explained the general theory on lobbying and transparency. Then, the current transparency register was explained at the opinions of scientists about the weaknesses of the current working of the Transparency Register. The next part of this thesis is a mapping of the opinions of different actors that are involved with the Transparency Register. After all, the ones working with lobbying, lobbyists and the Transparency Register, are probably the ones who know what needs to be done to make the lobbying regulations more functional. Mapping these opinions should give an insight in the general opinions of people and organisations who professionally work and are involved with the Transparency Register.

The method

The background and opinions of 7 parties will be described and their opinion on the current Transparency Register and the future changes in the Transparency Register are discussed. The parties have different backgrounds and they are different types of organisations with different views and goals. This is to get an overview of opinions of multiple types of professionals. Obviously, it is not possible for 7 parties to be representative for every professional that is involved with the Transparency Register and therefore, the conclusions of this thesis are not the definite truth. However, the results of this thesis are a good indication of the general opinion and it could be the start of further research. Also, it should be taken into account that the secretive and “bad” lobbyists would probably never publish this information, nor would they be willing to openly state that they want to lobby secretly. It is therefore probably not possible to map their opinions.

For every party, there are 3 subjects that will be discussed, either by using documents they’ve written themselves, which are written by others, by using the information found on their website or by directly asking someone from the organisation.

1. **The description of the organisation and their general opinion on transparency.**
2. **Their opinion on the current Transparency Register.**
3. **How should further regulations look? Is an IIA the correct legal basis for further regulations for lobbying? Should the register be mandatory or voluntary? Should the Council be part of the register?**
ALTER-EU

1. *The description of the organisation and their general opinion on transparency.*

ALTER-EU stands for the Alliance for Lobbying Transparency and Ethics Regulation EU. It is a coalition of more than 200 different types of groups. The members vary from lobby groups and law firms to different NGOs. ALTER-EU are concerned with the influence that lobbyists, especially corporate lobbyists, have over politics in Europe. ALTER-EU fears that this will lead to less democracy in the EU and that the influence of corporate lobbyists will weaken or block the protection of important social and environmental protection reforms.\(^{55}\)

ALTER-EU wants to change this problem by monitoring policy making and using expert knowledge to create promotional campaigns. ALTER-EU currently has some active campaigns, one of them is called Full lobby transparency now.\(^ {56}\)

So ALTER-EU is a coalition that has their primary focus on improving the lobbying situation in the EU. It is concerned with the current situation on transparency.

2. *Their opinion on the current Transparency Register.*

ALTER-EU published a report in January 2015 about the Transparency Register, called: ‘New and Improved? Why the EU Lobby register still fails to deliver.’ As the title already suggests, ALTER-EU came to the conclusion the current Transparency Register is still not sufficient to really monitor lobbying in the EU. They especially think the voluntary aspect is still failing. They argue that some of the main lobby groups still haven’t registered, for example big players in the financial world, like Standard & Poors. But also law firms or big corporations are not registering. Also, ALTER-EU concluded that the information in the register was unreliable, for example lobbyists were not being honest about their identity when they registered. Also, the budgets and number of lobbyists that the entries stated they had for lobbying, were not realistic. For example, Google has more access passes to the European Parliament than the number of lobbyists they registered. As explained in the chapter before this, the Register Secretariat should be checking this information, but ALTER-EU thinks that they don’t check well enough. They expected the changes made to the register to not have a huge impact. Even though more information needs to be entered now, this data will not be more accurately. If anything, the Secretariat will have an even heavier workload. According


to ALTER-EU, even though the will to create stricter lobby rules has been expressed a lot, too little has actually happened.  

After the release of this report, ALTER-EU looked at the same data of the report again in May 2015. Although some parties that were mentioned in the previous report now registered, not all did. Also, because the register changed in January 2015 and more information needed to be included in the entries, most parties have updated information in the register. But not all, some filled in outdated data, dating back to 2003. So even though some positive changes were made, ALTER-EU still thinks the register needs to change for it to work.

3. How should further regulations look? Is an IIA the correct legal basis for further regulations for lobbying? Should the register be mandatory or voluntary? Should the Council be part of the register?

ALTER-EU states that it is misleading by Juncker to propose an IIA. As explained before, an IIA is not binding for lobbyists, because it is only binding for the institutions that made the agreement. If the new regulation would still be an IIA, it would not be possible to effectively sanction lobbyists who have breached the rules of the Register. Therefore, ALTER-EU thinks an IIA is not the correct legal basis for the Transparency Register.

Then what should further regulations on lobbying look like? ALTER-EU thinks the Commission should propose EU legislation, that would make a mandatory register that is legally binding. If the register is legally binding and mandatory, the Secretariat can correctly investigate the entries and sanction those that not comply with the rules of the Register.

ALTER-EU sent a letter to Vice-President of the Commission, Frans Timmermans, with their recommendations for further regulating lobbying in the EU. The letter was signed by more than 100 NGOs and trade unions from all over Europe. The letter stated the urgency of changing the regulations on lobbying. In the letter, three recommendations were made. The

57 Rachel Tansey & Vicky Cann, ‘New and Improved? Why the EU Lobby register still fails to deliver’, Published by the Alliance for Lobbying Transparency and Ethics Regulation in the European Union (ALTER-EU) 2015, pp. 6 - 10
60 Ibid
first was to make the register mandatory. Lobbyists who try to avoid transparency can still do so without any consequence. This is something ALTER-EU is very worried about. Secondly, ALTER-EU thinks the information in the register is not sufficient to be able to monitor lobbying. They would recommend including information about who the lobbyist is, how much influence they have and more specific information on which dossier they lobby. The final recommendation is to give the register the means to monitor all entries and to create the possibility to sanction lobbyists.62

Corporate Europe Observatory

1. The description of the organisation and their general opinion on transparency.

Corporate Europe Observatory (CEO) is an activist research group that has its main focus on exposing corporations’ unethical behaviour. CEO also wants to expose the bias policymakers have towards corporations and how corporations have, also because of the policymakers’ bias, privileged access and influence. CEO is a research group as well as a campaign group that is based in Brussels, but is registered as a Dutch NGO. They monitor corporations especially, because it is their opinion that their great influence on policymaking leads to socially undesirable policy, which leads to big global problems, like environmental problems and social injustice.63

CEO is part of the umbrella of ALTER-EU64, so one can assume their opinion on transparency is not so different from ALTER-EU. However, because Corporate Europe Observatory is a research group that specifically focusses on transparency and the influence of corporate lobbyists in the EU, it is still worth discussing.

2. Their opinion on the current Transparency Register.

Like ALTER-EU, CEO also thinks the Transparency Register in this form is not a great success and has some issues with the working of the Register. They stated that lobbyists don’t take the register seriously and that they therefore don’t bother registering. CEO recognizes

the same issues with the current Transparency Register as ALTER-EU does. The voluntary aspect of the register and the incorrect data in the register are seen as reasons why the register is not functioning the way it’s supposed to and that it is not a good tool to monitor lobbying in the EU.65

3. How should further regulations look? Is an IIA the correct legal basis for further regulations for lobbying?

CEO has written further recommendations to the Commission for further regulating lobbying. First of all, the register should be mandatory and legally binding. The legal basis should be EU legislation, so CEO also agrees with ALTER-EU that the IIA is not the correct legal basis for the Register. As ALTER-EU, CEO mentions that it is important to be able to sanction lobbyists and this is not possible with an IIA as the legal basis.66 As mentioned before, because CEO is part of ALTER-EU, they use a lot of ALTER-EU sources and their opinion on the Transparency Register is similar to ALTER-EU’s views on lobbying.

The European Public Affairs Consultancies Association

1. The description of the organisation and their general opinion on transparency.

The European Public Affairs Consultancies Association (EPACA) is one of the representative bodies for public affairs professionals that lobby the EU institutions. They work towards the best working climate for their members. EPACA has its own code of conduct and self-regulates their members. EPACA states that their code of conduct takes it further than the Register code, mainly because the code is applicable to contact with all stakeholders, not only to the contact with the EU institutions. EPACA promotes ethical behaviour for all stakeholders and they also promote transparency and more specifically transparent lobbying. For reaching these goals, EPACA works together with the EU institutions on issues like lobbying and transparency.67 The code of conduct has 12 points that ensure that the members of EPACA act in complete

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transparency. EPACA sees transparency as the fundament of working in the lobbying industry with integrity, so improving transparency is extremely important for EPACA.

2. Their opinion on the current Transparency Register.

Because EPACA is a supporter of transparency, they support the Transparency Register and the effort to regulate lobbying. According to Karl Isaksson, chairman of EPACA, EPACA has been actively involved in the negotiations with the Commission about the register and they are already invited by the Commission to be part of the negotiations in the summer of 2015. EPACA feels like the voluntary aspect of the Transparency Register makes the playing field more uneven, because some lobbyists do register, while others don’t and they don’t play by the same rules. That’s why EPACA very much supports the decision of the Commission that it’s no longer possible to meet with higher ranked people from the Commission for lobbyists who are not in the register. They see that this has been a huge incentive to register, because ever since, the number of registrants has grown significantly. EPACA does have some issues with the additional information that needs to be disclosed in the register. Since January, the exact costs spent on lobbying needs to be added in the register. However, this is a problem for a lot of professional lobbyists, while lobbying for them is not a costs, but a benefit. Therefore, they just have to disclose all the costs they have, including for example employee costs. Also included in the register, is the income of the registrant. However, anyone who knows this information, could find out very sensitive information about the company, like how much their exact profit is. According to EPACA, this information will not improve transparency in the EU as much as it will damage the company and distort the internal market. Also, even though EPACA is a supporter of strictly enforcing the rules of the register, there is a problem with the enforcement of these rules. According to EPACA, only a very small amount of resources go to the register and few people from the Commission and Parliament are involved with the Transparency Register. The process of checking the complaints to the secretariat are not done correctly and the process is not unambiguous enough.

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70 Karl Isaksson, Chairman of EPACA, Interview over the phone on 08-06-2015
3. How should further regulations look? Is an IIA the correct legal basis for further regulations for lobbying? Should the register be mandatory or voluntary? Should the Council be part of the register?

As explained before, EPACA wants the register to be mandatory to level the playing field. This could be done both by creating legislation, or by making it mandatory in an IIA, like the Commission already stated they were planning on. EPACA would rather like it to be legislation, but they don’t see that happening anytime soon. They would like the Council to be part of the legislation or regulation, but they don’t think it will make a big difference. They think including the Council, like stated before in this thesis, only means including the Council administration and that that is not really where the lobbying is happening. The real lobbying of the Council, is done on the member state level. So even though EPACA wants there to be legislation and would like the Council to be included, they don’t think this will happen soon and that including them will not have the biggest impact.71

EPACA thinks the processes of sanctioning and complaints need to be improved. For a lobbyist, it is very harmful and bad for their reputation when they get deleted from the register, so these actions have a lot of impact. Therefore, every rule has to be very clear, and there should be no room for interpretation with these rules. It should be clear who has to register and it should be as easy as possible for those who register to comply with the rules. As explained in the previous section, EPACA believes the process of complaining is not solid enough now. There should be created more clear rules on how this works and when and why someone can be expelled. Linked to this, is the problem with the resources. EPACA wants the Commission and the Parliament to put more resources into the register to be able to really police the rules. This means the Commission and the Parliament need to commit to the Transparency Register more. EPACA also thinks that the commitment of the Commission and the Parliament to not meet with lobbyists should be stricter. Not only the higher ranked officials should only meet with the registered parties, no one who works for the Commission or Parliament should do so.72

Finally, as explained before, EPACA does not agree with everything that registrants need to enclose before being able to register. They would like the information in the register to be extensive but functional to make the process more transparent. More information is not only

71 Karl Isaksson, Chairman of EPACA, Interview over the phone on 08-06-2015
72 Karl Isaksson, Chairman of EPACA, Interview over the phone on 08-06-2015
not necessary for transparency, but could even distort competition in the lobbying and public affairs sector.\textsuperscript{73}

\textbf{VNO-NCW}

\textit{1. The description of the organisation and their general opinion on transparency.}

VNO-NCW is the biggest employers association of the Netherlands. They lobby for the best possible climate for investments and companies and VNO-NCW represents Dutch businesses.\textsuperscript{74} The office in Brussels represent the Dutch business by having contact with the European Institutions and by working together with different stakeholders, like employers’ associations from all over Europe. They lobby on different cases that are relevant for the Dutch business climate. In Brussels, VNO-NCW works with different associations and they are part of BUSINESSEUROPE, a business association active in Brussels. Also, VNO-NCW has four seats in the European Economic and Social Committee.\textsuperscript{75}

In the Netherlands, the debate on regulating lobbying recently started again. VNO-NCW stated that they agree with taking further steps in making Dutch policy making more transparent. VNO-NCW stated that they see the importance of transparency for lobbyists and that they would agree to improving this.\textsuperscript{76}

\textit{2. Their opinion on the current Transparency Register.}

VNO-NCW is positive about the concept of transparency and the Transparency Register. However, they see an important problem in the current Transparency Register. The Commission now asks for the exact budget for lobbying of companies that register. However, this can be very difficult to calculate and specify, because some companies hire a certain company to do multiple activities, including lobbying. This makes it difficult to precisely know how much money there is actually spent on lobbying and companies are unable to provide the right information. Also, competition could trace back the budget that has been entered in the register. This could give the competition insight in sensitive information about

\textsuperscript{73} Karl Isaksson, Chairman of EPACA, Interview over the phone on 08-06-2015
\textsuperscript{74} VNO-NCW, ‘Over VNO-NCW’, retrieved from \url{http://www.vno-ncw.nl/over_vnoncw/Pages/default.aspx#VWNdzs_tmko} on 30-05-2015
\textsuperscript{75} VNO-NCW, ‘Kantoor Brussel’, retrieved from \url{http://www.vno-ncw.nl/over_vnoncw/KantoorBrussel/Pages/default.aspx#VWNGzs_tmko} on 30-05-2015
\textsuperscript{76} Sigrid Verweij; Communication director VNO-NCW, ‘PvdA-voorstel 'Lobby in daglicht' goed voor draagvlak’, retrieved from \url{http://www.vno-ncw.nl/column/Pages/PvdAvoorstel_Lobby_in_daglicht_goed_voor_draagvlak_214.aspx?source=%2fcolumn%2fPages%2fdefault.aspx#VWNqC_tmko} on 30-05-2015
the other company. This could distort competition within the EU and the information in the register could therefore be not compliant with competition laws. EPACA has mentioned a very similar issue.\textsuperscript{77}

3. \textit{How should further regulations look? Is an IIA the correct legal basis for further regulations for lobbying? Should the register be mandatory or voluntary? Should the Council be part of the register?}

So even though VNO-NCW represents companies and industry, they still see eye to eye with transparency. However, they do see some issues with the current Transparency Register. They expect that these issues will be dealt at, because the system of the Transparency Register is still developing. So VNO-NCW supports the Transparency Register, but the administrative burden has to be as little as possible for the parties that need to register. It is important that the confidential information that companies have to disclose when registering is really confidential, because the Register could otherwise intervene with the internal market and free competition within the EU. The best case scenario would be to create one system for all EU institutions, because it would limit the administrative burden if there is one system for all institutions. If there is just one register and one system of regulating lobbying, one registration is enough for all institutions. VNO-NCW is not specifically against having a mandatory register. They don’t necessarily want or need it to be mandatory, but they don’t mind if it is, provided that the register is stable, it’s requirements are reasonable and that the register is actually functional.\textsuperscript{78}

\textbf{The European Ombudsman}

1. \textit{The description of the organisation and their general opinion on transparency.}

Since the Maastricht Treaty, the European Union has her own Ombudsman. European citizens, legal persons or citizens from third countries can complain to the Ombudsman about wrong activities of the institutions. The ombudsman can also start their own investigation out of her own initiative. When the investigation is completed, the Ombudsman sends a report to the European Parliament and to the institution that was investigated. The one who complained will also be updated about the outcome of the investigations. The Ombudsman

\textsuperscript{77} Winand Quaedvlieg, Permanent Delegate at the VNO-NCW Brussels office, question answered via email on 02-06-2015

\textsuperscript{78} Winand Quaedvlieg, Permanent Delegate at the VNO-NCW Brussels office, question answered via email on 02-06-2015
will make recommendations in this report on how to deal with issues she came across.\textsuperscript{79} The current Ombudsman, Emily O’Reilly, also accepted a code of conduct. In this code of conduct, transparency and ethical conduct are seen as key standards for the European Ombudsman. The Ombudsman believes that the European institutions can only win back the trust of the European citizens, by being transparent and working by high ethical standards. The Ombudsman has committed herself to work by the same standards.\textsuperscript{80} However, complains about transparency are one of the most common complains to the Ombudsman. 20\% to 30\% of the complaints investigated by the Ombudsman are about issues with transparency in the EU.\textsuperscript{81}

2. \textit{Their opinion on the current Transparency Register.}

The Ombudsman thinks the Transparency Register is vital. However, it does not give the full picture of the lobbying that takes place in the EU. Many lobbyists still don’t register, and according to the Ombudsman, the parties that have permanent access passes to the Parliament, are not necessarily the parties that have the most influence. The biggest influencers can also be the lobbyists that don’t come near the actual buildings of the institutions.\textsuperscript{82}

The Ombudsman regularly receives complaints on the Transparency Register. The complaints are mainly about inaccurate information in the Register. This is another problem with the Transparency Register the Ombudsman has identified.\textsuperscript{83}

3. \textit{How should further regulations look? Is an IIA the correct legal basis for further regulations for lobbying? Should the register be mandatory or voluntary? Should the Council be part of the register?}

The Ombudsman is involved in transforming the Transparency Register. The Ombudsman supports the European Commission in making the register mandatory. She also agrees with

\begin{footnotes}
\footnote{Paul Craig and Gráinne de Burca, \textit{EU Law, Text, Cases and Materials}, Oxford: Oxford University Press 2011, p. 56}
\footnote{The European Ombudsman, \textit{Annual Report 2014}, p. 7}
\end{footnotes}
the decision of the Commission to no longer meet with non-registered lobbyists.\textsuperscript{84} The Ombudsman states that the current Transparency Register does not function the way it’s supposed to be. The register has to be given “teeth”. To be more effective, the European Council should also be included in the Transparency Register. According to O’Reilly, these steps could be taken right now, even without creating new legislation.\textsuperscript{85}

But these changes are not enough. The register should eventually be in the law and it should not just be an IIA. So the European Ombudsman is also a supporter of making legislation of the Transparency Register.\textsuperscript{86} Also, the monitoring of the data that’s been entered in the register has to be improved.\textsuperscript{87}

**Transparency International**

1. *The description of the organisation and their general opinion on transparency.*

Transparency International was created in 1993 as a measure to stand up against corruption. Their vision is to create a world where everyone is free of corruption. Transparency International is active in more than 100 countries now. They fight against corruption by raising awareness on these issues.\textsuperscript{88} Transparency International has also made it their mission to promote transparency and integrity. Transparency is one of their core values, together with other morals, like democracy and justice.\textsuperscript{89}

2. *Their opinion on the current Transparency Register.*

Recently, Transparency International published a report on Transparency in Europe. In this report, regulations on lobbying transparency are discussed. Transparency International sees a lot of weaknesses in the system as it is right now. The first discussed in the report is the voluntary aspect of the register and therefore the fact that some lobbyists are still not registered. The second weakness is the weak monitoring of the register and that the

\textsuperscript{84} The European Ombudsman, *Annual Report 2014*, p. 10
\textsuperscript{86} The European Ombudsman, *Annual Report 2014*, p. 10
\textsuperscript{88} Transparency International, Our Organisation, retrieved from https://www.transparency.org/whoweare/organisation on 02-06-2015
Secretariat is not an independent body. The weak monitoring of the Secretariat is even more a problem because for the register to work properly, effective sanctioning should be possible. Another weakness of the register is that the Council is not part of the register.\footnote{Transparency International, Lobbying in Europe, Hidden Influence, Privileged access, Report published 15 April 2015, pp. 54 - 55}

Although Transparency International sees a lot of negative aspects of the current register, they also see a positive feature. Transparency International thinks the definition of lobbyists that the EU chose in the scope of the Transparency Register is broad. They agree with this choice.\footnote{Transparency International, Lobbying in Europe, Hidden Influence, Privileged access, Report published 15 April 2015, pp. 54 - 55}

3. **How should further regulations look? Is an IIA the correct legal basis for further regulations for lobbying? Should the register be mandatory or voluntary? Should the Council be part of the register?**

Although Transparency International states that the proposal of the Commission to make an IIA with the Council and the Parliament will strengthen the system, it is not good enough. A mandatory register, created by the legislative procedure, would be a better option. So Transparency International does not think an IIA is the right legal basis for the regulation of lobbying.\footnote{Transparency International, Lobbying in Europe, Hidden Influence, Privileged access, Report published 15 April 2015, p. 54} The register should also be extended to the Council, so that lobbying to the Council without registering is not as easy as it is right now. Finally, Transparency International recommends ensuring the possibility to sanction lobbyists in cases of misconduct.\footnote{Transparency International, Lobbying in Europe, Hidden Influence, Privileged access, Report published 15 April 2015, p. 61} This could be possible with a more independent and better functioning Secretariat.\footnote{Transparency International, Lobbying in Europe, Hidden Influence, Privileged access, Report published 15 April 2015, p. 54}

**Society of European Affairs Professionals**

1. **The description of the organisation and their general opinion on transparency.**

The Society of European Affairs Professionals (SEAP) is, like EPACA, an association that represents public affairs professionals in the EU. They not only represent professional lobbyists, but also in-house lobbyists of companies, trade associations or other representative
bodies. SEAP is a supporter of high professionalism for the working field. SEAP therefore also created a binding code of conduct for their members. They state that their code is a good tool to regulate public affairs professionals.95

Transparency is one of the core values of SEAP. According to article 2 of their code of conduct, their members maintain the highest transparency and they will always be open about who they are and who they work for. Their members have committed themselves to never misrepresent themselves or behave badly in any way.96

2. Their opinion on the current Transparency Register.

SEAP supported the effort of the European Parliament and the European Commission when they were first planning on enhancing transparency between the institutions and the lobbyists.97 SEAP sees some weaknesses in the register. They see a need for harmonisation in the regulation of lobbyists between the institutions and between the EU and the member states. The problem with no harmonisation is that it creates difficulties for lobbyists to comply with several different systems.98

As explained in earlier chapters, While most of the parties that were researched in this thesis think the register should be mandatory, SEAP actually thinks the register should be voluntary. They think that registering should be a choice for the lobbyists, for it to be transparent. They think coercing the lobbyists is not the right way to go about it. However, they do think that registering should be incentivized. That’s why they were supportive of the decision of the Commission and Parliament to at least ask the lobbyists why and if they were registered. They also recommended them to pass on the information why certain parties weren’t registered to each other and to the Register Secretariat, so these issues can be taken into account and eventually be dealt with in the future.99

3. How should further regulations look? Is an IIA the correct legal basis for further regulations for lobbying? Should the register be mandatory or voluntary? Should the Council be part of the register?

96 SEAP, Code of Conduct, Article 2
97 Susanna Di Feliciantonio, President of SEAP, ‘SEAP support for the Transparency Register’, letter to Gérard Legris Coordinator, JTRS Head of Unit of 14-02-2013
98 SEAP, Position on the review of the Joint Transparency Register October 2013
To deal with the harmonisation problem that SEAP has identified, SEAP thinks the first step is to make the Council a part of the register. SEAP does not elaborate on the question if it’s necessary to create legislation, but at least the Council should be a part of the Transparency Register. The register should remain a voluntary register, however, registering should be even more incentivized than it is right now, for example by not inviting unregistered parties, or to only attend conferences or meetings that are organised by parties that are registered. Also, ethical behaviour should be supported. Even though SEAP believes in promoting transparency through the register code, they state there is a difference between transparency and ethical behaviour. The goal of the Transparency Register is obviously transparency, the goal of the code of conduct of SEAP is behaving ethically and transparency is only a part of that. The SEAP code goes, as they describe, beyond the Transparency Register Code. SEAP thinks it is not the role of the EU to control lobbyists’ behaviour, but the lobbyists should do so themselves by self-regulation. However, the register should support these code holders more, for example by creating a check box in the Transparency Register about other registers, like if they have joined one of the organisations with a code of behaviour, like SEAPs code of conduct.

Politicians in the European Parliament

As discusses in earlier chapters of this thesis, the European Parliament saw the need for the regulation of lobbying in an earlier stage than other institutions. The European Parliament was the first institution, that was not willing to grant unregistered lobbyists permanent access passes. In 2014, the European Parliament voted on amending the Transparency Register so that it is more functional and stricter. Certain decisions on for example sanctioning were dealt with in these amendments. Amending the Transparency Register was proposed by the European Commission and eventually led to the changes that came into force in January 2015. The discussion in Parliament and the way that certain parties voted on these amendments, give a good indication of the opinion of the politicians in the European Parliament and how much they are in favour of strengthening the Transparency Register.

The discussion in the European Parliament started after a rapport by Roberto Gualtieri, who was a rapporteur on this issue. In the discussions, it soon became clear that most of the

100 SEAP Press Release, ‘SEAP challenges call to change EU transparency register code of conduct’, 29 April 2013
101 SEAP, Position on the review of the Joint Transparency Register October 2013
politicians would agree with the most important parts of the rapport he wrote and that politicians from different parties for the most part agreed with each other. For example, György Schöpflin, who spoke on behalf of the PPE Group, stated that he mostly agreed with the rapport. He said lobbyists and politicians have a tense relationship, while they need each other to be able to properly do their jobs, but they also work against each other. To deal with the difficulties of lobbying, Schöpflin stated that the framework needed to be further clarified and the right legal basis is necessary. Evelyn Regner, from S&D, saw the immediate necessity to make the transparency register mandatory. She, like ALTER-EU did, mentioned that a big part of financial lobbyists had not registered. The Council should also be part of the register, according to Regner. More politicians in the European Parliament had similar opinions to this and concluding multiple statements by the politicians, made it very clear that the general opinion of the European Parliament was positive towards stricter and mandatory lobbying legislation. Overall, they saw the necessity of creating stricter lobbying regulations.\textsuperscript{103} After the discussion, it was no surprise that the decision to amend the Transparency Register was adopted. The votes were almost all for the proposal. There were 646 votes for, only 7 against and 14 abstentions.\textsuperscript{104} This proves that there is a political will, at least in the European Parliament, to deal with this transparency issues and issues with lobbyists.

The committee of the European Parliament also made some amendments to the proposal of the Commission. First, they wanted to include that the Parliament regrets that the proposal of the Commission still does not deal with the big issues with the Transparency Register, like the need to make the register mandatory and that law firms don’t register. Especially the fact that the proposal still doesn’t lead to a mandatory register is emphasised in the European Parliament’s amendments. Also, the European Parliament urged that the next time the Transparency Register is reviewed, a public consultation should be part of this evaluation.\textsuperscript{105}

Some parties have spoken out about stricter rules for a longer time. For example the Greens think that the oversight of lobbying is essential. However, they do see some issues with the current Transparency Register. First of all, a weakness of the register is that it is voluntary and not mandatory. The Greens state that some of the most important players are missing from the register, like ALTER-EU also claimed, the Greens mention the missing biggest players in the financial industry. The Greens have been in favour of a mandatory register since the beginning and want every lobbyist to be in the register. In their opinion, the register should also include the Council, because if the Council remains to exclude themselves from lobbying regulations, lobbying will never be transparent. The Greens request the Commission to create a legislative proposal to make the register mandatory, before 2016. So the Greens think the IIA is not the correct legal basis for the Register and recommends to create legislation through the normal legislative procedure. The CDA, a Dutch Christian-Democratic Party, also agrees with the Greens in committing to a mandatory register.

What we now know

In this chapter, multiple parties have been researched to map the opinions of professionals working with and researchers studying the Transparency Register. Every party had some concerns with the Transparency Register and had recommendations for new regulation of legislation. There were four main issues that most of the researched parties had an opinion on. In this conclusion, these four concerns will be discussed in this conclusion and the opinion of the professionals will be explained. The opinions of the professionals will also be schematically shown in a table.

Voluntary or mandatory

Almost all parties concluded that the register will not be fully functional if the register is not mandatory, but voluntary. There are still key players that haven’t registered, which makes register less meaningful and less functional. For example, ALTER-EU explained that some key players, like important groups from the financial world, have failed to register. The fact that some of the most important players in the EU are not registered and the voluntary aspect of the register is one of the main weaknesses according to the professionals. CEO is part of

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ALTER-EU and has the same opinion. They also think that lobbyists don’t take the register seriously enough. These unregistered lobbyists might register when the register is fully mandatory. VNO-NCW doesn’t necessarily need the register to be mandatory, but doesn’t mind if it would be. However, if it were to be mandatory, the register has to be fair, stable and actually functional. SEAP does not believe in a mandatory register. They believe in the self-regulation of the profession and that obligating lobbyists is not the right way to make practices more transparent. However, most parties think the register should be mandatory in the future. The next schedule shows the opinion of professional of making the register mandatory or for it to remain voluntary in the future.

<table>
<thead>
<tr>
<th>Professional</th>
<th>Voluntary/Mandatory?</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALTER-EU</td>
<td>Mandatory</td>
</tr>
<tr>
<td>Corporate Europe Observatory</td>
<td>Mandatory</td>
</tr>
<tr>
<td>EPACA</td>
<td>Mandatory</td>
</tr>
<tr>
<td>SEAP</td>
<td>Voluntary</td>
</tr>
<tr>
<td>VNO-NCW</td>
<td>Agrees with both</td>
</tr>
<tr>
<td>The European Ombudsman</td>
<td>Mandatory</td>
</tr>
<tr>
<td>Transparency International</td>
<td>Mandatory</td>
</tr>
</tbody>
</table>

*The information in the register*

Some parties are concerned with the quality of the information in the register. They have stated that the information in the register is sometimes dishonest or just simply inaccurate or outdated. For example, the budgets that are registered for lobbying are not realistic. The Secretariat of the register is supposed to check the information in the budget. Because it doesn’t have the resources and because it’s not independent, it’s not possible to check all entries. However, not all the incorrect information in the register is intentional. The exact budget for lobbying is difficult to pinpoint for companies or other organisations. The information could also be sensitive in competition between companies. The information in the register could give the competition important insight in the other company’s business. This could cause a distortion in the competition in the EU. The opinions on information in the register is also be schematically shown.
<table>
<thead>
<tr>
<th>Professional</th>
<th>Opinion on information</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALTER-EU</td>
<td>Information in register is unreliable. Secretariat doesn’t check the information sufficiently enough.</td>
</tr>
<tr>
<td>Corporate Europe Observatory</td>
<td>The incorrect data in the register is a weakness.</td>
</tr>
<tr>
<td>EPACA</td>
<td>Some information in the register is not necessary for more transparency and is too sensitive for competition.</td>
</tr>
<tr>
<td>SEAP</td>
<td>Not specified</td>
</tr>
<tr>
<td>VNO-NCW</td>
<td>It is difficult for companies to disclose some of the information. Information could distort competition.</td>
</tr>
<tr>
<td>The European Ombudsman</td>
<td>The Transparency Register doesn’t give the full picture of lobbying. The Ombudsman receives a lot of complaints about incorrect information</td>
</tr>
<tr>
<td>Transparency International</td>
<td>The register is weakly monitored and the Secretariat is not independent.</td>
</tr>
</tbody>
</table>

**Including the Council in the register**

Most parties saw a need to include the Council in the Transparency Register for it to be fully functional. Because the Council exclude themselves from the regulations on lobbying, it is still possible to lobby in the EU without registering. The degree of how important this issue was for the researched parties vary. Some parties think this issue is very important and lobbying will never be transparent without the Council joining the Register. VNO-NCW also thinks the Council should be included in the Register, but this is more from a functional perspective. They argue that it would be less of an administrative burden for lobbyist if the procedure was the same for every institution. EPACA is also in favour of including the Council in the Transparency Register. However, they are more pessimistic about the effect that it would have. Because the members of the Council are ministers from the member states, the lobbying takes place in the member states. Including the Council in the register would only mean including the Council administration, and EPACA does not think that the
administration is where the lobbying happens. Therefore, they think the effect of including the Council in the Transparency Register will not make that much of an impact. So even though the ideas on including the Council in the register may be different, most parties are, at least mildly, positive about including the Council.

<table>
<thead>
<tr>
<th>Professional</th>
<th>Including the Council?</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALTER-EU</td>
<td>Not specified</td>
</tr>
<tr>
<td>Corporate Europe Observatory</td>
<td>Not specified</td>
</tr>
<tr>
<td>EPACA</td>
<td>Yes, but it will not have a great impact.</td>
</tr>
<tr>
<td>SEAP</td>
<td>Yes, it would be the first step to deal with the harmonisation problem.</td>
</tr>
<tr>
<td>VNO-NCW</td>
<td>Yes, it would mean less administrative burden.</td>
</tr>
<tr>
<td>The European Ombudsman</td>
<td>Yes</td>
</tr>
<tr>
<td>Transparency International</td>
<td>Yes</td>
</tr>
</tbody>
</table>

IIA

One of the main issues discussed in this thesis, is the question if an IIA is the right legal basis for the Transparency Register. This is also an issue that most of the researched parties have raised. According to for example ALTER-EU, an IIA is not the correct legal basis for the Transparency Register, because an IIA is only binding to the institutions that agreed on the IIA. So, if the new Commission proposal is still an IIA, sanctioning lobbyists when they breach the code of the register is not possible. The only option would be, what they’re doing now already, to delete these lobbyists from the register. EPACA would also prefer creating legislation over another IIA. However, they don’t think that that will happen anytime soon. They still think that a lot can be dealt with in an IIA, like making the register mandatory.

When looking at the descriptions of the different parties, it is possible to conclude that almost all parties believe that the Transparency Register should be legislation, and not just an IIA, which raised the question why the Commission proposed to create a new IIA in the first place, and not started working on proposing legislation.

<table>
<thead>
<tr>
<th>Professional</th>
<th>IIA or legislation?</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALTER-EU</td>
<td>Legislation</td>
</tr>
<tr>
<td>Corporate Europe Observatory</td>
<td>Legislation</td>
</tr>
<tr>
<td>Party</td>
<td>Comment</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>----------------------------------------------</td>
</tr>
<tr>
<td>EPACA</td>
<td>Legislation, but doesn’t see that happening anytime soon</td>
</tr>
<tr>
<td>SEAP</td>
<td>Not specified</td>
</tr>
<tr>
<td>VNO-NCW</td>
<td>Not specified</td>
</tr>
<tr>
<td>The European Ombudsman</td>
<td>Yes</td>
</tr>
<tr>
<td>Transparency International</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Looking back at the conclusion of the researched parties in the register, the opinions about the register are pretty similar between all the parties. Most parties think the register should be mandatory and that the information in the register should be of a better quality. The information should also be functional to the purpose it aims at, to ensure transparent lobbying. This information should not distort competition. Also, the Secretariat should check the information in the register more. The Council should be included in the register and the legal basis of the register should not be an IIA, but it should be real legislation, created through the normal legislative procedure. The fact that almost all parties agree on what the weaknesses of the Transparency Register are and also mainly agree on what needs to be done to deal with these weaknesses, raised the question why these changes haven’t been implemented yet. Simply said, if it is clear what the problem is and if it is also clear what the solutions to the problem are, why hasn’t the issue been dealt with?
4. Final conclusion and recommendations

In this thesis, the Transparency Register of the European Parliament and the European Commission has been studied and it has been explained how this register works. The second part of this thesis researched the opinions of different actors that work with the register or who have researched it. In this part of the thesis, this will shortly be concluded and explained. Then, this conclusion will move on to the opinions of the professionals and explain what the outcomes of the general opinions are. Finally, this thesis will end with recommendations to the Commission.

The EU has become more and more interesting for lobbyists over the years. That is why the necessity of regulating lobbying became more and more clear to the European institutions. After attempts to separately regulate lobbying, the European Parliament and the European Commission created an Inter-Institutional Agreement in 2011, that established the Joint Transparency Register of the European Commission and the European Parliament.

This register is voluntary, and all organisations or individuals that directly or indirectly try to influence the policy making process can register. Part of registering, is accepting the accompanying Code of Conduct. However, scientists have found some weaknesses to the register. The voluntary aspect of the register is one of the main weaknesses according to scientists, because those who choose to not register, are not monitored in any way. The register also doesn’t deal with some transparency issues, like the issue that European politicians and institutions are biased towards corporate lobbyist. Even though it has been questioned whether this is an issue or not, it should be mentioned and the possibility of this problem should be dealt with by the European institutions. The register is not the right tool for this.

The European Commission also agrees that the Transparency Register has some weaknesses. The first changes to the register were made in January 2015, lobbyists or other registrants now have to disclose more information, like the exact budget they have for lobbying. The Commission has also committed to only meet with registered lobbyists. But the Commission is planning to further regulate lobbying. Juncker has expressed the will to make a new Inter-Institutional Agreement, that would also include the Council. However, it is questioned if an IIA is the most suitable legal basis for the regulation of lobbying.
In the second part of this thesis, the opinions of professionals and researchers that work with the Transparency Register have been mapped. Seven groups from different backgrounds and with different occupations have been looked at. Three subjects per group have been discussed. The first is the description of the organisation and their opinion on transparency. The second is their opinion on the current Transparency Register and finally their ideas and recommendations for further regulating lobbyists.

Like the scientists, the professionals are not fully satisfied with the current Transparency Register. Most parties think the Transparency Register is not a sufficient method to regulate lobbying in the EU and all parties have issues with the current register. However, some parties do think the register is a step in the right direction.

So, to answer the research question from this thesis:

*Is the Transparency Register a sufficient method to regulate lobbying in the EU or should the EU create further legislation, and if so; what form should the further legislation/regulation be?*

The answer to the first part of the question is that, in this form, the Transparency Register is not a sufficient method to regulate lobbying in the EU. Because the register is voluntary, lobbyists don’t register, which creates an uneven playing field. Also, some lobbyists that do register, do so under false pretences with incorrect or even made up information. The Secretariat of the register is responsible for checking the information, but they don’t have the resources to sufficiently do so. Another weakness that makes the Transparency Register an insufficient method, is that the Council is not included. Lobbying at the Council administration is still possible without registering.

The second part of the research question will be answered in the form of recommendations to the Commission

*Recommendations*

There are some recommendations to the Commission for changing the Transparency Register.

- **Mandatory**

As stated before, because the register is voluntary and some lobbyists do register while others don’t, the playing field for lobbyists is uneven. Also, because lobbying without registering is
still possible, some parties don’t take the Transparency Register seriously. For the Transparency Register to be functional, the register should be fully mandatory and it should not be possible to meet with MEPs, Commissioners and with their staff without being registered to the Transparency Register. However, if the register were to be fully mandatory, it is important that the rules are crystal clear, like EPACA stated. It should be clear who has to register and what the rules are they need to keep. It has to be clear what should and what doesn’t need to be registered. Only when this is clear, a mandatory register could be manageable and successful.

- **Strengthening Transparency Register Secretariat**

The information in the register now is seen as unreliable and often as untruthful. For the register to work, the information in it has to be truthful. Someone should be able to consult the register and after that be sure about which party they are about to meet. To make this possible, the Transparency Register Secretariat should have more power and, as the European Ombudsman said, should be given more teeth. The Secretariat needs more manpower and more resources. This would ask a commitment from the European Parliament and the Commission, because more resources also means investing more. However, it is necessary to make this investment for the Transparency Register to become more effective.

- **Discrete with information**

It is important that the information in the register is the truth and that the information is extensive and broad to give a good insight in what the lobbyists are actually doing. However, it is also important that the information does not reveal too much about a company. The information that is in the register, should only be in it to make the process more transparent. Any further information is irrelevant and could even damage the free competition in the EU. It is important that the Commission asks herself if the information really contributes to transparency. If not, it should not be a part of the register. If a company’s sensitive information does contribute to more transparency, it should be considered to be more discrete. For example, to not directly publish the information on the internet, but to send it to parties who ask for it at the Secretariat. Then, the information is still open, but there is one step in between to not make it too easy for competition to get to know everything about their competitors.

- **Legislation instead of an IIA**
Because an IIA is only binding for the institutions that agreed to it, lobbyists are not bound by anything if the Transparency Register is based on an IIA. Sanctioning lobbyists who don’t comply with the rules, could be useful. However, it could be argued that if the register is truly mandatory, excluding someone from the register could be a tough enough sanction. If the Commission does think that sanctioning is necessary, the legal basis of the Transparency Register should not be an IIA, but they should create legislation through the normal legislative procedure.

- **Council should be a part of the Register**

The Council is still not participating in the Transparency Register and therefore, lobbying them is possible without registering. As brought up by EPACA, the lobbying might not really be going on there, because the Council is made up from politicians from the member states, but it would still be an important step to include the Council administration. This would also be useful for companies and lobbyists. For them, it is desirable if there is harmonisation. That would make it easier, because it would be a small administrative burden if there is one process for all institutions.

But maybe the most important thing that has to change before any regulation of lobbyists can ever be successful, is the will of the EU institutions to actually deal with the Transparency Register. Secretive lobbying will always be possible, even if the Transparency Register is fully mandatory, as long as politicians and staff let it happen. If there is a political will to deal with this issue and to also invest resources and manpower, lobbying in the EU could soon be more transparent.
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