

The Challenge of Introducing a Mandatory Lobbying Register

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In September 2016, the European Commission proposed to make the Transparency Register mandatory¹. According to the proposal, meetings with high-level politicians and officials would be subject to prior registration. The register is to cover for the first time the three EU institutions – the Parliament, the Commission and the Council – where the same minimum standards would apply to all of them. The aim of the register is to strengthen the framework for ethical interaction between interest representatives and the three institutions participating in the new scheme, but most of all to ensure transparency, as it is one of the key objectives of the Juncker Commission². Negotiations on the proposal started in April 2018 and are currently ongoing. But is there really a need for more transparency? Can a switch from a voluntary to mandatory register make a significant difference? And can the proposed mandatory register bring greater transparency into the EU policy-making process?

The concept of the lobbying register has changed significantly since the 1990s, when the Commission and the Parliament presented their first initiatives³. The initial registers were in the form of internal databases which aimed to facilitate the identification of lobbyists by EU employees. The information collected in the registers was limited, as were the incentives for registration mostly allocated at the discretion of the institutions. Moreover, the registers were voluntary and inaccessible to citizens. With the increasing number of lobbyists and citizens' demands, both institutions added new elements to

their systems, thus increasing their efficiency and transparency. From 1993 to 2011, the registers, from internally limited databases, changed into one publicly available source of information about the activity of categorised interest groups – their finances, structures, employees and clients⁴. Along with the development of the register, the perspective on lobbying shifted. Initially, increased access of lobbyists to EU officials was seen as a step towards increased transparency and representation in the policy-making process⁵. With the growing number of competences obtained by the EU as well as a growing number of lobbyists active in Brussels, the suspicions about potential bias from decision-makers due to the influence of lobbyists, became larger. Over the years, lobbying started to be gradually perceived as a threat instead of an opportunity for the interest representatives to have their voice heard at policy level⁶.

The current voluntary registration system contains loopholes pointed out by organisations such as ALTER-EU and Transparency International⁷. Interest groups, in order to hide their actual expenses or connections and to protect their clients, understate lobbying expenses and the total number of lobbyists, use prohibited abbreviations or do not disclose names of their clients. This type of incomplete or inaccurate data is not uncommon in the register, which results from the lack of systematic check of entries and ineffectiveness of the rules enforcement. Furthermore, the register still does not cover all interest groups, since for large corporations the benefits of non-registration

outweigh the benefits of registration.

The partial solution to these problems could be the introduction of a mandatory, legally binding registration system. The more entries there are in the register, the clearer it is which interests are represented in Brussels. The legally binding register would force interest groups to enter credible information under threat of fines or other legal sanctions. However, solely introducing a mandatory register would not establish full transparency. The internal and external scope of the register is equally important. At present, the register covers only the Commission and the Parliament, leaving out institutions such as the European Council and the Council of the European Union as well as committees and agencies beyond its reach. Furthermore, only the broadest possible definition of lobbying allow for the coverage of all groups engaged in advocacy directed at policy-makers. Although the current definition is broad, the framework includes exemptions and special provisions for some interest groups that are not expected to register.

The Proposal for an Interinstitutional Agreement on a mandatory Transparency Register is not as revolutionary in content as in the title. Its only de facto mandatory character lies in the conditions that interest groups must meet in order to obtain privileged access to EU officials. Yet, the proposal does not introduce a legally binding registration system. Calling the proposed register mandatory is, therefore, misleading, but there is a reason behind it. The introduction of an obligatory registration is a response to the demands of the civil society. By adopting a mandatory register, the Commission would take a major step towards rebuilding citizens' trust, which has been the main reason for the revision in the first place⁸.

Can the mandatory register proposed by the Commission ensure greater transparency of

the EU policy-making process? The proposal indeed has such potential. Although it is not legally binding in relation to interest groups, it legally binds the signatory institutions. Moreover, it aims to cover for the first time the Council. The new incentive included in the proposal, which is making the meetings with high-level officials dependent on registration (principle of conditionality), may significantly increase the number of entries in the register. Furthermore, the proposal provides for greater supervision and quality control of entries. On the other hand, it also introduces a narrow definition of lobbying, excludes indirect lobbying and includes new exemptions, which in turn reduce the scope of the register.

In their negotiating mandates, the Parliament and the Council responded to the Commission proposal and suggested their own amendments⁹. Even though both institutions are characterised by a significantly different degree of legitimacy and transparency¹⁰, their amendments partially overlap. The Parliament objects to the possibility of applying the principle of conditionality to MEPs whereas the Council opposes the application of this principle to the Ambassador of the Presidency and COREPER. Both institutions also argue that each of them should have greater freedom in choosing other conditionalities. Overall, although both the Parliament and the Council refuse to accept some changes proposed by the Commission, the Parliament amendments have the potential to increase the transparency of the register. First of all, in its mandate the Parliament insists on leaving a broad definition of lobbying. Secondly, it supports the Commission's request to include meetings with high-level officials from all three institutions within the scope of the agreement. Furthermore, it declares to continue insisting on a legally binding act.

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All three participating institutions argue that it is not possible to accept certain changes and hide behind a possibility of legal conflict. However, detecting the conflict or its absence depends on the interpretation of the EU law and the wording of the legislative proposal. The three institutions, transparency organisations and scholars have been exchanging legitimate arguments about the basis for creating a mandatory register for a decade without finding a compromise¹¹.

The results of the first negotiating meetings, although not completely transparent¹², were moderately promising. At first, it seemed that the likely scenario is the adoption of the Commission proposal with the Council amendments. The efforts to include the Council in the scope of the register have been ongoing for years without success. Because of this, the Commission and the Parliament could give way and agree to limit the register in exchange of covering the Council by the agreement. Yet, there was no real chance to change the Commission proposal to a legally binding act or making meetings with MEPs conditional on registration. The Parliament, by adopting its package of measures, displayed the direction of negotiations on those matters¹³. Now, after two interinstitutional meetings, the College of Commissioners gave its chief negotiator First Vice-President Frans Timmermans the mandate to suspend negotiations and the pressure now falls back on the Parliament and the Council. As long as all institutions sign an agreement and at least meetings with some policy-makers will be conditioned by registration, transparency will increase compared to the current system. However, determining the extent to which these changes will lead towards transparency requires further research after the negotiations are finished.

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Endnotes:

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