



Public Consultation on a proposal for a mandatory Transparency Register *An outline response prepared by ALTER-EU*

The European Commission has launched a consultation on the EU transparency register. The consultation can be found here:

http://ec.europa.eu/transparency/civil_society/public_consultation_en.htm

The current lobby transparency register can be found here:

<http://ec.europa.eu/transparencyregister/public/homePage.do?redir=false&locale=en>

The text below has been drafted by the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU) to aide groups, including ALTER-EU's members, in preparing their response to the consultation. Of course all participants in the consultation will want to complete all questions according to their own views and experiences, but hopefully this briefing provides some useful suggestions for input. There are also links to further information which you might find useful. These links should not be included in your final submission. **We have highlighted which questions we think are especially important to answer, but if you can only make a short submission, all the key points are included in our comments for Section A below. Section B is only optional.**

Other tips:

- Please feed in details of your own experiences of lobby transparency, from the perspective of your organisation and sector
- Experiences of the lack of transparency of EU institutions and or concerns about the privileged access enjoyed by big business would be especially worthwhile to feed in
- If you have experiences of lobby transparency at the member state level, this would also be useful to feed in, especially if there is some good practice to promote. Telling the Commission how bad your national register is, or that there is no national register in your country, is probably not so helpful.

Please note, the Commission's consultation must be completed on-line

<https://ec.europa.eu/eusurvey/runner/PublicConsultationTransparencyRegisterMarch-2016> and all submissions should be made by 31 May 2016.

For further information about this briefing, contact ALTER-EU:

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ALTER-EU is registered in the EU Transparency Register under number: 2694372574-63.

A. GENERAL PART (7 questions)

1. Transparency and the EU

1.1 The EU institutions interact with a wide range of groups and organisations representing specific interests. This is a legitimate and necessary part of the decision-making process to make sure that EU policies reflect the interests of citizens, businesses and other stakeholders. The decision-making process must be transparent to allow for proper scrutiny and to ensure that the Union's institutions are accountable.

a) Do you agree that ethical and transparent lobbying helps policy development?

ALTER-EU will respond “partly agree” to this question.

Comments:

In general, ethical and transparent lobbying helps policy development and it is important to make sure that the processes to secure ethical and transparent lobbying are as robust as possible.

Transparent lobbying is about more than just the EU's lobby transparency register. The Commission should extend the wider transparency rules (which currently only apply to commissioners, cabinet members and directors-general or 250 individuals) so that no Commission official meets an unregistered lobbyist and so that all lobby meetings held are recorded online. This would ensure a further 30,000 or more individuals are covered including those with high interactions with lobbyists and those with serious input into the policy drafting process.

Meanwhile, the European Ombudsman has seriously criticised the Commission for its poor implementation of the World Health Organisation's Framework Convention on Tobacco Control and the Commission should immediately publish details of all meetings with tobacco lobbyists online.

However, it should be pointed out that lobbying which is transparent is not always ethical. Lobbyists may make full disclosures according to the rules, but if certain interests outnumber and outspend others, and if they receive greater or privileged access to decision-makers, and then manage to secure policies or rules which are contrary to the public interest, then arguably this is not ethical lobbying and it will not help the quality and legitimacy of policy development. Lobbying is not ethically neutral.

More information here:

<http://alter-eu.org/full-lobby-transparency-now-frequently-asked-questions>

<http://www.ombudsman.europa.eu/en/press/release.faces/en/63655/html.bookmark>

b) It is often said that achieving appropriate lobbying regulation is not just about transparency, i.e. shedding light on the way in which lobbyists and policy-makers are operating. Which of the below other principles do you also consider important for achieving a sound framework for relations with interest representatives?

ALTER-EU will respond “other” to this question.

Comments:

To achieve a sound framework for relations with lobbyists, the following would also be important:

Stopping the privileged access by business interests: Lobbyists representing businesses and trade associations make up 75 per cent of all high-level Commission lobby meetings and more than 80 per cent in certain areas such as financial regulation or the internal market, according to analysis conducted by the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU) in 2015. Yet the Commission has committed to deliver balance in stakeholder representation. The most effective, and ethical, way to stop privileged access to the Commission by business interests would be by introducing a reduction overall in the amount of lobbying that goes on, and clear limits to the number of meetings and other kinds of interactions with big business lobbyists, so as to bring parity with access by other stakeholders, including civil society organisations.

Stopping lobbying on behalf of 'toxic' industries: An ethical approach to lobbying would ensure that the World Health Organisation's Framework Convention on Tobacco Control is fully implemented, as recently demanded by the European Ombudsman, and that contacts with the tobacco industry are really kept to an absolute minimum as is required under this regulation.

Ethics rules for those in the institutions: It is not just about rules for lobbyists, but there need to be far tougher codes of conduct and rules for individuals with the institutions and those who have recently left. Such rules would, for example, prevent MEPs having lobby-related side jobs and/ or block the revolving door between the EU institutions and the lobby industry.

More information here:

<http://alter-eu.org/documents/2015/09/juncker-corporate-lobby-bias>

<http://alter-eu.org/dg-fismas-lobby-meetings-corporate-bias-and-access-for-unregistered-lobbyists>

<http://www.ombudsman.europa.eu/en/press/release.faces/en/63655/html.bookmark>

c) In your opinion, how transparent are the European institutions as public institutions?

ALTER-EU will respond "no opinion" to this question

Comments:

The EU institutions have introduced some important transparency measures although transparency varies between them. There is much that could be improved across the EU institutions to boost transparency.

Lobby register: As mentioned elsewhere there should be a legally-binding register, with comprehensive disclosure requirements, and active monitoring, enforcement and sanction capacities, which covers lobbying in all the EU institutions and executive agencies.

Proactive meetings transparency: All EU institutions should only meet with registered lobbyists, lists of meetings should be pro-actively published by Commission officials and reports of lobby meetings held by EU officials should be kept and should be releasable under access to documents. On-line lists of meetings should be held in a centralised,

searchable database for each institution.

Trilogues: These informal inter-institutional meetings between the European Parliament, the Council of the European Union and the European Commission have become an established feature of EU decision-making, but often undermine accountability and transparency of the EU legislative process. Very little information is available to the public because these meetings take place behind closed doors and only well-resourced lobbies have access to trilogue documents. The publication of all documents should be required and in a timely and systematic manner. Furthermore, there should be public access to meetings, and access to any reports or notes discussed over the course of the process, in line with the procedures for normal Parliament committee meetings.

Access to documents: Reforms to bring the Access to Documents regulation 1049/2001 into line with the Treaty of Lisbon by widening its scope to encompass all EU institutions, bodies, offices and agencies currently not covered are to be welcomed. Such reforms should recognise the fundamental nature of the right of access to information, and to ensure harm and public interest tests apply for all exceptions.

European Ombudsman: All European Ombudsman decisions on transparency should be binding for EU institutions.

1.2 The Transparency Register provides information to politicians and public officials about those who approach them with a view to influencing the decision-making and policy formulation and implementation process. The Register also allows for public scrutiny; giving citizens and other interest groups the possibility to track the activities and potential influence of lobbyists. Do you consider the Transparency Register a useful tool for regulating lobbying?

ALTER-EU will reply "somewhat useful" to this question.

Comments:

The idea of a lobby register as a tool to bring transparency to EU lobbying is very important. However, the present register is highly-flawed and serious changes must result from this consultation and review process if it is to become the very useful tool which is needed.

A lobby register which is no longer voluntary, but which is backed by the force of law, is essential if all lobbyists are to sign-up and if the register is to contain data which provides an accurate snapshot of lobbying in the EU institutions so that citizens can see who is influencing EU decision-making, on which issues, on whose behalf, and with what budgets.

As a result, a commitment to start negotiating a legally-binding lobby register should be in place by 2017. A legally-binding lobby register would give the authorities the opportunity to levy fines or other real sanctions (including refusing to hold lobby meetings) on those who refuse to register or on those who post inaccurate information or who otherwise break the rules. A legally-binding lobby register should be introduced alongside a clear threshold for registration which clarifies what constitutes 'lobbying' and which contacts with decision-makers do not eg. citizens contacting their local MEP.

In the meantime, before a legally-binding lobby register is introduced, it will be important to

continue to introduce further incentives to encourage registration now, and this will be discussed further below.

More information here:

<http://alter-eu.org/documents/2013/06/eu-treaties-provide-legal-base-for-mandatory-lobby-register>

2.1 Activities covered by the Register include lobbying, interest representation and advocacy. It covers all activities carried out to influence - directly or indirectly - policymaking, policy implementation and decision-making in the European Parliament and the European Commission, no matter where they are carried out or which channel or method of communication is used. This definition is appropriate?

ALTER-EU will reply “fully agree” to this question.

Comments:

The definition of lobbying / interest representation in the lobby register is one of the strongest elements of the present set-up. All efforts should be made to resist any demands to weaken it.

2.2 The Register does not apply to certain entities, for example, churches and religious communities, political parties, Member States' government services, third countries' governments, international intergovernmental organisations and their diplomatic missions. Regional public authorities and their representative offices do not have to register but can register if they wish to do so. On the other hand, the Register applies to local, municipal authorities and cities as well as to associations and networks created to represent them.

ALTER-EU will reply “Changed to include certain types of entities” to this question.

Comments:

ALTER-EU considers that all churches and religious communities, political parties, third country governments, and regional public authorities and their representative offices should register if they are undertaking lobbying/ representing their own interests, according to the definition provided. There is no rationale for their exclusion: some of the distinctions (eg between a city and a regional government) are arbitrary, and it is also clear that each of these entities have 'interests' and there is a strong public interest in citizens knowing what lobbying they carry out.

It is also essential that all third country (ie those outside of the EU) governments should also be covered by the register, and required to register. Furthermore, the lobby firms, PR firms and law firms employed to lobby the EU institutions on behalf of third country governments, or to promote their image, should be required to declare all such clients.

Furthermore, the register applies to law firms but many refuse to register correctly, although some do. It is imperative to find a solution so that law firms which lobby join the register. A legally-binding register is the obvious long-term solution.

More information here:

<http://corporateeurope.org/pressreleases/2015/01/european-pr-firms-whitewashing-brutal-regimes-report>

3.1 What is your impression of the Register web site?

ALTER-EU proposes that you complete this table yourself, based on your own experiences.

4. Final comments or ideas on any additional subjects that you consider important in the context of this public consultation

Comments:

In addition to the above comments, including about the need for the introduction of a legally-binding lobby register, further important changes are required:

Effective data monitoring: The quality of the data in the lobby register is extremely poor and Transparency International estimates that around half of the entries are problematic. This must change if citizens are to have confidence in the system. The human resources and software capacity devoted to the EU lobby register, as well as its investigatory and enforcement powers, need to be totally transformed so that effective monitoring checks are carried out on at least 20 per cent of all declarations each year, and all complaints are dealt with speedily. Particular priority should be allocated to ensuring the accuracy of the financial data within registrations.

Improved sanctions to boost data quality and registrations: Submitting inaccurate and / or misleading information must be specified as an offence, punishable by suspension. Suspended lobby groups should be placed on a public list. Law firms which do not register at all or which do not disclose their clients, are still a weak spot in the register. For as long as the register is not legally binding, other methods of bringing them into the register are required.

Meetings with registered lobbyists: The Commission's lobby meeting policy should be immediately extended so that no Commission official is allowed to meet with unregistered lobbyists. Additionally, if MEPs, their staff and Parliament staff choose to meet with lobbyists, they should first ensure they are registered.

Include the European Council, Council and permanent representations: The European Council and Council are significant EU institutions and the EU lobby register should be extended to fully include the European Council, the Council and permanent representations.

Changes to the lobby transparency register disclosure requirements: A series of detailed changes are required to the rules of the lobby register in order to further boost data quality and to ensure that the register presents a reliable picture of lobbying at the EU level:

- **Financial disclosure:** Lobby turnover should be disclosed to the nearest 10,000 euros and not according to the present system of wide brackets. Lobby spending should be disclosed to the nearest 10,000 euros.
- **Lobby issue disclosure:** All lobby consultancies and law firms should be required to list, alongside the specific lobby revenue received from each client, the precise

- issues upon which they lobby and / or advise each client.
- Lobbyists' names disclosure: All individuals lobbying on behalf of a registrant should be listed
 - Disclosure of lobbying through third parties: Registrants should specify all third party organisations which it pays through which it conducts its lobbying and indicate how much it pays to them.

More information here:

<http://alter-eu.org/documents/2016/03>

<http://alter-eu.org/sites/default/files/documents/NationalRepresentationBrussels%20FINAL.pdf>

<http://www.transparencyinternational.eu/2015/09/press-release-more-than-half-the-entries-on-the-brussels-lobby-register-are-inaccurate-incomplete-or-meaningless-2/>

B. SPECIFIC PART (13 questions)

1. Structure of the Register

1.1 The Register invites organisations to sign up under a particular section, for example, professional consultancies, NGOs, trade associations, etc (Annex I of the Interinstitutional Agreement). Have you encountered any difficulties with this categorisation?

ALTER-EU proposes that you complete this table yourself, based on your own experiences.

Comments:

There are many organisations which have categorised themselves wrongly. Some of these could be easily dealt with by using clearer titles and descriptions for the different categories and by providing examples to indicate how certain kinds of organisations should categorise themselves. For example, professional consultancies should be re-named as 'lobby consultancies' to make it clear that other kinds of consultancies should register in other categories.

2. Data disclosure and quality

2.1 Entities joining the Register are asked to provide certain information (contact details, goals and remit of the organisation, legislative dossiers followed, fields of interest, membership, financial data, etc) in order to identify the profile, the capacity of the entity and the interest represented (Annex I of the Interinstitutional Agreement). The right type of information is required from the registrant?

ALTER-EU will reply "too little is asked" to this question.

Comments:

A series of detailed changes are required to the rules of the lobby register in order to boost data quality and to ensure that the register presents a reliable picture of lobbying at the EU level. At the moment much of the data is too poor to be of use. As articulated above in question 4 the following changes are recommended:

- Financial disclosure: Lobby turnover should be disclosed to the nearest 10,000 euros and not according to wide or open-ended brackets. Lobby spending should be disclosed to the nearest 10,000 euros.
- Lobby issue disclosure: All lobby consultancies and law firms should be required to list, alongside the specific lobby revenue received from each client, the precise issues upon which they lobby and / or advise each client.
- Lobbyists' names disclosure: All individuals lobbying on behalf of a registrant should be listed
- Disclosure of lobbying through third parties: Registrants should specify all third party organisations which it pays through which it conducts its lobbying and indicate how much it pays to them.

More information here:

<http://alter-eu.org/documents/2016/03>

2.2 It is easy to provide the information required?

ALTER-EU proposes that you complete this table and comment box yourself, based on your own experiences.

2.3 Do you see any room for simplification as regards the data disclosure requirements?

ALTER-EU will reply “no” to this question.

Comments:

There is no rationale to simplify the data disclosure requirements, especially if that ultimately leads to less data being disclosed. Rather, as set out above, the data disclosure requirements need strengthening.

2.4 What is your impression of the overall data quality in the Register:

ALTER-EU will reply “poor” to this question.

Comments

Transparency International has estimated that over half of the entries on the lobby register contain factual errors or implausible numbers and it made a formal complaint about over 4,200 entries! This reflects the scale of the challenge and the current lack of capacity of the secretariat to properly monitor the data in the register.

The human resources and software capacity devoted to the EU lobby register, as well as its investigatory and enforcement powers, need to be totally transformed so that effective monitoring checks are carried out on at least 20 per cent of all declarations each year, and all complaints are dealt with speedily. Particular priority should be allocated to ensuring the accuracy of the financial data within registrations and software could easily be used to alert registrants to particularly unlikely-looking postings (see below for more detail) and to highlight unlikely-looking entries to staff, enabling speedy follow-up investigations.

More information here:

<http://www.transparencyinternational.eu/2015/09/press-release-more-than-half-the-entries-on-the-brussels-lobby-register-are-inaccurate-incomplete-or-meaningless-2/>

3. Code of Conduct and procedure for Alerts and Complaints

3.1 The Code of Conduct sets out the rules for all those who register and establishes the underlying principles for standards of behaviour in all relations with the EU institutions (Annex III of the Interinstitutional Agreement). The Code is based on a sound set of rules and principles?

ALTER-EU will reply “partially agree” to this question.

Comments:

The Code of Conduct covers many important points although some important phrases such as “inappropriate behaviour” remain undefined. This should be remedied, perhaps along the lines of the European Parliament's decision of April 2014 on the modification of the interinstitutional agreement on the Transparency Register.

The Code of Conduct should prohibit the representation by private firms (including lobby firms, PR firms, law firms) of regimes the EU considers to be in breach of human rights.

The Code of Conduct should also prohibit the representation by private firms of the tobacco industry.

Breaches of the Code of Conduct should be more readily sanctioned; see below for more information.

More information here:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FTEXT%2BTA%2BP7-TA-2014-0376%2B0%2BDOC%2BXML%2BV0%2F%2FEN&language=EN>

<http://www.ombudsman.europa.eu/en/press/release.faces/en/63655/html.bookmark>

<http://corporateeurope.org/pressreleases/2015/01/european-pr-firms-whitewashing-brutal-regimes-report>

3.2 Anyone may trigger an alert or make a complaint about possible breaches of the Code of Conduct. Alerts concern factual errors and complaints relate to more serious breaches of behavioural nature (Annex IV of the Interinstitutional Agreement).

a) The present procedure for dealing with alerts and complaints is adequate.

ALTER-EU will reply “Disagree” to this question.

Comments:

The present system for dealing with alerts and complaints and the general maintenance of the register is far from adequate and the Commission should significantly boost the resources devoted to the register.

Currently, the only real sanction available to the lobby register authorities is removal from

the register. This is an important sanction, but also a blunt one that can only be applied in limited circumstances. Under the current rules, those who have been shown to post inaccurate information face no real penalty and can maintain their European Parliament access passes or hold meetings with commissioners. This must change if citizens are to have confidence in the system. Submitting inaccurate and / or misleading information must be specified as an offence and new sanctions should be introduced such as the temporary suspension of lobby 'privileges'.

More information here:

<http://alter-eu.org/inaccurate-lobby-register-entries-make-a-mockery-of-junckers-transparency-reforms>

b) Do you think that the names of organisations that are suspended under the alerts and complaints should be made public?

ALTER-EU will reply “Yes” to this question.

Comments:

Yes, this is absolutely crucial as the threat of bad publicity from suspension should act as a further incentive to keep registrations and data up to date.

4. Register website – registration and updating

4.1 How user-friendly is in your opinion the Register website in relation to registration and updating?

ALTER-EU proposes that you complete this table yourself, based on your own experiences.

Comments:

A good proportion of the errors in the data posted on the lobby register are likely to be accidental or inadvertent. The register's software could help identify and warn about possible errors during the update process.

Furthermore, the register would be far more effective and precise if all registrants were required to submit at least two updates per year, and on shared dates ie. 31 January and 31 July. This would result in improved data which could be more easily compared.

5. Current advantages linked to registration

5.1 The European Parliament and the European Commission currently offer certain practical advantages (incentives) linked to being on the Register. The Commission has also announced its intention to soon amend its rules on Expert groups to link membership to registration.

Which of these advantages are important to you?

ALTER-EU proposes that you complete this table yourself, based on your own experiences.

Comments:

In the interim period before a legally-binding lobby register comes into force, these 'carrots' can be important in incentivising participation in the register. However, such policies only boost the number of registrations; they do nothing to improve the data quality in the register, and arguably there are many lobby groups accessing the elite of the Commission or gaining access passes to the Parliament on the basis of flawed or even misleading lobby register entry. Overall, such incentives do not replace the need for a legally-binding register.

6. Features of a future mandatory system

6.1 Do you believe that there are further interactions between the EU institutions and interest groups that could be made conditional upon prior registration (e. g. access to MEPs and EU officials, events, premises, or featuring on specific mailing lists)?

ALTER-EU will reply "Yes" to this question.

Comments:

In the interim period before a legally-binding lobby register comes into force, the following interactions should be made conditional upon prior registration:

European Commission:

- Any lobby meeting with any Commission official
- Any participation in expert groups, advisory groups, market access groups
- Any attendance by Commission staff and commissioners at meetings and other events organised by lobbyists

European Parliament:

- All meetings by MEPs, their staff and Parliament with lobbyists
- All events in the Parliament's premises organised by lobbyists
- Any participation by MEPs, their staff and Parliament staff at events and activities organised by lobbyists
- Any participation in official Parliament intergroups and unofficial cross-party groups which organise events inside the Parliament

European Council, the Council, and member states

- Any lobby meeting held by President Donald Tusk, members of his Cabinet, and staff from the secretariat
- Any lobby meeting held by the general secretariat of the Council
- Any lobby meeting held by the permanent representations on EU decision-making matters
- Any lobby meeting held by staff from the European External Action Services, high-level representative Federica Mogherini and her Cabinet

However, it is important to remember that even if all of these incentives are implemented, they will still only lead to a *de facto* mandatory register. There remains a pressing need for a legally-binding register.

More information here:

<http://alter-eu.org/documents/2015/07/next-step-measures>

<http://alter-eu.org/sites/default/files/documents/NationalRepresentationBrussels%20FINAL.pdf>

6.2 Do you agree with the Commission's view that the Council of the EU should participate in the new Inter-institutional Agreement on a mandatory Register?

ALTER-EU will reply "Yes" to this question.

Comment:

The European Council and Council are significant EU institutions and important lobbying also occurs towards the member states' permanent representations in Brussels. The EU lobby register should be fully extended to include the European Council, the Council and permanent representations.

However, if there is no likelihood that these bodies will join the register, the Commission and Parliament should proceed to revise the present register and set-up legally-binding system. Recalcitrance on the part of the other institutions should not prevent progress on a new register.

More information here:

<http://alter-eu.org/sites/default/files/documents/NationalRepresentationBrussels%20FINAL.pdf>

7. Looking beyond Brussels

7.1 How does the Transparency Register compare overall to 'lobby registers' at the EU Member State level?

ALTER-EU will reply "No opinion" to this question.

We think it is especially important that national level groups complete this question based on their own knowledge and experiences. We would suggest you prioritise good practice from the national level. You could also make the point that the EU should set best practice standards for strong transparency requirements to serve as an example for members states.

8. Additional comments

Final comments or ideas on any additional subjects that you consider important in the context of this public consultation (Optional)

Comments:

It is good to see this consultation process. However it will be important that the process of the inter-institutional agreement which follows is also conducted openly; previous processes have been far too opaque. Meetings of the high-level working group of the European Commission, Parliament and Council that will discuss the new IIA should be

open to the public and web-streamed. The draft agreement, proposed changes, agendas and minutes should be made available online promptly.

Finally, all EU institutions should conduct regular reviews of their transparency rules and the way in which they are implemented so as to constantly strive for better and more comprehensive transparency. This would include, but not be limited to, the EU lobby transparency register.