

Civil Society Europe

Response to the European Commission Public Consultation On a proposal for a mandatory transparency register

Civil Society Europe (CSE) brings together [28 European networks and platforms](#) of civil society organisations (CSO) working towards regenerating the European project around the shared values of Equality, Solidarity, Inclusiveness and Democracy. Our main objectives: to facilitate and enable horizontal and vertical dialogue between European civil society organisations and policy-makers and help strengthening CSOs in their activities and relations with the institutions. CSE is an independent voice promoting a space for structured civil dialogue and citizen's participation at all levels.

CSE Register ID: 520775919740-63

A. GENERAL PART

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?

Fully agree

Partially agree

Disagree

No opinion

Comments:

Ethical and transparent lobbying are important to ensure a healthy policy development. For this reason, it is important to develop robust processes and tools. The revision of the EU's lobby transparency register must be accompanied by further transparency rules. For instance the obligation for Commission officials to meet only registered lobbyists and to record online lobby meetings should be extended beyond Commissioners, cabinet members and directors-general to cover all those engaged in policy development. We support in this sense the [recommendations](#) of the European Ombudsman asking the

Commission to immediately publish details of all meetings with tobacco lobbyists online as part of the implementation of the World Health Organisation's Framework Convention on Tobacco Control. Also other EU institutions should adopt and apply transparency rules on their meetings.

It is also critical for EU decision-makers to ensure a balanced access of the different interests to decision-makers. According to the data published by the European Commission itself, we unfortunately see that corporate interests have still a privileged access to the European Commission. Transparency International monitors regularly these meetings through its [Integrity Watch](#). Rules on the composition of expert Groups currently under review must also ensure such balance.

Finally policy development can only be guaranteed through the development of a culture of civil dialogue at all levels in the EU institutions. The implementation of article 11 TUE: "The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society".

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?

Integrity

Equality of access

Other (please elaborate in the comments box below)

No opinion

Integrity and Equality of access are both important principles for a sound framework of relations with interest representatives. The EU institutions should make an assessment of their engagement with the various interest groups in society. According to [analysis](#) conducted by the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU) in 2015, 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, despite commitments to deliver balance in stakeholder representation.

Codes of conducts should also be developed within EU institutions which should cover relations with lobbyists and also issues such as revolving doors between private interests and EU officials.

However, in addition to such codes, it will be critical to address the imbalance in representation by taking positive steps to further supporting the development of a dialogue with civil society organisations through dedicated meetings and structured dialogue consultations as well as to invitations to nominations in expert groups. Civil Society Europe has launched a survey on the existing mechanisms for civil dialogue and

their effectiveness. We would welcome to have a discussion on the results. Ensuring also further recognition to civil society organisations and continuing operating grants for EU civil society networks is essential. Finally the European Commission must promote more actively civic space at national level. According to a recent survey by Civil Society Europe and Civicus to national civil society organisations 66, 4% (69,9% in Eastern Europe) want the EU to do more to guarantee civic space in their country.

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

They are highly Transparent

They are relatively Transparent

They are not Transparent at all

X No opinion

None of the options proposed, including no opinion is satisfactory, and they introduce a certain bias the way they are formulated and by not allowing “they are relatively untransparent” and “other”. First of all it is difficult to assess all institutions together. Although there have been improvements, the level of transparency varies from one institution to the other or even within the same institution. A culture of Transparency needs to be developed.

We suggest therefore that:

- Transparency rules should apply equally to all EU institutions
- A legally-binding register, with comprehensive disclosure requirements, and active monitoring, enforcement and sanction capacities
- A code of conduct ensuring that EU institutions should only meet with registered lobbyists, pro-actively published lists of meetings and reports of lobby meetings held by EU officials should be kept and be releasable under access to documents. On-line lists of meetings should be held in a centralised, searchable database for each institution.
- Public access to meetings including Council working group meetings
- Transparency of trilogues
- 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.
- 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 decisionmaking 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?

Very useful

X Somewhat useful

Not useful at all

No opinion

It is important to ensure that the lobby register is mandatory and that a quality check of the information provided is made, and if relevant sanctions are applied to use the register as a tool for regulating lobbying.

With an improved register, the EU institutions could pro-actively use the register to seek the input of civil society organisations on different policy issues. According to what emerges from the response by President Juncker and Vice President Timmermann to the letter of Alter EU on the research on the meetings between interest representatives and the European Commission, there is a lack of proactive measures to address the imbalance between the corporate and public interests in meetings.

A systematic use of the register in this sense would be useful and would also encourage to increase the quality of submissions. It would also contribute to develop a culture of civil dialogue within the European Commission and other institutions. Civil Society expertise is also underused for hearings and advice by the European Parliament and the Council.

2. Scope of the 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?

X Fully agree

Partially agree

Disagree

No opinion

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.

Changed to exclude certain type of entities (please elaborate in the comment box below)

X Changed to include certain type of entities (please elaborate in the comment box below)

Preserved the same as currently

No opinion

CSE sees no reason for the exclusion of certain entities and thinks all churches and religious communities, political parties, third country governments, international intergovernmental organisations, as well as regional public authorities and their representative offices should register if they are undertaking lobbying/ representing their own interests, according to the definition provided. 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.

3.1 What is your impression of the Register web site?

Please give feedback on:

- Design and structure: Good
- Availability of information/documents: Good
- Ease of search function: Average
- Accessibility: No opinion
- Access via mobile design: No opinion

The quality of data needs to be improved. The website structure is clear and easy to navigate. It would be good to be able to search according to the areas of lobbying in order to use also the register to fostering consultation and stakeholders' involvement and ensure more participation of organisations promoting the public interest.

4. Additional Comments

CSE believes that the quality of the data in the lobby register needs to be substantially improved. [According to Transparency International data](#) around half of the entries are problematic.

In order to improve this, systematic checks on at least 20% of the declarations must be carried out every year. The European Commission needs to invest further human resources in to be able to achieve this.

In addition to making the register mandatory, so as to cover all those that engage in lobbying including law firms, it is essential to ensure sanctions in case of inaccurate or

misleading information. These sanctions should be proportional and dissuasive. Suspended lobby groups should be placed on a public list.

We also support the proposals of ALTER EU on concrete changes to the information required:

- 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.

B. SPECIFIC PART

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?

XYes

No

No opinion

The category NGO is too broad. We suggest to separate NGOs from Foundations who should be categorised separately in the register. NGOs and Foundations are both not for profit organisations, but foundations have a grant making role. Also guidelines for registration should be clearer, by making explanations less ambiguous and including concrete examples. For instance the sentence in the category NGOs "Any such organisation which includes substantial profit-making elements among its membership must register in Section II" can be interpreted in different ways. Only strictly not for profit associations which are advocating for non commercial, non professional interests should be under the category NGOs.

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?

Fully agree
Too much is asked
X Too little is asked
No opinion

The way questions are formulated and even the guidelines encourage in practice quite vague answers by registering entities in particular on the organisation, and their lobby activities, and unreliable input on the resources they have at their disposals. Most of the entries are too vague to guarantee an adequate level of transparency both for the EU institutions and the general public.

The questions on human resources dedicated to lobbying does not allow to assess the actual lobbying resources of organisations as voluntary work (predominantly used by NGOs) is considered equivalent as a paid staff or consultancy work. Both categories should be allowed but accounted for separately.

Furthermore we believe that the entries in the register could be usefully used by the EU institutions also to reach out to civil society organisations in order to identify expertise on specific or transversal issues. In order to do so, the quality of the questions need to be improved.

2.2 It is easy to provide the information required?

Fully agree
X Partially agree
Disagree
No opinion

Some of the information required such as the FTE calculation is unnecessary complicated and does not allow to have a consistent view of the lobbying resources of an organisation.

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

Yes
No
No opinion

More data should be required.

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

Good

Average

X Poor

No opinion

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!

As mentioned before, at least a fifth of the entries must be systematically checked every year. An adequately staffed secretariat should be put in place in order to ensure all necessary checks and in order to follow up complaints.

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?

Fully agree

X Partially agree

disagree

No opinion

CSE supports the position of Alter EU that:

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. Finally the phrase “inappropriate behaviour” should be clarified.

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**

Fully agree

Partially agree

X Disagree

No opinion

The Commission has not allocated sufficient resources to deal with complaints, nor to check efficiently at least part of the entries. Furthermore the current provisions do not foresee sanctions to organisations that have entered misleading or inaccurate information. Sanctions such as suspending passes to the European Parliament or depriving organisations of the possibility to hold meetings with commissioners should be included.

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

X Yes

No

No opinion

This would be an important incentive to provide accurate information.

4. Register website – registration and updating

Registration process:

Straightforward

X Satisfactory, but can be improved

Cumbersome

No opinion

Updating process:

Straightforward

X Satisfactory, but can be improved

Cumbersome

No opinion

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

Currently you are discouraged to make updates to the register and are only allowed to make an annual full update. There should be at least two annual updates.

Some of the mistakes by several organisations seem to be involuntary. There should be a first check before an entry becomes public in the register and also some automatic filters should be introduced.

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?

In the European Parliament

- long term access passes to the EP premises are only issued to individuals representing or working for registered organisations
- Committee Public hearings: guests invited to speak at a hearing need to be registered
- Patronage: Parliament does not grant its patronage to relevant organisations that are not registered

X Very important

Somewhat important

Not important

No opinion

In the European Commission:

- Meetings: organisations or self-employed individuals engaged in relevant activities must be registered in order to hold meetings with Commissioners, Cabinet members and Directors-General
- Public consultations: the Commission sends automatic alerts to registered entities about consultations in areas of interest indicated by them; it differentiates between registered and non-registered entities when publishing the results
- Patronage: Commissioners do not grant their patronage to relevant organisations that are not registered
- Mailing lists: organisations featuring on any mailing lists set up to alert them about certain Commission activities are asked to register
- Expert groups: registration in the Transparency Register is required in order for members to be appointed (refers to organisations and individuals appointed to represent a common interest shared by stakeholders in a particular policy area)

X Very important

Somewhat important

Not important
No opinion

Comments:

It is useful to have incentives, however these do not replace the need for a legally-binding register with high quality and reliable data.

CSE believes that also a positive use of the register could be made provided adjustments to the quality of the data. For instance, instead of just checking if representatives of an expert group is on the register, to use proactively the data to select additional participants from NGOs.

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)?

X Yes

No

No opinion

Meeting with EC officials, participation in expert or advisory groups, participation at official events of the EU institutions, Participation at meetings with EU Council Secretariat and European Council Presidency and cabinet, with the Permanent Representations, with the European External Action Service at all levels. At the same time EU officials should make their participation at lobbyist meetings conditional upon prior registration.

Nevertheless we believe that the most efficient and practical solution is to make the register mandatory.

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?

X Yes

No

No opinion

It is regrettable that the European Council and Council are not part of the register, while they are also lobbied, and principles of transparency and ethics also apply to them.

Continuing to keeping them out would continue to contribute to further distrust by citizens.

The register should include the European Council, the Council of the EU and permanent representations.

In case this does not happen, it is important nonetheless that the European Commission and the European Parliament agree on a legally binding register.

7. Looking beyond Brussels

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

It is better

It is worse

It is neither better nor worse

X No opinion

The issue is not to compare the EU register with national registers of vice versa, but to achieve an efficient and reliable register at EU level, that can also set an example for member States and third countries.

In order to do so, we can certainly learn from both good and bad practices that exist in the EU member States, but also in other countries such as Canada.

Certainly the mandatory dimension of the register, the quality of the data required, a sufficiently resourced secretariat to ensure a proper checks in the entries, and follow up complaints, the existence of sanctions are all elements that emerge in the evaluation of existing national registers.

8. Additional comments

Civil Society Europe welcomes this consultation process and calls for an open and transparent decision-making process on the preparation of the inter-institutional agreement which will follow. All Interinstitutional Agreement preparatory meetings of the high-level working group of the European Commission, Parliament and Council should be open to the public and web-streamed. The draft agreement, proposed changes, agendas and minutes should be made immediately available online.

It is also important to include in the proposal regular evaluation and revision mechanisms so as to improve the effective functioning of the lobby register, and to involve civil society in this process.