

Development of the framework for the activities of interest representatives (lobbyists) in the European institutions

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In its Communication on the follow-up to the Green Paper "European Transparency Initiative", the Commission stated that the Register of Interest Representatives would be open in Spring 2008 and that a review of the system would be conducted one year later.

By presenting this Communication, the Commission considers that the **results obtained so far, the ongoing overall trend observed, and the main observations formulated in this Communication underpin the basic choices that have been made for the system**, namely: a voluntary approach, a reasonable level of financial disclosure, and declarations by organisations rather than individuals.

As the system is still in its expansion phase, **it is not possible to draw a final conclusion purely on the basis of quantitative data**. The universe of interest representation is itself volatile and unlimited. Overall, the voluntary approach is working and should therefore be maintained.

The Communication considers the number of registrations reached shows that the Register provides a sound basis on which to build, and that further improvements could help to strengthen it.

1) Registration: at this point in the process of the finalisation of the text, the overall number of registrations has already passed the 2 000 mark. The Commission has seen a steady influx of registrations during the past 16 months, and the number is still rising. Therefore, the coverage of the Register, though already quite significant at this stage, has not yet achieved its full potential.

A very large and steadily growing number of trade associations that are active in lobbying have registered, as well as "in-house", corporate lobbyists, and this trend shows no sign of saturation for the time being. Although some non-governmental organisations would have preferred a mandatory Register, a similar trend is seen in the case of non-governmental organisations, especially those belonging to European networks, and this also applies to a large number of those engaged in regular interaction with Commission services.

In contrast to these favourable trends across the board it must be noted that, regrettably **two sub-categories of operators are still, for the most part, outside the Register:**

- **Law firms** engaged in activities of interest representation as defined by the Commission remain largely unregistered. The Commission has provided detailed information on the definition of activities falling within and outside the scope of the Register in the case of lawyers and law firms. This approach has already made matters clearer and should now make it easier for those in this category to register;
- **Think-tanks:** the Commission recalls that the Register covers all interests represented, be they specific or general and therefore expects think-tanks to register.

This evolution reflects the fact that **registration is becoming a normal process** for more and more organisations. A significant element is the fact that registered operators, who have voluntarily committed to a transparent relationship with the European Institutions, now adhere to a common Code of Conduct, introduced by the Commission, or to other codes with similar contents.

In addition, **the Register becomes a reference for Commission services.** Commission staff have been informed about the Register and training sessions have been offered on it. Internal instructions invite all staff to use the Register and to promote it in their contacts with interest representatives. These awareness-raising and information activities will be maintained.

Lastly, the **self-regulatory should remain a key component of the system.** In this regard the Commission notes that several major, horizontal networks have recommended to their members that they should register. The Commission encourages this attitude. A number of networks have even provided direct guidance to their members about how to handle the registration process itself. The Commission encourages all networks to follow these good practices, as this will lead in time to a consistent implementation of the system. It expects the authors of such guidelines to make them public so that this work can also be done in a fully transparent manner.

2) Improvements: the Communication highlights possible improvements or corrections to be made to the system in the light of experience.

As regards financial disclosure: corporate lobbyists and trade associations/ federations still point to the difficulties they are having in making an estimate in good faith of the "cost associated with the direct lobbying of EU institutions". The Commission considers that the current guidance given in the Commission's interpretative documents needs to be made more specific, along the following lines:

- registrants should disclose all expenditures covering actions initiated with the aim of influencing European policy formulation or decision-making processes, irrespective of the communication channel or medium it is using (whether direct or indirect, using outsourcing, media, contracts with professional intermediaries, think-tanks, "platforms", *fora*, campaigns, etc.). Social events or conferences fall within the scope of the Register if invitations have been sent to staff or members of European Institutions;
- the activities to be declared for the financial disclosure of the Register are those aimed at all European institutions and bodies, their members, and their services, as well as European agencies and their personnel. These activities also include activities directed at the Permanent Representations of the Member States, including the Council Presidency. However, activities aimed at influencing Member States' authorities in the capitals or any sub-national authority are deemed to be outside the scope of the Register;
- hence, in order to determine whether an activity falls within the scope of the declaration, two questions have to be answered: What is the purpose of the activity and who is its target? In the light of an earlier clarification provided by a Communication in 2008 where the Commission excluded from the scope all activities that are a "response to the Commission's direct request", a third question can be added, namely: "Who took the initiative to launch the activity?"

Other improvements suggested by the Commission, concern:

- **the clarification of the scope of the exemption on legal advice and assistance.** This concerns in particular the specific activities of lawyers, which fall outside the scope of the Register;
- **transparency and "double counting"**, i.e. the fact that the same costs are declared several times by different registrants;
- **the adjustment of the requirements as regards the disclosure of information:** to ensure a more level playing field for all registrants, the list of ranges should be extended beyond the current limit of € 1 000 000. Registrants are also asked to declare the relative weight of their clients in this turnover by placing all their clients in brackets. Currently, the brackets are expressed in bandwidths of either € 50 000 or 10 %-points. To correct this bias the Commission intends to abolish the

percentage option and to introduce differentiated brackets instead, according to the amount of the turnover declared.

The Commission also intends **facilitating the registration of think-tanks** and improving the estimation of the number of individuals concerned.

As regards the **monitoring and enforcement mechanism**, the document states that during the past months, 10 complaints have been filed, four of which were deemed to make a sufficiently strong case to justify an administrative inquiry. In three cases, no violation of the Code of Conduct was established. One registrant has agreed to rectify its declaration after a short suspension; one gave a convincing explanation allowing the Commission to close the investigation without further action.

Inter-Institutional Cooperation: the European Parliament and the European Commission are endeavouring to work together towards a common Register. In April 2009 a joint working group already agreed on a first series of steps towards achieving that objective, and on a set of guidelines plus a revised draft code of conduct. Pending the arrival of this "one-stop shop", the two institutions already launched a common web-page offering citizens a more comprehensive insight into who is seeking to influence decision-making at EU level.

This Communication, drawing on the lessons and experience from the first year of operation of the Register, as well as from the inputs provided by a large number of registrants and users, will serve as a basis for this common approach to be discussed between the two institutions in the near future.