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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director
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to: Mr Javier SOLANA, Secretary-General/High Representative
Subject: Communication from the Commission to the European Parliament and the
Council: European Transparency Initiative: the Register of Interest
Representatives, one year after

Delegations will find attached &Commission& document COM(2009) 612 final.

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COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

**European Transparency Initiative: the Register of Interest Representatives, one year
after**

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European Transparency Initiative: the Register of Interest Representatives, one year after

In its Communication on the follow-up to the Green Paper "European Transparency Initiative"¹, 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.

Since the Register was launched, in June 2008, citizens have been able to appreciate the very wide range of interests represented at the European level. They have seen that European policy makers do not operate in isolation from the civil society's concerns and interests, but interact with them in an open and inclusive fashion, creating a level playing field for all categories of interests. As a result, the European Commission today is one of the relatively few public authorities in the world that has put in place practical frameworks for transparency in this field².

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. 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. IMPROVING TRANSPARENCY: A STEADY RATE OF REGISTRATIONS

1.1. Registration: the Register is a success, even if law firms and think-tanks are still lagging behind

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 rising³. Therefore, the coverage of the Register, though already quite significant at this stage⁴, has not yet achieved its full potential.

Registrations have been received from many of the main professional players lobbying on behalf of clients in the Brussels arena. The Commission has insisted that all clients must be declared in order for the registration process to be credible, and on several occasions has suspended entities which did not fulfil this requirement. Over time, compliance has been achieved.

¹ COM(2007) 127.

² See for reference: "Self regulation and regulation of the lobbying profession" OECD – April 2009-07-16:
[http://www.oilis.oecd.org/olis/2009doc.nsf/ENGDATCORPLOOK/NT00002A56/\\$FILE/JT03263523.PDF](http://www.oilis.oecd.org/olis/2009doc.nsf/ENGDATCORPLOOK/NT00002A56/$FILE/JT03263523.PDF)

³ See graph in Annex 2.

⁴ Some organisations have had hesitations about registration, being mindful of the supposed consequences such a registration could potentially have on the way they are treated by national tax authorities.

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 subcategories of operators are still, for the most part, outside the Register:

- **Law firms** engaged in activities of interest representation as defined by the Commission⁵ remain largely unregistered. Whilst lawyers and law firms quite rightly claim that rules on confidentiality specifically applying to them prohibit them from declaring who they represent in cases where they act as lawyers, i.e. advise and represent clients in legal proceedings and litigations, most – if not all – Brussels-based law firms also engage in lobbying on behalf of their clients in a similar fashion to other interest representatives covered by this initiative. The Commission remains convinced that a level playing field must be established for the Register and that all operators engaged in similar activities should be treated in a similar manner. 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 (see 2.1.2.). This approach has already made matters clearer and should now make it easier for those in this category to register.
- Most **think-tanks** make valuable contributions to the European institutions by producing high quality data based on scientific and academic research and, therefore, do not want to be assimilated to specific or profit-oriented interests. However, their contributions may be aimed at influencing the choices and courses of action orientations of the European institutions. A number of think-tanks promote membership by offering their potential members "unparalleled networking opportunities" and "the chance to communicate directly with high-level personalities". They also offer "guaranteed participation in a wide range of high-level events" and debates to enable members to "voice their opinion on a range of hot topics". The Commission recalls that the Register covers all interests represented, be they specific or general and therefore expects think-tanks to register (see 2.2.).

Overall, the Commission considers that the Register has come a long way in both quantitative and qualitative terms in its first 'pilot' year. 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.

1.2. This evolution reflects the fact that registration is becoming a normal process for more and more organisations

The steady growth in registrations confirms that more and more organisations are seeing registration as a normal step for those intending to interact with the European institutions in full compliance with the principles of good governance and transparency. Discussions have now moved on from “Why do we need a registration system?” to “How can the system be improved?”.

⁵ "... activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions" - COM(2007) 127.

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. This situates the interaction between interest representatives, public office holders and officials (who are themselves bound by strict rules and codes on ethics) in a stronger ethical context. The fact that a number of organisations choose to go even further, by committing themselves to specific professional codes going well beyond the common Code⁶, or by providing information about themselves beyond what was requested, sends a positive signal in terms of the ethical trend in European public affairs.

Following the European Transparency Initiative, the issue of regulating interest representation has given rise to various debates and works in several EU countries and organisations⁷. The Commission's initiative has also attracted the interest of academic circles.

1.3. 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.

Commission services are using the Register as a reference in their contacts with interest representatives. "The Register is voluntary. However, when choosing to consult in the context of advisory groups or consultative committees, DGs have the possibility to introduce criteria including a minimum level of transparency towards the public"⁸, such as signing up to the Register.

The Commission considers that extending registration to most actors will result naturally from the practical use of the Register by its services. This will result in a plus for anyone wishing to take part in any dialogue or participatory process going beyond basic public consultations.

1.4. The self-regulatory approach, reinforced by the guidance issued by some organisations, remains a key element of the system

Self-regulation 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 has been made aware of particular efforts in this context, including those developed by the European Public Affairs Consultancies' Association (EPACA) and the Society of European Affairs Professionals (SEAP) for professional practitioners, but also those of EU Civil Society Contact Group in cooperation with the Alliance for lobbying transparency and ethics regulation in the EU (AlterEU). They range from a simple explanatory document to more detailed guidelines on the items to be covered for financial disclosure and on how to present the requisite information.

⁶ List of professional codes of conduct which have been declared by registrants as having rules comparable to the Commission's Code of Conduct:

<https://webgate.ec.europa.eu/transparency/regrin/infos/codeofconduct.do?locale=en>

⁷ France, Ireland, Italy, United Kingdom, as well as work within OECD.

⁸ Letter from VP Kallas to Confederation of European Paper Industries (CEPI aisbl) dated 7 April 2009.

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.

In some cases⁹, as part of an active campaign to promote the extension of the requirement in the Register to include such information, the guidance provided suggests going further than simply providing the minimum information required. In the Commission's view, such practices are part and parcel of the voluntary and self-regulatory dimension of the system. The blank spaces in the registration forms leave more room and greater flexibility for anyone who wishes to include additional information.

2. IMPROVEMENTS

Since the launch of the Register in June 2008, the Commission has made it clear that it is open to constructive criticism. Any such criticisms have been published on the website of the Register.

Technical comments on subjects not related to the basic principles (such as the user-friendliness of the website, presentation of information, availability of PDF forms for internal processes, etc.) are incorporated as part of the ongoing improvements being made to the system by the Commission.

Some remarks are of a more substantive nature, highlighting possible improvements or corrections to be made to the system in the light of experience. These issues – as well as the guidelines in the work being done on the establishment of a single, inter-institutional register – are listed below.

It should be noted that the adjustments presented in this Communication do not affect the compliance of the Register with the personal data protection rules.

2.1. Financial disclosure: how to make the Commission's expectations clearer

2.1.1. *Scope of eligible activities*

Those registering in category II¹⁰ 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"¹¹. They want more specific guidelines on which costs are to be taken into account in the definition of "*direct* lobbying" and they see the current situation as a source of considerable uncertainty, fearing that their declaration could be challenged at any moment.

More generally, registrants in the other categories are also calling for more specific guidelines about the activities and costs to be taken into account. On the basis of this experience and of the guidelines established by some associations, the current guidance given in the Commission's interpretative documents (such as the Frequently Asked Questions published on the internet) 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",

⁹ EU Civil Society Contact Group in cooperation with the Alliance for lobbying transparency and ethics regulation in the EU (AlterEU).

¹⁰ Corporate lobbyists and trade associations/ federations.

¹¹ COM(2007) 127.

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 2008¹² 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?"

Subject to these clarifications, the word "direct" will be removed from the definition of the expenditures to be declared by registrants of category II¹³, as it has caused confusion. The categories of exemptions identified in previous communications remain unchanged.

2.1.2. Clarification of the scope of the exemption on legal advice and assistance

A number of operators in category I¹⁴ have called for a more precise definition of the exemption which applies to some of their activities. This concerns in particular the specific activities of lawyers, which fall outside the scope of the Register.

The following text, which already appeared in an exchange of letters with a stakeholder, provides the necessary clarification and will be incorporated into the explanatory documents (such as the Frequently Asked Questions): "*N'entrent pas dans le champ du registre des représentants d'intérêts (quels qu'en soient les acteurs) les activités de conseil et les contacts avec les instances publiques, destinés à éclairer un client sur une situation de droit, sur sa situation juridique spécifique, sur l'opportunité ou la recevabilité d'une initiative de nature judiciaire ou administrative dans le cadre du droit en vigueur, y compris les conseils prodigués à un client en vue de l'aider à organiser ses activités dans le respect de la loi. Il en va de même des représentations faites dans le cadre d'une conciliation ou d'une médiation en vue d'éviter qu'un litige soit porté devant une instance juridictionnelle ou administrative. Cette approche vaut pour tous les secteurs d'activité de la Commission et n'est pas limitée à certaines procédures particulières (concurrence)*"¹⁵.

2.1.3. Transparency and double counting

Numerous questions have been raised about "double counting", i.e. the fact that the same costs are declared several times by different registrants¹⁶. The following change should be made:

¹² COM(2008) 323.

¹³ According to COM(2007) 127, "in-house" lobbyists and trade associations active in lobbying need to provide "an estimate of the cost associated with the direct lobbying of EU institutions".

¹⁴ Professional consultancies and law firms involved in lobbying EU institutions.

¹⁵ Letter from VP Kallas to Délégation des Barreaux de France (DBF) dated 6 April 2009.

¹⁶ A company could include in its declaration the amount billed by a public affairs company to which it has given instructions. The latter must publish the list of its clients, including the relative weight of each client in its turnover. The same amount of money would therefore be published twice.

Double counting is no longer excluded. Registrants are expected to ensure transparency by describing such situations in their declaration, using the text fields of the declaration in particular to provide specific explanations such as: "Our estimated costs include our contracts with lobbying firm X, our membership fees to our trade association Y" or "We contributed in kind (staff, services etc.) to the lobbying activity of our federation Z".

This approach seems to be the simplest and best way to address the issue of double counting: If the aim of the Register were to provide details of the *total* amount of money spent on all lobbying activities vis-à-vis the European institutions, double counting would be a problem, as it would result in an over-estimation of this amount. In fact, the aim of the Commission's policy is not to achieve a consolidated analysis, but to provide transparency at the level of each individual registrant. Therefore, the inclusion of the same costs declared by different entities does not affect the Register's basic purpose, which is to provide information on how much each individual entity spends on lobbying.

2.1.4. Financial disclosure: adjust the requirements for the category I

Those registering in the first category are asked to disclose the turnover they generate, by lobbying the European institutions, as well as the full list of their clients.

If they decide to show the turnover in brackets, the second highest range available in the current set-up is "€ 950 000 – € 1 000 000" and the highest is "> € 1 000 000". In practice, the level of transparency expected from registrants with a smaller turnover is therefore higher than for registrants generating a higher turnover. 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.

This system means that registrants who choose to use the percentage brackets are not being treated equally, a point which has been underlined by many smaller public affairs consultants and NGOs. Registrants with a very large turnover and many clients, who choose the percentage option, are *de facto* allowed to be significantly less transparent than registrants with a smaller turnover and only a few clients. They can offer their clients a much higher degree of confidentiality about the size of their contracts than smaller firms can. Some see this as discriminatory, since virtually all clients of the biggest registrants fall within the 0%-10% bracket, whereas the weight of the clients of smaller registrants will often be spread more widely across the percentages grid. 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 grid will be as follows:

Level of turnover in €	Bracket size in €
0 – 500 000	50 000
500 000 – 1 000 000	100 000
> 1 000 000	250 000

2.2. Facilitating the registration of think-tanks

Registrants may choose from among four categories¹⁷. Think-tanks are expected to register in category III ("NGOs and think-tanks"). Within this category there is a dedicated subcategory for "think-tanks" so there should be no actual confusion with NGOs. To reinforce this distinction, the category of "NGOs and think-tanks" should be divided in two and a new specific category for think-tanks should be created.

2.3. Estimating the number of individuals concerned

The question "How many individuals are representing interests with the EU institutions?" continues to attract outside attention. Many stakeholders also argue that the number of individuals that can be mobilised is an important aspect of the transparency offered by the register. Many current registrants have in fact disclosed individual names on a voluntary basis, as is already required for lobbyists accredited to access the European Parliament. Therefore, while the current focus on organisations will remain, registrants will be asked to estimate the number of collaborators involved in interest representation as defined under the Register.

2.4. Monitoring and enforcement mechanism

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.

As some stakeholders have asked for the mechanism to be clarified, the Commission intends to issue a more detailed description of this administrative process in an explanatory note.

3. 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 guidelines¹⁸ plus a revised draft code of conduct. Pending the arrival of this "one-stop shop", the two institutions already launched a common web-page¹⁹ offering citizens a more comprehensive insight into who is seeking to influence decision-making at EU level by providing access to the two existing systems through a single web-page.

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.

¹⁷ Three categories correspond to the operators which are all expected to register; one extra category is for other entities which, although not mentioned in the relevant Communications, have the opportunity to sign up if they wish.

¹⁸ Link to guidelines: http://ec.europa.eu/commission_barroso/kallas/doc/joint_statement_register.pdf

¹⁹ Link to common web-page: http://europa.eu/lobbyists/interest_representative_registers/index_en.html

ANNEX 1

On 5/10/09, there were 2014 interest representatives in the register.

Professional consultancies / law firms involved in lobbying EU institutions	112
law firm	9
public affairs consultancy	61
independent public affairs consultant	29
other (similar) organisation	13
«in-house» lobbyists and trade associations active in lobbying	1 129
company	276
professional association	654
trade union	56
other (similar) organisation	143
NGO / think-tank	559
non-governmental organisation / association of NGOs	434
think-tank	51
other (similar) organisation	74
other organisations	214
academic organisation / association of academic organisations	45
representative of religions, churches and communities of conviction	8
association of public authorities	37
other (similar) organisation	124

ANNEX 2

ETI register 05.10.2009

