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CONTRIBUTION OF THE LEGAL SERVICE¹

Subject: Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation
- Council participation

I. INTRODUCTION

1. At its meetings on 3 and 17 October 2014, the General Affairs Group (GAG) discussed the Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation², and in particular the question whether it would be appropriate for the Council to become a party to this Agreement (hereinafter, 'the Agreement' or 'the IIA'). Following oral interventions of the representative of the Legal Service on this question, the Group requested a contribution in writing. This contribution responds to that request.

¹ This document contains legal advice protected under Article 4(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, and not released by the Council of the European Union to the public. The Council reserves all its rights in law as regards any unauthorised publication.

² OJ L277 of 19.9.2014, p. 11.

II. BACKGROUND

2. The Transparency register for the registration of lobbyists was set up in 2011 by the European Parliament and the Commission by means of an inter-institutional agreement³. This inter-institutional agreement was revised by the two institutions concerned and replaced by the Agreement referred to in point 1.
3. The Agreement covers "*all activities, other than those referred to in paragraphs 10 to 12, carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and the decision-making processes of the EU institutions, irrespective of where they are undertaken and of the channel or medium of communication used, for example via outsourcing, media, contracts with professional intermediaries, think tanks, platforms, forums, campaigns and grassroots initiatives*" (point 7 of the Agreement).⁴
4. In particular, "those activities include:
 - contacting Members and their assistants, officials or other staff of the EU institutions;
 - preparing, circulating and communicating letters, information material or discussion papers and position papers;
 - organising events, meetings, promotional activities, conferences or social events, invitations to which have been sent to Members and their assistants, officials or other staff of the EU institutions; and
 - voluntary contributions and participation in formal consultations or hearings on envisaged EU legislative or other legal acts and other open consultations" (point 7 of the Agreement).

³ OJ L191 of 22.7.2011, p. 29.

⁴ Emphasis added.

5. Two specific provisions concern the position of Member States. On the one hand, pursuant to point 15, *"the register does not apply to Member States' government services, third countries' governments, international intergovernmental organisations and their diplomatic missions"*. On the other hand, pursuant to point 19, *"the activities to be taken into account for assessing eligibility to register are those aimed (directly or indirectly) at all EU institutions, agencies and bodies, and their Members and their assistants, officials and other staff. Such activities do not include activities directed at Member States, in particular those directed at their permanent representations to the European Union."*
6. All organisations and self-employed individuals, irrespective of their legal status, engaged in activities, whether ongoing or under preparation, covered by the register are expected to register (point 8).
7. By registering, the organisations and individuals concerned agree that the information which they provide for inclusion in the register shall be in the public domain (point 21 of the Agreement). This information concerns general and basic information on inter alia the organisation, the persons legally responsible, its members and goals, but also specific information on the main legislative proposals or policies targeted by the activities of the registrant, its link with EU institutions (e.g. membership of high-level groups or consultative committees) and financial figures (See Annex II to the Agreement).
8. By registering, the organisations and individuals concerned also agree to act in compliance with the code of conduct set out in Annex III to the Agreement and to be subject to any measures to be applied in the event of non-compliance.

9. In return, and in order to encourage registration, the parties to the Agreement shall offer incentives in the framework of their administrative authority. For instance, permanent access passes to the Parliament's premises will only be issued to individuals representing or working for registered organisations. Listed as further possible incentives that may be offered by the European Parliament are the authorisation to organise or co-host events on the Parliament's premises, a facilitated transmission of information and participation as speakers in committee hearings, or patronage by the Parliament.
10. As regards the Commission, the following possible incentives are listed: measures with regard to the transmission of information to registrants when launching public consultations, measures with regard to expert groups and other advisory bodies, specific mailing lists and patronage by the Commission.
11. The Secretaries-General of the European Parliament and of the Commission shall be responsible for supervision of the system and for all key operational aspects, and shall by common accord take the measures necessary to implement the agreement (point 22). A joint operational structure, designated as the Joint Transparency Register Secretariat and made up of a group of officials from the concerned institutions, shall implement the system (point 24).
12. The European Parliament and the Commission have regularly called upon the Council to join the Transparency register, and a series of letters on the topic have been exchanged among the institutions. Point 35 of the revised Agreement includes an explicit invitation to both the European Council and the Council: "*The European Council and the Council are invited to join the register*".

III. LEGAL ANALYSIS

a) Preliminary remarks

13. What follows is a legal analysis of possible implications for the Council based on the text of the inter-institutional agreement as it currently stands. This is without prejudice to the fact that, were the Council to decide to 'join the Transparency Register' (the terms of point 35 of the Agreement) it would have to become a party to the IIA, which necessarily means that the parties to the Agreement engage in trilateral negotiations and agree on a new text.
14. The analysis which follows is also without prejudice to any future views which the Legal Service may take on the establishment of a mandatory register for lobbyists. If and when the Commission submits a proposal to that effect to the European Parliament and the Council, as announced by Commission President-elect Juncker and First Vice-President Commissioner-designate Timmermans, further legal analysis will be required.
15. This contribution only addresses the position of the Council and not that of the European Council, which is a separate institution.

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