

BUSINESSEUROPE



THE DIRECTOR GENERAL

Mr Frans Timmermans
 First Vice-President of the
 European Commission
 Rue de la Loi 200
 BE - 1049 Brussels

6 December 2016

Dear First Vice President,

Dear Mr. Timmermans,

Transparency Register

We are writing because the European business community is concerned that reasonable and important points it is raising on some of the elements of the proposal for an interinstitutional agreement on a mandatory transparency register are not being heard.

As we have stated in our previous letters to you, we have supported the register and its flanking policies from the outset.

We support the political aims of the European transparency initiative. We openly defend it inside and outside the European business community. We have promoted registration in the Transparency Register among our member federations and companies.

We fully agree with you that a regular and open dialogue between the EU institutions and relevant stakeholders is vital for high quality EU policy-making. It helps improving the quality and efficiency of legislation and serves as a reality-check for law-makers. We therefore want simple and effective rules to facilitate such dialogue in a spirit of mutual trust.

European companies contribute to the wealth and well-being of our countries, our social welfare systems and are an integral part of our modern societies. It is therefore crucial to engage with their representatives when preparing policy proposals that will affect them and that they will have to comply with.

The European business community has actively engaged in the consultation on a future mandatory transparency register, but unfortunately none of the solutions and ideas we have proposed to address business concerns - whilst meeting the objective of ensuring transparency - have been taken on board in the new proposal.

Consequently, there are real signs of frustration within our community, that these reasonable proposals, such as on the 30% rule, or our concerns on double/triple counting or the new 10% rule for budget contributions, were simply ignored without any convincing explanations.

The task of business associations, as specified in their statutes, consists in safeguarding and promoting the common interests of their members. By contrast, the submission of *individual* members' contributions wrongly gives the impression that business associations represent the interests of large individual members. As a result, this provision weakens the legitimacy of representative associations in the dialogue with EU institutions.

The European business community is a strong supporter of the European Union and wants to have a constructive dialogue with EU institutions on the way forward to bring the EU closer to companies and citizens.

We would be very grateful if we could meet with you personally, in order to discuss the pitfalls to be avoided by this proposal. My team will be in contact with your cabinet in the near future to try and find a date.

For your convenience, I have listed in the annex below our main proposals and concrete points of concern.

Yours sincerely,

Markus J. Beyrer

ANNEX

1. Introducing a new requirement for not-for-profit entities - including representative trade associations - to disclose **financial information on contributions (10% rule)** is misleading and bureaucratic. It is not in line with the EU's legal culture of control over an entity. We had made a specific and balanced proposal of 30% to you, but which has not been taken on board. This new 10% requirement would create real difficulties for associations, without adding to transparency.
2. Introducing a new requirement for not-for-profit entities to disclose their **total budget** does not enhance transparency either. Registered organisations already have to disclose an estimate of their annual costs related to EU lobbying. The additional disclosure of costs without any link to EU lobbying expenditures does not provide relevant information to users, and could be misused by some, for their own political purposes.
3. A lowering of the '**full-time equivalent**' (FTE) calculation from 25% to 10% is extremely difficult to undertake and to calculate in a serious manner. The additional burden this creates would not lead to increased transparency and doesn't comply with an 'effort-benefit-approach'. This new provision, therefore, would lead to serious compliance problems for companies, increase even further the bureaucracy, and damage the comparability of data in the register.
4. Furthermore, the **FTE figure** of people is not used in practice. Only the aggregated 'persons involved' figure with a much lower information content appears in "studies" and media articles. This is potentially distorting and leads to inflated and inaccurate figures of people working on EU affairs.
5. We encourage the European Commission to facilitate the **disclosure of memberships in EU structures**, platforms or expert groups. Especially for large entities, it is often very burdensome to collect all relevant information. On a practical note and to increase data reliability, we recommend to establish a fully integrated, accurate database covering all EU structures and platforms and to link it to the EU Transparency Register.
6. BusinessEurope is in favour of further improving the reliability, validity and transparency of costs for EU interest representation. We highlight the importance to protect the quality and robustness of data, which should be based on a clear methodology. At the same time, comparability of such **financial data** should be improved in order to meet accuracy of the Register.

The (un-intended) effect of this is **double- and triple counting**, which some actors use to "demonstrate" the alleged "dominance" of corporate interests in Brussels by blowing up aggregate figures. This phenomenon can also be observed for the requirements to disclose **membership costs** and related fees in the total lobby

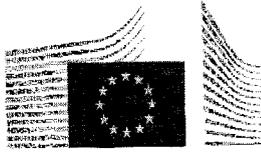
sum. In including this demand, it leads in many circumstances to exorbitantly inflated sums (again: double- and triple-counting). This can especially lead to serious compliance problems, especially for companies. This latter requirement should be removed.

7. The **specificity of some organisations**, such as BusinessEurope, should be fully recognised by the European institutions. All activities carried out under Social Dialogue should continue to be excluded from the scope of the register. The same goes for activities where the European institutions are demanding input, data examples etc, to the organisation concerned, or where they invite them to hearings, meetings, seminars or other events. This latter aspect constitutes a very large part of our activities and those of our members.

The current classification does not convey to the wider public the fact that the European Social Partners are *distinct* from other interest representatives. They are playing an institutional role, and are sometimes integral part of the legislative process, in accordance with a procedure foreseen in the EU Treaties.

8. In the future, the **representativeness**, relevance and expertise of the stakeholders concerned need to be taken much more into account by the European Commission and the Parliament. A coherent policy for open dialogue with the relevant stakeholders depending on the issue at stake is important for transparency. Bodies representing collective interests of wide economic and societal relevance have to be recognised as playing a specific role. We will continue providing constructive support and therefore contribute to help achieving high quality legislation and transparency in EU policy-making.
9. The representativeness of **Social Partners** is fully documented, regularly researched and reviewed by the European Commission. The same should be done for any organisation claiming to defend wider collective interests, **including NGOs**.
10. BUSINESSEUROPE and its member federations are *not* in favour of a **legally binding register**. The example of some member states with a good track record shows that very high levels of transparency and ethical policy-making can be achieved without a mandatory register for lobbyists. We would especially see major problems if the register were to be made conditional on commissioners or senior commission officials and Members of the European Parliament being able to meet stakeholders.

This could limit the meetings to representatives of the "Brussels bubble", and make it more difficult for SME representatives (who are often not on the register) to meet with decision-makers. It would thus impede on the Commission's goal of better integrating SME concerns in its policies and, more generally, run against its vision for smarter and better law-making.



EUROPEAN COMMISSION

Office of the First Vice-President Mr Frans Timmermans

Head of Cabinet

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Dear Mr Beyrer,

On behalf of First Vice-President Timmermans, I would like to thank you and Business Europe for your letter of 6 December 2016, including the detailed break-down of proposals and points of concerns regarding the Commission's proposal for an Inter-Institutional Agreement on a mandatory Transparency Register. Please accept our apologies for the delay in replying to you, but we wanted to take the time necessary to examine your comments in depth and provide a substantive reply.

On a general note, let me underline that the Commission appreciates your support for the Transparency Register and its objectives. We welcome input from all stakeholders and have maintained a regular and continuous dialogue with Business Europe on transparency issues. Listening to stakeholder views, including from the European business community, is fundamental for the sound development of the Commission's policies. We have examined carefully the results of the public consultation in order to ensure that the Commission's proposal fulfils its objective of reinforcing transparency, building on and upgrading the present regime, while remaining proportionate and balanced.

The proposal to create a mandatory lobby register through an Inter-Institutional Agreement covering the Commission, Council and European Parliament has been an important political commitment of this Commission since the very beginning of its mandate. The Commission's proposal of 28 September 2016 delivers on this pledge, which was highlighted in President Juncker's Political Guidelines under the priority "A Union of Democratic Change". The chosen instrument – i.e. an Inter-Institutional Agreement making certain types of interactions with the three institutions conditional on prior registration in the Register and acceptance of its Code of Conduct – reflects a pragmatic approach. It seeks to achieve a mandatory scheme in the most efficient and least burdensome way.

Mr Markus J. BEYRER
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As you know, the rule for interest representatives 'not on the Register, no meeting' decided on 1 December 2014 already applies to Commissioners, their Cabinet members and Director-Generals. Under the Commission's proposal, this principle would be extended to decision-makers in the European Parliament and in the Council. Over the last two years, the Commission has gained experience with this rule and has not met any obstacles to its implementation. Organisations varying in nature, remit and size have joined the Register without encountering any major problem. The Register now covers more than 11.000 registrants ranging from individuals to multinational corporations, demonstrating the clear benefits of this conditionality approach. The mandatory Register will build on this success and, by extending this principle to the European Parliament and the Council, will further boost transparency.

Let me also clarify, to avoid any misunderstanding, that the role of the Social Partners as distinct from lobbying activities of interest representatives has been clearly taken into account in the Commission's proposal. Indeed, activities carried out pursuant to Article 152 TFEU will remain excluded from the scope of the Register. In addition, submissions made in response to direct and specific requests from any of the three Institutions, their members or officials, such as requests for factual information, data or expertise, are excluded from the Commission's proposal (Art 3d).

Moreover, I would like to underline that the proposal addresses several additional concerns raised by the business community and will, in particular, reduce the administrative burden through a number of simplification measures. More specifically the proposal:

- removes the need to declare funding received from grants and tenders under EU programmes;
- will no longer require turnover figures from trade associations;
- clarifies the definition of lobbying and activities covered by the Register and suppresses the reference to indirect lobbying.

Work on the integration of the Transparency Register with the Commission Expert Group Register is also in progress. This will make it easier to register and access information on Commission Expert Groups. Many of these features are the result of the conclusions the Commission drew from the public consultation process.

Finally, I would also like to reply briefly to the specific concerns you raise concerning the data disclosure requirements.

Equal treatment across all categories of stakeholders must be a guiding principle governing the Transparency Register. It is both relevant and useful from a transparency point of view to indicate the overall budget of an organisation as well as its costs related to lobbying. A disclosure requirement for the total budget already applies to NGOs, think tanks, academic institutions and others. Enlarging it to all non-for-profit organisations is therefore a matter of equal treatment and a level playing field. Under the Commission's proposal, not-for-profits receiving more than 10% of their total budget from a given source will also have to name it.

This provision was introduced in order to address any situations where the interests standing behind a given organisation are not apparent, and to shed light, more generally, on the main funders of organisations. It will therefore contribute to strengthening transparency. As regards the new 10% FTE-estimate, it is worth recalling that many registrants, including many businesses, employ staff with less than 25% of their working time involved in lobbying. Adding an extra option to the currently existing four intervals (100%, 75%, 50% and 25%) therefore better corresponds to the reality of smaller organisations.

The Transparency Register provides information to the public. The Commission is aware that the Register cannot prevent abusive or erroneous interpretation of the data contained in it by third parties, including possible double-counting of financial resources. However, this cannot justify under-reporting, as it would result in understating the level of lobbying undertaken towards the EU institutions. Needless to say, the Commission does not endorse studies by third parties based on their own methodologies. It may well be the case that these methodologies are questionable and, if so, are liable to public scrutiny and public criticism.

All the clarifications above are based on the Commission's proposal, which will now be discussed with the European Parliament and the Council. The Commission is convinced that EU institutions must meet citizens' expectations and abide by the highest standards of transparency. This means that everyone must be able to know who tries to influence the EU law-making process, who they represent and how much they spend. To achieve this, it is essential to upgrade the current regime by moving to a mandatory Transparency Register covering all three institutions. The Commission will continue to pursue this objective in the forthcoming inter-institutional negotiation.

Yours sincerely,



Ben SMULDERS

