



EUROPEAN COMMISSION

LEGAL SERVICE

Brussels, 2 October 2013  
sj.f(2013)3385109 PCO/al

**NOTE FOR THE ATTENTION OF MR JURAJ NOCIAR,  
HEAD OF CABINET OF VICE-PRESIDENT MAROŠ ŠEFCOVIČ**

**Subject: Mandatory register for lobbyists: legal basis**

**I - BACKGROUND**

1. The registration of lobbyists is currently made on a voluntary basis in a common register run by the European Parliament and the Commission<sup>1</sup>. The purpose of the register is described as follows on the relevant web site<sup>2</sup>:

*European institutions interaction with citizen's associations, NGOs, businesses, trade and professional organizations, trade unions, think tanks, etc. is constant, legitimate and necessary for the quality of democracy, for their capacity to deliver adequate policies, matching needs and reality.*

*Citizens have a right to expect this process to be transparent and to take place in compliance with the law as well as in due respect of ethical principles, avoiding undue pressure, illegitimate or privileged access to information or to decision makers.*

2. By registering, the organisations concerned agree, *inter alia*, that the information included by them in the register shall be public and that they act in compliance with the code of conduct<sup>3</sup>.
3. Certain NGOs (ALTER EU) consider the current system as insufficient arguing that a large number of companies and lobby groups remain unregistered and that the financial information provided in the register is imprecise and unreliable.

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<sup>1</sup> Interinstitutional agreement between the EP and the Commission, OJ L 191, 22.7.2011, p. 29.

<sup>2</sup> <http://ec.europa.eu/transparencyregister/info/about-register/whyTransparencyRegister.do?locale=en>

<sup>3</sup> Point 17 of the Interinstitutional agreement.

4. At the request of ALTER EU, Professor Markus Krajewski, University of Erlangen-Nürnberg, issued a legal study in which he considers that mandatory rules on registration may be based on Article 298(2) TFEU. Article 352 TFEU is also considered but he discards this possibility for procedural reasons (unanimity in Council and consent of the EP).
5. In 2010, the Legal Service of the European Parliament issued an opinion in which it concluded that mandatory rules for registration may be adopted under Article 352 TFEU<sup>4</sup>.
6. At the request of cabinet of the Vice-President in charge of the interinstitutional relations, the Legal Service replies as follows on issue of the legal basis for the matter under consideration.

## II – LEGAL ANALYSIS

7. As a first remark, the Legal Service would underline that it has no information at its disposal on the purpose and possible content of a legal act that would impose mandatory registration of lobbyists. In any event, since a mandatory system would impose obligations on third parties, it would be meaningful only if it foresaw sanctions to be applied in case of non-compliance. Such system would be subject to judicial control.
8. As a second remark, it is worth recalling that free debate on all areas of EU action and consultations of representatives of civil society are part of the institutions' obligations under Article 11 TEU. The Commission has, in addition, the obligation to carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent (Article 11(3)). Furthermore, Article 24 TFEU provides that every citizen of the Union may write to any of the institutions or bodies in one of the languages of the Union and have an answer in the same language. Therefore, if and when considering possible mandatory rules for registration of lobbyists, particular care must be taken in not depriving an institution of the possibility to consult any interested parties it deems appropriate and not render impossible for an interested party to contact an institution and make its views known. In particular, the legal question to which extent mandatory rules can limit the above-mentioned primary law provisions, possibly going as far as depriving natural or legal persons, who would be considered as "lobbyists" but refuse to register, from their right to contact the institutions, cannot be analysed at this stage and in the abstract.

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<sup>4</sup> Ref. SJ-0012/10

**II. 1. Article 298 TFEU**

9. Article 298 TFEU reads as follows:

*1. In carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration.*

*2. In compliance with the Staff Regulations and the Conditions of Employment adopted on the basis of Article 336, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish provisions to that end.*

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***II. 2. Article 352 TFEU***

21. Article 352 TFEU empowers the Union to adopt measures if *action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers.*

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