



COMMISSION EUROPÉENNE

SECRÉTARIAT GÉNÉRAL

**SEC(2014) 610**

Bruxelles, le 18 novembre 2014

**OJ 2106**

## DEBAT D'ORIENTATION SUR LA TRANSPARENCE

---

Note de cadrage de  
M. le PRESIDENT et du 1er VICE-PRESIDENT, en accord avec Mme MALMSTRÖM

Destinataires : Membres de la Commission  
Directeurs généraux et chefs de service

## ORIENTATION DEBATE ON TRANSPARENCY

Transparency in the European policy-making process is essential to build **understanding of and trust** in the European institutions and the policy process. The European institutions need to be open about how policy is made and who influences it. In line with Article 11 of the Treaty on European Union, the European institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society. This is a core element of delivering a **more democratic** European Union which has legitimacy and support in the eyes of citizens, one of the four key parameters of change this College is committed to in line with the Political Guidelines.

The European Commission should **lead by example** in this area, through concrete actions to increase its own transparency and by encouraging the other institutions to provide a comparable level of transparency.

The College is invited to give its orientations for a first set of measures to promote greater transparency as set out below. These orientations will be translated into concrete decisions in some of these areas for adoption by the College at its next meeting on 25 November, so that the measures can enter into force on 1 December. In other areas work will continue on the basis of the orientations given with a view to presenting concrete proposals in early 2015.

### **1. Publication of information on meetings held with professional organisations or self-employed individuals**

The European Commission and the other EU institutions interact with a wide range of professional organisations or self-employed individuals on a regular basis. This interaction is legitimate and allows policy-makers to better understand the context and implications of the decisions taken.

The Political Guidelines contain a new **commitment to transparency of contacts** between stakeholders and lobbyists and Commissioners and Commission staff. The Mission Letters include a further commitment to make public via the respective websites all the contacts and meetings Commissioners hold with professional organisations or self-employed individuals on any matter relating to EU policy-making and implementation.

To implement this in a consistent and effective way, the College should agree on a set of **common rules**.

These should provide clarity on:

- **scope of application within the Commission:** the commitment to provide information in relation to Commissioners should extend to contacts with their Cabinets, since the Cabinets are emanations of the Commissioner.
- **definition of stakeholders and lobbyists:** in line with the Mission Letters, publication of interaction with professional organisations or self-employed individuals should be mandatory. This would cover contacts with those organisations and representatives that should be registered in the Transparency Register<sup>1</sup>.
- **nature of information to be made public:** since the access to documents regime already covers written contacts, the focus could be on bilateral meetings in person. For these meetings the date, location, name of the Commissioner/Cabinet Member/Director General, name of the professional organisation or self-employed individual and the subject of the discussion could be made public. For reasons of proportionality, contacts at public events, spontaneous encounters taking place at the occasion of other events and purely private or social contacts could be excluded. Protection of personal data rights should be respected.
- **timing of publication:** the minimum would be to require ex-post publication within a set period (e.g., two or three weeks after the meeting). Beyond this, it could be decided that ex-ante information on confirmed future meetings may be provided on a non-mandatory basis.
- **exceptions:** for reasons of credibility, the starting point should be the maximum openness on meetings. Any exceptions should be clearly defined and justified by a legitimate need for confidentiality. This could be the case for example in the competition area where disclosure of a meeting would be market sensitive. Parallelism with the limited exceptions set out in the access to documents regime could be considered here. The integrity of legal procedures should be protected as a general rule. The protection of the person could also be invoked to restrict the information given on some meetings.

**At services' level,** in line with the Political Guidelines, the same approach should be applied to meetings of professional organisations or self-employed individuals with Directors-General.

---

<sup>1</sup> <http://ec.europa.eu/transparencyregister/info/homePage.do>

## 2. Towards a mandatory transparency register for the three institutions

The Political Guidelines commit the Commission to working towards a **mandatory lobby register** also applicable to the European Parliament and the Council. The Mission Letter of First Vice-President Timmermans mandates him to lead this work.

The existing joint Commission/Parliament Transparency Register has been in place since 2011 and the Commission's own register since 2008. The register has had a significant impact: there are now more than 7000 registered entities. But the register as it exists today relies on encouragement and incentives to attract professional organisations or self-employed individuals, and there is no effective sanction mechanism for those who do not register but continue to actively seek to influence European policy-making.

In 2015 the Commission will propose an **interinstitutional agreement** to the European Parliament and the Council to create a mandatory register covering all three institutions. To prepare this, the First Vice-President intends to engage in exploratory talks with the other institutions to scope key issues such as the scope of application and the precise legal effects of the register. The starting point from the Commission side should be maximum ambition to ensure the same high standards apply in the three institutions.

The Commission should **lead by example**. As a rule, Commissioners must not meet professional organisations or self-employed individuals which are not registered in the Transparency Register, as set out in the working methods of this Commission.

## 3. Commission expert groups

In the course of its preparatory work on policy-making and implementation, the Commission has recourse to groups of experts who provide technical advice on a range of issues. Information on these expert groups and their composition is made available through a **public register** on the respective website<sup>2</sup>. However, concerns have been expressed, inter alia by the European Parliament, that there is insufficient information about the **interests** of experts who are appointed in a personal capacity.

It is important to identify and eliminate any potential conflicts of interest in the functioning of expert groups. A proposal is under preparation to require that experts appointed in a personal capacity – who are required to act independently and in the public interest – submit **declarations of interest** allowing the Commission to identify and address any potential conflict of interest. The declarations would be published in the register of expert groups.

The approach will need to balance the public interest with the right to personal **data protection** of the individuals concerned. The opinion of the European Data Protection

---

<sup>2</sup> <http://ec.europa.eu/transparency/regexpert/>

Supervisor should be sought on the proposed approach. As soon as this opinion is received and taken into account, a proposal will be brought to the College.

#### **4. Specific enhanced transparency arrangements for TTIP**

The negotiations with the US on TTIP have, over the last year, become the object of increased public scrutiny and a certain amount of concern in public opinion. It is important to ensure that the general public has accurate and full information of the EU's intentions in the negotiations, to address the concerns and to evacuate misperceptions. The European Parliament has also called for greater transparency, in particular as concerns access to negotiating documents.

In line with President Juncker and First Vice-President Timmermans public commitments to increase transparency, and in order to win public trust and support for the TTIP, the following transparency initiatives could be considered to ensure greater access to trade documents by the general public and the European Parliament, and legitimacy EU trade policy at large:

1) A first priority could be to provide **more extensive access to TTIP documents**, notably by making public all the EU negotiating texts that the Commission already shares with Member States and Parliament (e.g. formal negotiating proposals on the "rules" part of the trade agreement). However, there should be no intention to publish any US documents or common negotiating documents without the explicit agreement of the US. The EU market opening offers on tariffs, services, investment and procurement should not in principle be made public either, as they are the essence of the confidential part of the negotiations. This approach would also still allow the Commission to retain those negotiating documents the release of which could otherwise harm EU international relations, provided however that one of the exceptions in Regulation 1049/2001 can be showed to be met on a case by case basis. That being said, once this policy of publishing EU negotiating texts is introduced for TTIP, the Commission will also have to make public, upon requests for access to documents based on regulation 1049/2001, the same type of documents drawn up in other international negotiations (both in the area of trade and in other EU policy areas).

Introducing this priority will have a direct impact on the Council, since publishing EU negotiating texts will de facto make public also the content of negotiation directives decided by the Council (which have been published by the Council as regards TTIP, but are not yet published for other negotiations). Therefore, provided this priority is endorsed in the College's orientation debate, Commissioner Malmström will seek the views of the Council on it at its meeting on 21 November and report back at the College meeting of 25 November.

2) A second priority could be to ensure **classification of information** (recourse to 'Limited' marking' instead of 'Restreint UE' classification where legally possible), and keeping such information classified only up to the point when it is shared with the other party.

3) A third priority could be to **provide broad access to all MEPs** (and where necessary certain categories of staff members advising MEPs) subject to appropriate modalities to be agreed with the Parliament to ensure the confidentiality of the information provided, including by taking the appropriate steps in the event of unwarranted disclosure of the documents themselves or their content. This implies extending the use of a 'reading room' to those MEPs who had no access to '**Limited**' and '**Restreint UE**' documents so far. For MEPs with a direct "need to know" because of their specific responsibility in monitoring the negotiations, paper copies of classified documents will continue to be available as until now.

Moreover, additional steps to enhance transparency around EU trade negotiations, with a special focus on TTIP, could also be taken forward in the immediate future by:

- publishing and updating on a regular basis a list of TTIP documents shared with the European Parliament and Council;
- reporting more extensively on the outcome of negotiating rounds (as has been done recently for the last TTIP rounds);
- preparing additional on-line material that explains our negotiating positions and approaches;
- increasing engagement with Civil Society and the general public at political and working level, in Brussels and within Member States;
- increasing communication and outreach efforts (including in social media) alongside increased engagement with citizens.

## **Annex - useful references**

### Political guidelines:

*"I am also committed to enhanced transparency when it comes to contact with stakeholders and lobbyists. Our citizens have the right to know with whom Commissioners and Commission staff, Members of the European Parliament or representatives of the Council meet in the context of the legislative process. I will therefore propose an Inter-institutional Agreement to Parliament and Council to create a mandatory lobby register covering all three institutions. The Commission will lead by example in this process."*

### President Juncker's opening speech at the European Parliament Plenary on 15 July 2014:

*[On TTIP]: "And let us ensure that these negotiations are as transparent as possible. I say this to you: if we do not publish the relevant documents – and I do not mean documents on negotiating strategies – this agreement will fail. It will not be accepted by public opinion, it will not be accepted by this Parliament, it will not be accepted by our national parliaments if there is a mixed agreement. So let us be more transparent, because in fact we have nothing to hide. Let us not give the impression that we are not being upfront, let us operate transparently and make the documents public."*

### Mission letters:

*"You will have seen that the Political Guidelines include a new commitment to transparency. Transparency should be a priority for the new Commission and I expect all of us to make public, on our respective web page all the contacts and meetings we hold with professional organisations or self-employed individuals on any matter relating to EU policy-making and implementation. It is very important to be transparent where specific interests related to the Commission's work on legislative initiatives or financial matters are discussed with such organisations or individuals."*

### Working methods of the European Commission 2014-2019:

*"A commitment to transparency should characterise the work of all the Members of the Commission and of their Cabinets. While contact with stakeholders is a natural and important part of the work of a Member of the Commission, all such contacts should be conducted with transparency and Members of the Commission should seek to ensure an appropriate balance and representativeness in the stakeholders they meet."*

*As a rule, Members of the Commission must not meet professional organisations or self-employed individuals which are not registered in the Transparency Register."*

*As of 1 December 2014, all Members of the Commission are expected to make public, on their respective web pages, all the contacts and meetings held in their capacity with professional organisations or self-employed individuals on any matter relating to EU policymaking and implementation, unless compelling reasons of public interest, such as those provided for in Article 4 of Regulation 1049/2001 (access to documents), require confidentiality. Transparency is of particular importance where specific interests related to*

*the Commission's work on legislative initiatives or financial matters are discussed with such organisations or individuals.*

*Access to documents is governed by Regulation 1049/2001. Members of the Commission and services should respect the deadlines set by this regulation at all times."*