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NOTE

From: General Secretariat of the Council
To: Delegations

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Subject: The Joint Transparency Register
– Overview of the main developments during the participation of the GSC in the Joint Transparency Register as an observer and report on the review of the Register

I. Introduction

1. On 23 June 2011, the European Parliament and the Commission concluded an Interinstitutional Agreement (IIA) laying down the rules on the establishment of a Common Register for the registration and monitoring of organisations and self-employed individuals engaged in EU policy-making and policy implementation¹. At this occasion, the Council issued a unilateral statement, stressing the value of this new tool and the Council's support for this initiative². It moreover indicated that it was ready to consider having a role in the Register and to start discussions on the modalities on the Council's possible role.

¹ OJ L 191, 22.7.2011, p.29.

² 12024/11.

2. In April 2012, a set of guidelines were approved by Coreper providing the basis for an agreement between the Council, the Commission and the European Parliament on the modalities of the participation of the General Secretariat of the Council (GSC) as an observer in the Transparency Register. An observer designated from the GSC Transparency Service has thus attended the weekly meetings of the Joint Transparency Register Secretariat (JTRS) since June 2012. Since September 2013, the observer has also attended the meetings of a High Level Group on the Revision of the IIA on establishment of the Register³. The observer has reported regularly to the General Affairs Group on the functioning of the Register and on the state of play of the on-going review process⁴.

II. Exchange of letters on the Council's role in the context of the review process

3. On 19 December 2012, Mr. WIELAND, Vice-President of the European Parliament, and Mr. ŠEFČOVIČ, Vice-President of the European Commission, sent a letter to the Cyprus Presidency on the Transparency Register including the first annual report on the operations of the Register⁵. In the letter, the Council was invited to consider issues addressed in the annual report, to provide any input contributing to the review process of the Register and to provide any conclusions made on the participation of the GSC as observer in the Register.
4. Replying to this letter in June 2013, the Irish Presidency indicated that a number of concerns around the scope of the Register would have to be further explored before the Council could take a final position on possible future participation. In this respect, the Council could consider having an input into the review process, while at the same time maintaining the presence of an observer at the weekly meetings of the JTRS.

³ 13882/13.

⁴ 13528/12, 6458/13, 14983/13 and 16711/13.

⁵ 5081/13. The second annual report (released on 29 November 2013) is set out in doc. 17186/13.

5. The Presidency also underlined that any potential future agreement between the three Institutions would need to clearly define the role of the General Secretariat of the Council and clearly exclude activities directed at Member States, including their diplomatic missions and national governments, since these form part of the national decision-making process. In addition, the question of the scope of the Transparency Register as it might apply to the activities of interest groups directed at the rotating Presidency would need to be further examined and considered⁶.

III. Launch of the review of the Transparency Register

6. In accordance with paragraph 30 of the IIA, the review of this agreement was initiated no later than two years following the creation of the Transparency Register. The review is currently being prepared by a High Level Working Group (WG) made up of MEPs from all the political groups in the European Parliament and a representative from the non-attached Members. The Group is co-chaired by Vice-President of the European Parliament, Rainer Wieland and Vice-President of the European Commission, Maros Šefčovič. At the first constitutive meeting of the WG on 9 July 2013, it was decided to invite the Council to participate in the review process as observer. This invitation was accepted by the Council in September 2013⁷.

7. The review of the IIA aims essentially at enforcing stricter compliance with the register rules, improving its provisions on the scope, introducing stronger incentives to register and clarifying procedures. The overall objective set for this exercise is thus to ensure that all relevant interest groups seeking to influence EU decision-making *do register* and *provide the necessary information* about the purpose of their activities⁸.

⁶ 11502/13, p. 3.

⁷ 13882/13.

⁸ During the review, the possibility of replacing the existing voluntary EU Register with a mandatory legally binding register system (known from notably the USA and Canada) has also been examined. In this regard, the legal service of the European Parliament and the Commission have pointed out that the only appropriate legal basis for introducing such a legally binding system would be Article 352 TFEU and underlined the procedural difficulties (unanimity in the Council and consent of the European Parliament) entailed by this legal basis (see doc. 16711/13, p. 2).

8. In order to attain these objectives, it has been proposed to introduce a number of modifications in the text of the IIA itself and its Annexes I-IV with a view to clarifying the nature of activities, carried out by registrants (e.g. consultancies, law firms, professional associations, event organising entities as well as NGOs, think tanks and religious organisations) with the aim of influencing the formulation or implementation of policy and the decision-making processes of the EU institutions and which are therefore covered by the scope of the Transparency Register.
9. Excluded from the scope of the IIA will be any lobbyist activities directed at *national political structures*, including the Permanent Representations of the Member States. As regards sub-national entities, regions are not expected to register, although the possibility to register will remain open for those who wish to do so on a voluntary basis. However, all other sub-national entities (including cities and municipalities) or any mixed entity are expected to register when engaged in activities targeting the EU institutions.
10. With a view to encourage registration by interest representatives, it is envisaged to strengthen the provision on incentives in the IIA to the effect that each institution, party to the agreement commits to offer further incentives for registrants within its own powers of organisation, notably by use of internal rules or administrative codes. Such incentives might take the form of further facilitation of access to the premises of the European Parliament or facilitated transmission of information to registrants, including specific mailing lists when launching consultations or organising events.
11. A draft proposal for a review of the provisions of the Agreement and its four Annexes has been drawn up, based on the practical experience gained by the JTRS during the first two years of the implementation of the IIA. At the meeting of the WG on 3 December, the revised text of the Agreement and its Annex 1 (Organisations and self-employed individuals engaged in EU policy-making and policy implementation) and Annex 2 (Information to be provided by registrants) were examined and globally approved. The WG will continue its deliberations on Annexes 3 (Code of Conduct) and 4 (Procedure for the investigation and treatment) at its next meeting scheduled for 12 December in Strasbourg.

IV. The next steps

12. Following the completion of the work carried out by the WG, a *recommendation for a review* (including a *draft revisited text*) will be submitted simultaneously to the Bureau of the European Parliament and to the College of Commissioners and subsequently to the Parliaments Committee on Constitutional Affairs (AFCO) and plenary for approval. This work calendar provides the Council with an opportunity to assess the draft revisited text as completed by the WG and consider its possible participation in the Transparency Register before the end of the above-mentioned procedure.
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