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“Transparency Register: implementation challenges”

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Thank you for your continued interest in the transparency register and the negotiations of the Inter Institutional Agreement between the European Parliament, the Council of the European Union and the European Commission.

Indeed, we have concluded the agreement between the three institutions. This was not an easy process but it was clearly worth trying.

The Commission adopted its proposal for an IIA on a mandatory transparency register on 28th September 2016. On 27th October 2016, the EP Conference of Presidents appointed as its two co-negotiators – Sylvie Guillaume in her capacity as the Vice President of the European Parliament responsible for Transparency and myself as chair of the Committee on Constitutional Affairs as co-negotiators. On 15th June 2016, the parliamentary negotiators got from the Conference of Presidents the endorsement of the mandate prepared by the co-negotiators in cooperation with the Contact Group. The Coreper reached its position on 6th December 2017. During the negotiation process, the EP Conference of Presidents also endorsed a new set of measures “New transparency tools for Members of the European Parliament – Closing the loopholes” proposed by the EP co-negotiators to support their negotiating position. Altogether three rounds of political negotiations have taken place during the eighth Parliamentary term, but were unable to conclude the process. On 2nd April 2020, the Conference of Presidents appointed new team of co-negotiators, EP Vice President Katarina Barley and Danuta Hübner on behalf of the Committee on Constitutional Affairs and reconfirmed their mandate. The negotiation process restarted with first

political meeting in the new term on 16th June 2020. All institutions expressed their strong engagement to conclude negotiations swiftly. This determination allowed us to reach an agreement on 7th December 2020, with formal tripartite endorsement of the Agreement on 15th December 2020.

I would like to explain why the European Parliament had never been satisfied with the Commission's choice of legal basis. We believed that the best option for the Transparency register would be a legislative act instead of inter institutional agreement.

In our last report on the modification of the interinstitutional agreement on the Transparency Register (2014/2010(ACI)), the Parliament called on the Commission to propose by the end of 2016 a mandatory register on the basis of the Article 352 TFEU. It also called for comprehensive reform of the Treaties with a view to establish a specific legal basis for the Transparency register under ordinary legislative procedure. The Commission ultimately made its proposal in September 2016 on the basis of the article 295 TFEU – again as a new inter-institutional agreement. Such legal basis carries certain limitations as it only allows the institutions to organize their cooperation, but does not have specific capacity to bind third parties. I think here of the interest representatives themselves. Operation of such scheme based on Article 295 TFEU stems from the power of the self-organization, which each institution enjoys autonomously and which allows, through the restrictions in their internal organization, to create de-facto obligations for the interest representatives to register in order to have access to the decision-makers. Nevertheless, each institution has in such a situation its own specific constraints.

On the one hand, the three signatory institutions strongly vary in proportion between the number of members of their staff and elected Members with a political mandate. On the other hand, they face specific constraints of legal nature. For instance, while the Lisbon Treaty entrusts in Article 17 the president of the Commission with high degree of authority over the Commissioners, no similar provisions exist in the Parliament or the Council. Parliament insisted on the need for the Agreement to fully respect the constitutional freedom of the mandate of its Members. In order to address those specific legal constrains, the

decision of the negotiators was therefore to allow each institution to engage itself towards specific conditionality and other transparency measures on the basis of individual institutional decisions taken in full respect of their internal procedures and democratic processes, which underpin them.

As a consequence, with regard to conditionality and individual decisions a Political statement therefore accompanies the Agreement. It recognizes the existing conditionality and other transparency measures as contributing to reinforcement of the objective of the coordinated approach. On this basis the institutions will “continue to build and improve” the system with a view to strengthen ethical interest representation at Union level. The measures adopted by each of the institutions in their individual decisions should therefore be seen as a floor for their engagements on which they can build further.

Article 14 of the Agreement, with specific regular review process of the conditionality measures in place as well as separate chapter in the annual report with regard to their application, should allow each institution to support an increase in their respective level of engagement.

An important part of the negotiations focused on the need of a strong political oversight of the

Transparency process. In case of the European Parliament, I believed we needed to ensure a strong sense of political ownership of the transparency measures adopted to implement the Agreement and to provide impetus to their development. An effective implementation of the agreement would benefit from political oversight in the Parliament. The review process, which is foreseen in the Article 14 of the Agreement, should be shaped in close cooperation between the EP Vice-President responsible for Transparency and the AFCCO committee.

It deserves noting that the objective of further engagement by the signatory institutions in developing the scheme rests equally on all three signatory institutions and the Parliament should also insist on their further engagement and their contribution to development of the Register, through introduction of additional transparency measures. The engagement in both other institutions

should be increased, for instance by expanding the scope of the conditionality measures to additional categories of officials. Parliament has in the process of the negotiations enlarged its mandate offering to introduce additional transparency measures, which need to be properly implemented. Nevertheless it is to be noted that this is a complex process of implementation as responsibilities lie with various EP bodies – several implementing rules require the adoption by the Bureau, other require decision of the appointing authority, while some might in the future require a modification of the EP Rules of Procedure.

The new Agreement clarifies also several obligations of the registrants in order to prevent the conflicts of interest. These obligations should take into account requirements and rules applicable to former members and staff of the institutions post-office, obligation to publish financial information both as clients and intermediaries and specific financial information required also from the registrants, which do not represent commercial interest. Additional measure, which is to increase the transparency of the interest pursued by the registrants, is the obligation imposed on them to provide more information about legislative proposals, policies and initiatives, which they are targeting.

With the participation of the Council and overall agreement on the financing mechanism, there was a chance to strengthen the Secretariat. It should enjoy additional resources to carry out its duties, ensure the quality of the information provided by the registrants, support them in the registration process and update, reviewing the registrations, carry out investigations and provide support to the participating institutions. Nevertheless, in comparison with national schemes, which pursue the same objective (e.g. HATVP in France, Register of Lobbying in Ireland, Office of the Commissioner of Lobbying in Canada) its resources, remain limited. Should other institutions, bodies or agencies decide to join the scheme, which they are encouraged to do so, this is likely to imply an additional pressure on the Register's resources.

An agreement was reached on the 7th of December on a new inter-institutional Transparency Register, which marks an important step towards a more open and accountable European Union. It looked like a small step, but after almost 5 years of discussions and negotiations among the three institutions, the Council finally

accepted a coordinated approach together with the Parliament and the Commission. It was a great achievement that was celebrated by both the civil society and the members of the Parliament. I would like to mention that in the EP, the agreement was recognized by 645 MEPs, 92% of the Chamber. The three institutions have signed the interinstitutional Agreement a week ago.

Under the new register, Member States' officials should systematically meet with registered interest representatives only, in line with current practices in the European Parliament and the Commission. We have not started from the scratch. The European Parliament is one of the most transparent institutions in the world, and by Member States adopting a similar approach through the joining our open working method, it contributes to a healthy debate culture in Europe in which citizens can understand how the decisions are being made. Very important for the Parliament, was the fact that we safeguarded the freedom of mandate for Members of Parliament, while putting in place terms for an instrument that will be truly effective.

The agreement shifts the focus from the legal status representatives have to an activity-based approach. This builds on what the two institutions have already been doing since 2011 and improved in 2014, and what made registration obligatory in practice for lobbyists. The agreement covers all lobbying activities, whether they involve direct or indirect communications with the three institutions. This was an important achievement, since Parliament's experience with lobbying is one that includes many indirect paths, be that online or via public opinion shaping. It defines covered and non-covered interests and creates an equal footing among the three institutions.

We wanted and achieved the necessary conditions for ethical interest representations at EU level and at the same time ensured meaningful participation of the Member States. We have pushed for an understanding of conditionality that is broader than the 'no registration, no meeting' rule. Now it will be rather 'no representation without registration'. Conditionality means that registration in the Transparency Register is an essential precondition for interest representatives to perform certain lobbying activities.

The scope covers the activities of non-diplomatic representatives of third countries. This means that public affairs consultancies will be required to list any third country government or body thereof on whose behalf they lobby the institutions within the sense of the agreement.

The agreement provides a framework for a coordinated approach to lobbying, which the signatories implement by means of individual decisions. This means that each institution will decide which lobbying activities require registration. SEAP members will already be familiar with the Parliament's rules concerning access badges, speaking at Committee hearings or supporting intergroups.

New measures could be introduced, and will definitely be introduced in the future, and these would be published on the Transparency Register, in order to inform registrants.

I believe that conditionality measures should be and, in fact, will be complemented by other transparency measures, to strengthen the added value of our tripartite regime.

You will be aware of Parliament's new practice of publishing meetings held with interest representatives, and today almost half of Members publish such meetings, also beyond those files they have responsibility for, adding up to over 10,000 meetings published on Parliament's website in a space of 18 months.

This Transparency Register should continue to be a model and show our continued common commitment to transparency at European level. In this respect, I believe that the central publication of all the measures adopted by the three institutions on the Transparency Register website will ensure transparency and provide the necessary visibility, in a one-stop shop.

To conclude, I believe that our common commitment, higher standards, strong coordination, individual implementation and central publication will make this register quasi-mandatory, while keeping the wide scope and taking into account

possible new forms of lobbying (the pandemic has given some examples of how lobbying can adapt and take new (virtual) forms).