

BEYOND EU'S NEW TRANSPARENCY POLICY

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The term „transparency“ has firmly thrived in today's language. Everyone knows it and many use it; yet, few have a very precise conception of its meaning. As a direct consequence of this ambiguity, politicians and institutions can easily enhance their reputation by associating themselves with the concept without much political cost. From a scholarly perspective however, the lack of precision in the uses of transparency is problematic, as it complicates significant discussion of the phenomenon and our expectations of it.

According to A. Schnackenberg¹, within institutional systems, transparency is envisaged to exist naturally when actors share goals. When actors do not share goals, transparency is envisaged to exist only when actors are able to boundary span beyond personal objectives. Transparency strategy is identified as the link between the systemic character of information senders and the level of transparency in their representations. Finally, the author argues that information receivers gauge the systemic character of information senders through the level of transparency in their representations over time.

European Union can be described as a system with a unique type of transparency. A common definition of transparency that can apply to the EU system is difficult to find. „The principle of transparency requires clarity with regard to decision-making, actions, and policies at both the national and international level, in public, mixed, and private institutional settings as to: their position(ing) in the overall context of institutional decision-making; the organizational context in which they are set; the allocation of powers within that structure; the actual process of their establishment, including the parameters according to which it takes place, and their content, including their status.“²

According to the official presentation of the European Commission Transparency portal, „the European Union's activities today affect millions of European

¹ Andrew Schnackenberg, (2009), 'Measuring Transparency: Towards a Greater Understanding of Systemic Transparency and Accountability', Working Paper of Weatherhead School of Management (WP-09-02), <https://weatherhead.case.edu/departments/organizational-behavior/workingpapers/wp-09-02.pdf>, (last accessed on 2 June 2015), p. 48.

² Sophie van Bijsterveld, (2002), *The Empty Throne: Democracy and the Rule of Law in Transition*, Utrecht, Lemma, p. 62.

citizens' lives. The decisions affecting them must be taken as openly as possible. As a European citizen, you have a right to know how the European institutions are preparing these decisions; who participates in preparing them; who receives funding from the EU budget, and what documents are held or produced to prepare and adopt the legal acts. You also have a right to access those documents, and make your views known, either directly, or indirectly, through intermediaries that represent you³. The European Commission Transparency portal „is designed to be your window on this world, giving you direct access to information that will help you to be better informed and better prepared to follow and participate in the EU decision-making process, to enjoy your rights and to play your role as a European citizen to the full“⁴.

In short, at EU level, transparency is indispensable for increasing citizens' understanding of EU decision-making and for enhancing their confidence in EU institutions. Public access to EU institutions' documents strengthens their democratic credentials and helps to close the gap between them and the citizens.

The general level of transparency across the EU system benefits from a strong legal foundation in the EU treaties. Public access to EU institutions' documents strengthens their democratic credentials and helps to close the gap between them and the citizens. The central instrument in the EU to that purpose is Regulation 1049/2001 of the European Parliament and of the Council, setting out the modalities for a right of access to EU documents and regulating transparency of disclosure procedures⁵. However, public scrutiny of EU law-making is vulnerable by blind spots in the process. These include so-called „trilogue“ discussions where EU laws are negotiated behind closed doors between the Council, Parliament and Commission. Sophie in't Veld, a member of the Dutch social liberal party Democrats 66 and of the ALDE group in the European Parliament, promotes in an online article for Euractiv, some simple and cheap measures aiming for more transparency. For example, every European institution and agency should designate an official as transparency officer, responsible for compliance, for improving the handling of access-to-documents requests and classification practices. The transparency officer in each institution has to bring about a true culture of transparency. Transparency must become a key objective, instead of something to be avoided. A transparency officer can be appointed from within the administration, so it does not have to entail any additional cost⁶.

In his opening statement at the European Parliament Plenary Session in July 2014, European Commission President Jean-Claude Juncker pledges in his

³ http://ec.europa.eu/transparency/index_en.htm, (last accessed on 2 June 2015).

⁴ Idem

⁵ Maja Augustyn, Cosimo Monda, (2011), „Transparency and Access to Documents in the EU: Ten Years on from the Adoption of Regulation 1049/2001.“ EIPAScope 01/2011. EIPAScope, 2011 (1). p. 17 http://www.eipa.eu/files/repository/eipascope/20110912103927_EipascopeSpecialIssue_Art2.pdf (last accessed on 2 June 2015).

⁶ <http://www.euractiv.com/sections/eu-priorities-2020/roadmap-transparency-and-away-sir-humphrey-308698>, (last accessed on 4 June 2015).

Political Guidelines⁷, the importance of an enhanced transparency available for all EU's institutions. His proposal demonstrates public institutions leading by example, which could be a crucial step in creating a culture of transparency and restoring trust in public institutions. However, an illusion of transparency cannot lead to real transparency and its only purpose is to alleviate public fears.

According to his 5-year plan, Juncker stresses that „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“⁸ and also „we could do the best possible work but it will be worth nothing if we do not earn the support and trust of the citizens we are working for. So let us be more transparent, because in fact we have nothing to hide. Let us show that this time it really is different and that together we are able to really change and renew Europe.“⁹

The Commission agreed on a common set of rules that will apply to Commissioners, their Cabinets, and the Directors-General of the Commission services. From 1 December, the Commission will, within two weeks of each meeting, publish on its website the dates, locations, names of the organisations and self-employed individuals met and the topics of discussion of its bilateral meetings. Juncker's team is even more ambitious in its initiative to shed light on EU policy making with lobbyists and interest group representatives, and in 2015 will invite the European Parliament and the Council into talks for an inter-institutional agreement, leading to a joint mandatory register for lobbies. European Commission First Vice-President Frans Timmermans said: „For people to regain trust in Europe, we have to open the windows wide and be more transparent about the way we work. It is just as important to enable citizens to know who we meet and why, as it is for the Commission to maintain an open and regular dialogue with stakeholders. The Commission intends to lead by example on transparency matters“¹⁰.

In making this commitment to transparency, Mr Juncker has positioned himself quite clearly on two key issues:

- Transparency is not optional, it's a right. Mr Juncker has indicated that all institutions must respect the commitment to transparency and he is ready to address Council opacity by demanding that it subscribes to the scope of a mandatory Transparency Register.
- Transparency is not just a list of names. As the new Commission President also rightly underlines, knowing who was met with in the context of the

⁷ J. C. Juncker, (2014), A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change. Political Guidelines for the next European Commission. Opening Statement in the European Parliament Plenary Session, Strasbourg, http://ec.europa.eu/priorities/docs/pg_en.pdf, (last accessed on 2 June 2015).

⁸ Idem, p. 13.

⁹ Idem, p. 22.

¹⁰ European Commission Press Release, (25 November 2014), Opening the windows: Commission commits to enhanced transparency, Strasbourg, http://europa.eu/rapid/press-release_IP-14-2131_en.htm, (last accessed on 1 June 2015).

legislative process is a baseline for meaningful transparency. As it stands, the Transparency Register delivers limited insight to the public on exactly what meetings were linked to specific policy changes. The general public have access to a list of organisations and their general lobbying interests but have no way of seeing how many times lobbyists contacted institutions, on which specific piece of legislation they were in contact and whether their interaction was considered as impacting on the process or not. A more dynamic version of the current system is needed to give real effect to the current transparency tools of the EU and Mr Juncker has signalled he is perhaps willing to respond¹¹.

Moving from the current voluntary system of the Transparency Register to a mandatory one is the only way to tackle the flaws in the current register, namely that many lobby organisations continue to boycott it, that the register is full of inaccurate or misleading information, and that there are no effective sanctions for false reporting¹².

Since 27 January 2015, the European Parliament and European Commission have updated and improved their Transparency Register. The latest updates include an extended Code of Conduct and mandatory registration for anyone wanting to meet with Commissioners, Cabinet Members or Director-Generals, or speak at hearings organised by the European Parliament. The Transparency Register is, as yet, not mandatory for all lobbyists.

Commission Vice-President Frans Timmermans renewed the Commission's commitment to a mandatory lobby register but postponed submitting a proposal to the autumn 2015 and rejected the possibility of trying to do so via legislation, instead choosing to implement a sanctions-based system for the unregistered and those who submit false information.

The Vice-President explained that he would look to reform the current register via an Inter-Institutional Agreement (IIA) which he hopes will cover the Commission, the Parliament and the Council. According to a number of NGO's, members of campaigns supporting a mandatory lobby register, these type of agreements can only create binding rules on the European institutions and its officials, not external actors such as lobbyists. This means that lobbies would still not be compelled to sign-up. Its mandatory character would therefore be „de facto“, based on a set of measures designed to incentivize registration (or penalize non-registration), for instance, forbidding officials from meeting unregistered lobbyists and banning unregistered lobbyists from expert groups¹³. Timmermans mentioned in a series of interviews that that the sanction for false reporting

¹¹ <http://www.transparencyinternational.eu/2014/07/junckers-plans-for-eu-transparency-time-to-get-meaningful/>, (last accessed on 1 June 2015).

¹² Vicky Cann, (11 December 2014), „EU lobbying standards: Devil in the details“, The Parliament Magazine, <https://www.theparliamentmagazine.eu/blog/eu-lobbying-standards-devil-details>, (last accessed on 1 June 2015).

¹³ <http://www.access-info.org/frontpage/15940>, (last accessed on 1 June 2015).

ought to be the same as not registering at all - no access to policy makers, and no meetings with Commissioner or their underlings. However, he did not outline who would be monitoring the register or how they would determine whether the information supplied was true or false.

The Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU) has urged Frans Timmermans to take strong and urgent action to create a high-quality and legally-binding EU lobby transparency register in a letter sent to him on May 11, 2015, signed by 113 non-governmental organisations and trade unions from across Europe, and supported by the European Parliament Intergroup on Integrity.

The letter calls on the Commission to adopt measures to reduce opportunities for unethical lobbying and to ensure a better balance between corporate and public interest groups in the access to, and influence they have on, EU decision-making processes. It brings into attention the major weaknesses of the EU Lobby Register. Firstly, it is still not obligatory. Lobbyists determined to avoid transparency will continue to get away with it unhindered. Secondly, disclosure requirements are too limited to give a comprehensive picture of who the EU's lobbyists are; who they are working for; what their financial means of influence are; how much they spend influencing; and what specific dossiers they lobby on. Moreover, too much information disclosed within the register is vague and can even be misleading. And thirdly, the lack of adequate capacity to monitor entries properly and to apply sanctions means that lobbyists who fail to follow the rules can do so without fear of sanction¹⁴.

The signatory organisations to the letter, have specifically called on the Commission to: immediately extend its ban on meeting unregistered lobbyists so that it applies to all staff, to further boost registrations; make detailed proposals on the disclosure of additional and more precise information, including further details about the dossiers lobbied on; commit to an open and transparent process with other EU institutions to improve the lobby register, which would include substantial opportunities for input by citizens and civil society; commit to increasing the resources devoted to this area so that monitoring and enforcement of the rules can become far more effective; commit to including the objective of a lobby register that is legally-binding on lobbyists and thus truly mandatory (requiring legislation) in its proposed Inter-Institutional Agreement as a medium-term option to ensure that all EU lobbyists sign up; civil society groups have previously welcomed the steps the Juncker Commission has taken to increase lobby transparency at the European level, including the ban on senior Commission representatives holding meetings with unregistered lobbyists. However, since the ban on meetings with lobbyists only covers around 300 people out of a Commission staff of 33,000, the current measures still do not go far enough to ensure that the register is „mandatory“ in practice.

¹⁴ The Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), (11 May 2015), Over 100 NGOs urge EU Commission to make the lobby register legally binding, <http://alter-eu.org/press-releases/2015/05/11/113-ngos-demand-legally-binding-lobby-register>, (last accessed on 1 June 2015).

On 28 April the deadline expired for all organisations on the EU Transparency Register to perform an update of their registration. Organisations that did not update were suspended and no longer appear in the public database of the Transparency Register. Transparency International has gone through the list of 1552 organisations that disappeared, at least for a period from the register, like Gazprom.

The Transparency Unit of the European Commission that supervises the Register announced the press that organisations that failed to update are suspended for another two weeks before final deletion from the database. Organisations that are deleted lose their access badges to the European Parliament and should no longer be able to meet with high level officials in the European Commission.

The conclusions are easy to draw. On 4 June 2015, there are 7734 registrants in the EU Transparency Register¹⁵ out of 30.000 lobbyists. The Commission would push to have a common mandatory register between all three institutions, making a proposal by the end of 2015. Until then, the Register portal is happy to announce that it managed to bring ten improvements:

- Modern design and easier navigation from the homepage
- More straightforward registration process
- Comprehensive guidelines and updated frequently asked questions (FAQs)
- Extended search options
- More efficient Helpdesk services
- Improved European Parliament accreditation procedure
- Live updates of most recent registrations
- Useful links to information sources and related background
- All registrants to declare financial information on an equal basis
- Increased disclosure of relevant activities.

„A mandatory lobby register would help balance the influence that wealthy elites have over rule-making compared to public interest groups. The EU must put people first and powerful interests of a few, second“¹⁶.

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