

PRCA's response to the Public Consultation on a proposal for a mandatory Transparency Register

Introduction

- + The PRCA is the professional body representing lobbyists and communications professionals. Our membership includes consultancies (including around 75% of the "PR Week Top 150"), in-house teams and individual practitioners. Members include organisations as diverse as charities, banks, professional bodies, law firms and the entire Government Communications Service. We represent around 350 consultancies and 250 in-house teams. We are the largest association of our type in Europe and MENA.
- + Of our 20,000 individuals who are members of the PRCA, around 1,500 are lobbyists.
- + There are currently 103 members on the PRCA Public Affairs Register. This includes the largest consultancies such as MHP Communications, Weber Shandwick, H+K Strategies and Edelman, alongside specialist and smaller organisations. We also represent in-house teams for organisations as diverse as the NSPCC, AXA, Visa, Local Government Association and Nationwide.

A. General Part

1. Transparency and the EU

1.1

a) Do you agree that ethical and transparent lobbying helps policy development?

- + Partially agree.
- + We agree that ethical and transparent lobbying helps policy development and is necessary for a thriving democracy. Public officials clearly benefit from the expertise lobbying brings to the decision-making process. Lobbyists also have the right, whether as an individual or a company to inform the legislative process.
- + However, we must stress that the onus to be transparent should not solely lie with lobbyists. The lobbying community is clearly committed to transparency and solely placing the burden on lobbyists to declare their activities is a disservice to transparency and creates negative myths about the industry. Public officials should also ensure that their meetings with lobbyists are accurate and declared publicly in a timely manner in the interest of transparency. They should also be easily accessible to the public. This is the only way to ensure that the Union's institutions are held accountable.
- + Similarly, lobbyists subscribe to a code of conduct by appearing on the transparency register and are therefore expected to behave in an ethical manner which helps improve transparency. It is important to note that lobbyists subscribe to other codes of conduct in relation to lobbying EU institutions such as The European Public Affairs Consultancies' Association (EPACA) code of conduct and the Society of European Affairs Professionals (SEAP) code of conduct. Furthermore, lobbyists also subscribe to code of conducts in member states such as the Transparency Code in Ireland, voluntary codes of conduct such as the PRCA's code and the code of conduct under the forthcoming Lobbying Register in Scotland.
- + In contrast, the transparency register's code of conduct does not hold the union's officials' ethical behaviour to the same standard. The register's code of conduct does not specifically mention that EU officials must act ethically in accordance with the rules and standards of behaviour applicable to them. There is no mention of the code of conduct for MEPs or Commissioners. This exclusion is troubling as it places the responsibility on lobbyists to behave ethically even when public officials may be the ones behaving in a non-compliant manner.

b) It is often said that achieving appropriate lobbying regulation is not just about transparency, i.e. shedding light on the way in which lobbyists and policy-makers are operating. Which of the below other principles do you also consider important for achieving a sound framework for relations with interest representatives?

- + Proportionality and Inclusivity.

- + We strongly agree that achieving appropriate lobbying regulation is not just about transparency, it should also be about proportionality and inclusivity.
- + The requirement to be transparent should not place an unnecessary burden on lobbyists to declare their lobbying activities. The register as it currently stands is not proportionate as the information required on the register is onerous and the balance of responsibility solely lies with the lobbyist.
- + Lobbyists are expected to declare their general information such as organisation name, address, contact details and principal point of contact. Lobbyists are also required to declare the number of people employed who are involved in the activities covered by the register, their goals, fields of interest, activities, membership of organisations, links with EU institutions, financial information related to the activities covered by the register, turnover attributable to these activities, budgets and sources of funding. In contrast the Commission's public officials are only required to declare the date, location, entity met and the subject of their meetings. Asking lobbyists to declare this volume of information does nothing for transparency. Equal levels of transparency could be achieved by asking lobbyists to declare employee lists, fields of interest and client lists.
- + We also believe that a register must be truly inclusive and it should level the playing field – a lobbyist is a lobbyist is a lobbyist. There should be no exemptions as we believe that a “lobbyist” is not defined by any specific profession of the person lobbying, but by the “act of lobbying in a professional capacity” itself. Any lobbying register must be universal in order to capture all who perform the “act of lobbying in a professional capacity”.

c) In your opinion, how transparent are the European institutions as public institutions?

- + They are relatively transparent.
- + We appreciate that EU officials are required to declare all their meetings with organisations and self-employed individuals. However, the diaries in their current state do not ensure the utmost transparency. As mentioned earlier, in contrast to the information required by lobbyists on the transparency register, EU officials simply need to declare the date, venue, entity met and subject of their meeting. Furthermore, as with Ministerial diaries in the UK, the meetings declared by EU officials are not kept up to date in a timely and regular manner and are not easily accessible which is of no use to the public.
- + We are also concerned by the fact that junior officials such as heads of unit and desk officers are not required to declare their meetings with lobbyists. This must be addressed immediately to ensure transparency across all EU institutions as these junior officials are key players in the decision-making process.

- + Finally, the EU institutions should address the lack of cross-referencing between agendas and meetings as they do not tend to have the same information in relation to meetings with lobbyists. We do not anticipate that it would be difficult to synchronise these separate resources.

1.2

Do you consider the Transparency Register a useful tool for regulating lobbying?

- + Somewhat Useful.
- + We certainly appreciate the register's broad scope in that it covers everyone from consultant lobbyists to in-house professionals. The PRCA has long argued that any lobbying register must include in-house lobbyists, law firms and think tanks among others in order to be an accurate representation of the industry.
- + However, the register must be mandatory and while we appreciate that organisations who do not appear on the register cannot lobby senior officials, the register still has a limited deterrent effect on those who do not comply with codes of conduct and do not appear on the register. Under the current system, there is little in place in terms of sanctions to punish non-compliance. We strongly believe that there should be statutory powers in place to penalise organisations for non-compliance. The system of sanctions in the Companies Act 2006 in the UK, for instance, include the proportionate approach that small offences should face a warning notification prior to any civil penalties. More serious offences, such as deliberately misleading information, should face larger civil fines and/or criminal proceedings.
- + The need for a mandatory system with sanctions is heightened by the fact that registration offers a range of incentives from access to Parliament buildings, meetings with Commissioners and public consultations. With this in mind, it is unsurprising that organisations would want to register and potentially provide some inaccurate information in order to make use of the benefits of registering.
- + We also believe that the information registrants are required to disclose is onerous especially when it comes to financial disclosure. It is often hard for organisations to estimate their revenue from a particular client and estimate their budget for lobbying activities. From a professional association's perspective, we do not have an allocated budget on lobbying activities and it is mostly calculated by the hours two full-time staff spend on lobbying. However, as an organisation we do not allocate specific hours that should be spent on lobbying and we often rely on the expertise of our voluntary chairmen who choose to join us in meetings with MPs and advise us on our lobbying activities. In this context, it would be almost impossible to estimate our budget for lobbying as we do not employ our Chairmen and members in a professional capacity. Furthermore, the figures on the register tend to fluctuate significantly and are at best vague estimates. It is hard to see how accurate this information is in reality and ultimately it may be of no use to the end user.

- + Under a mandatory register with sanctions, the issue of reliable financial data would be even more problematic with the prospect of registrants facing sanctions for overestimating or underestimating their budgets and revenues.

2. Scope of the Register

2.1 Activities covered by the Register include lobbying, interest representation and advocacy. It covers all activities carried out to influence - directly or indirectly - policymaking, policy implementation and decision-making in the European Parliament and the European Commission, no matter where they are carried out or which channel or method of communication is used.

This definition is appropriate:

- + Partially Agree.
- + We strongly agree with the broad definition and scope of the register in that it covers indirect and direct lobbying of officials and covers all forms of communication. We believe that the register has a good pool of registrants and the definition is broad enough to capture a majority of the industry. However, we also believe that that the definition could be improved significantly in order to be a truly representative register.
- + The register as it currently stands only requires lobbyists to disclose their meetings with MEPs, Commissioners, cabinets and directors-general. We believe the definition should be expanded to include desk officers and heads of unit who are often contacted by lobbyists on a regular basis. In fact, these officials draft policy and work alongside directors-general on new laws and are certainly important players in the decision-making process.
- + The PRCA has long argued that the UK Register of Consultant Lobbyists should cover special political advisers (SPADs) as they are often involved in the decision-making process and are regularly targeted by lobbyists. In contrast, the Register of Consultant Lobbyists only covers direct communications with Ministers or Permanent Secretaries (the most senior civil servant in a department). Despite their seniority, lobbyists do not usually have access to these figures. More importantly, Permanent Secretaries do not engage externally and as such the industry does not engage with them.

2.2 The Register does not apply to certain entities, for example, churches and religious communities, political parties, Member States' government services, third countries' governments, international intergovernmental organisations and their diplomatic missions. Regional public authorities and their representative offices do not have to register but can register if they wish to do so. On the other hand, the Register applies to local, municipal authorities and cities as well as to associations and networks created to represent them.

The scope of the Register should be:

- + Changed to include certain types of entities.
- + We believe there are clearly some common-sense exemptions and we largely agree with all the exemptions on the register. However, we do not believe that churches and religious

communities should be exempt from registering as this is not a natural distinction. We have consistently argued that any transparency register must be truly inclusive to level the playing field. A lobbyist is a lobbyist is a lobbyist – churches and religious communities are no different from consultant lobbyists or in-house lobbyists. They are simply one in many organisations that need to be heard and expect the same outcome from lobbying.

- + The Register does however need to clearly define common-sense exemptions to protect everyone’s democratic right to lobby. Journalists are a clear exemption because they certainly influence public opinion but more importantly they contribute to the debate. They should be able to meet EU officials freely without having to appear on the transparency register. Another common sense exception are constituents lobbying their local MEP on constituency issues. These exemptions should be clearly defined in the Interinstitutional Agreement.

- + We appreciate that the register has specific provisions to exempt organisations from registering if they are providing legal advice to their clients or are responding to information requests from EU institutions. However, we are concerned that law firms may be abusing client-attorney privilege in order to lobby on behalf of clients without disclosing their clients. It is clear that law firms provide their clients with lobbying services such as face-to-face meetings with MEPs and European Commission officials as well as strategic advice on how to influence the EU institutions. The Transparency Register certainly has clear provisions to ensure that law firms conducting lobbying activities are not exempt from registering but these provisions should be enforced more stringently in order to capture all the organisations conducting lobbying services in Brussels.

3. Register Website

3.1 What is your impression of the Register website?

- + Design and Structure: Average
- + Availability of information/documents: Average
- + Ease of search function: Poor
- + Accessibility: No Opinion
- + Access via mobile devices: No Opinion

- + The Register’s search function could be improved by including an alphabetic list of organisations registered by member states. Other than that, it is reasonably straightforward to search for relevant documents on the website and look up specific organisations on the register.

Part B.

1. Structure of the Register

1.1. The Register invites organisations to sign up under a particular section, for example, professional consultancies, NGOs, trade associations, etc (Annex I of the Interinstitutional Agreement).

Have you encountered any difficulties with this categorisation?

- + Yes.

- + We appreciate that the Register's scope extends to consultancy lobbyists as well as in-house lobbyists including everyone from think tanks to trade and business associations. The scope of transparency register extends to all and as such the register has a good pool of registrants. However, the definitions that distinguish the organisations on the register are arbitrary and we do not believe they serve to improve transparency. Distinguishing the organisations on the register in this manner risks creating a two-tiered system of lobbying in which certain types of lobbying conducted by consultancy firms and law firms is considered to be "real" lobbying and other forms of lobbying such as those conducted by not-for-profit organisations is an "inferior" form of lobbying. It also risks creating a perception of the "malicious" lobbying conducted by companies in contrast to the "benign and charitable" lobbying conducted by not-for-profit organisations.

- + We believe that the transparency register should level the playing field and distinguishing organisations on the register in such an arbitrary manner risks creative unhelpful myths about the lobbying industry. Equal levels of transparency could be achieved by simplifying the categories to consultancy and in-house lobbyists. It is important to note that lobbyists within professional bodies and companies are still in-house professionals. Therefore, creating unnecessary categories can often confuse the end-user rather than provide them with clarity.

2. Data disclosure and quality

2.1 Entities joining the Register are asked to provide certain information (contact details, goals and remit of the organisation, legislative dossiers followed, fields of interest, membership, financial data, etc) in order to identify the profile, the capacity of the entity and the interest represented (Annex I of the Interinstitutional Agreement).

The right type of information is required from the registrant:

- + Too much is asked.

- + We believe that too much is asked and a lot of the information asked from registrants does nothing to improve transparency and in many ways hinders it. It is important to consider what information is valuable to the end user and a lot of the information of the register may not necessarily interest the wider public. As mentioned earlier, we believe that a register should provide the utmost transparency but it should also be proportionate and should not be onerous for registrants to fill out.

- + First, asking registrants to disclose their goals and the remit of their organisations is often a redundant task. Many organisations would, if asked to be honest, state that their organisational goal is for no legislation to ever affect their business practice. This is hardly every cited as a goal on the transparency register, therefore we are not convinced that asking organisations to declare their goals sheds light on the organisation's work. If anything, everything provided under this section could be easily found on the relevant organisation's website and would lessen the administrative burden on lobbyists. We also think that the information under fields of interest is replicated under the main EU initiatives, policies and legislative files followed by the organisation.
- + Secondly, asking registrants to estimate the percentage their staff spends on lobbying activities is trivial as it does not provide any information on how the organisation operates its lobbying activities and it is clearly onerous. In any case the percentages provided on the register are vague estimates and everyone working in the lobbying industry is aware that their workload differs from one day to another.
- + Finally, we have also previously discussed how the disclosure of financial data is problematic and unreliable therefore adds little to transparency. From our experience, disclosing our budgets on lobbying activities, for example a face-to-face meeting would require us to consider each staff member present and then divide their salary, office overheads, employees' costs and travel costs by the number of hours that meeting took. Furthermore, financial disclosure suggests that money equates influence which is a disservice to the industry and the public. Not only would this task be extremely onerous but it would not provide an accurate figure.

2.2 It is easy to provide the information required:

- + No opinion.
- + We believe that the process of providing information on the register is onerous but as an organisation that is not on the register we have no opinion on the input of information.

2.3 Do you see any room for simplification as regards the data disclosure requirements?

- + Yes.
- + First, we believe that organisations should not be required to disclose financial data especially in its current form where organisations are required to disclose the estimate revenue from each client and are expected to disclose their budgets.
- + Secondly, the goals section should be removed and the fields of interest section should be merged with main EU initiatives followed by the organisation.

- + Finally, organisations should no longer be required to disclose how much time staff spend on lobbying activities. Furthermore, financial disclosure suggests that money equates influence which is a disservice to the industry and the public.

2.4 What is your impression of the overall data quality in the Register:

- + No opinion.
- + As an organisation that has never appeared on the register we have no point of reference for the quality of returns.

3. Code of Conduct and procedure for Alerts and Complaints

3.1 The Code of Conduct sets out the rules for all those who register and establishes the underlying principles for standards of behaviour in all relations with the EU institutions (Annex III of the Interinstitutional Agreement).

The Code is based on a sound set of rules and principles:

- + Disagree.
- + The PRCA fully supports the development of ethical and professional standards, requiring all our members who lobby to sign up to the PRCA Code of Conduct, which contains eighteen specific points relating to lobbying. These include the requirement for PRCA members conducting lobbying to be open in disclosing the identity of their employers and not misrepresenting their interests, the requirements for PRCA members to not employ any sitting MP, MEP, sitting Peer, MSP or member of the regional assemblies and the requirement for lobbying to be kept strictly separate from their personal activity or involvement with a political party.
- + With this in mind, we believe in preserving the distinction between those who are committed to transparency and openness and those who are not. The existence of a statutory code has the potential to undermine established and successful codes and remove this distinction for politicians, businesses and the public viewing the Register who wish to make an informed decision about the ethical standing of the organisations which appear.
- + A statutory code of conduct risks a situation where members of the public viewing the Register assume that all organisations on there are committed to the high level of ethics we have cultivated over the past decades. It also unintentionally risk disregarding a long history of voluntary adherence to ethics.
- + An advantage of our industry code – compared to a statutory code – is flexibility; we can change and review the PRCA Code of Conduct to reflect the changing political environment or emerging techniques relatively quickly.

- + It is also worth noting that UK Register of Consultant Lobbyists, which is often upheld as the model transparency register across Europe, did not introduce a statutory code of conduct. Instead it allows organisations on the register to declare if they subscribe to a relevant code of conduct such as the PRCA's code which has the powers to expel non-compliant members. In this contexts the end user is able to distinguish those organisations committed to ethical standards and those who are not.

3.2 Anyone may trigger an alert or make a complaint about possible breaches of the Code of Conduct. Alerts concern factual errors and complaints relate to more serious breaches of behavioural nature (Annex IV of the Interinstitutional Agreement).

a) The present procedure for dealing with alerts and complaints is adequate:

- + Partially agree.
- + We fully agree that anyone should be able to make a complaint about factual errors and more serious instances of non-compliance. The PRCA, for example accepts complaints from any member of the public in relation to our members' conduct. However, we have long argued that any transparency register should be complemented with a series of sanctions to punish non-compliance. We do not anticipate the frequent use of sanction as in our experience of running the industry's voluntary register, errors are promptly corrected once highlighted and subsequently not repeated.
- + The most serious breach under the transparency register's code of conduct would in the worst case scenario warrant the organisation's removal from the register for one year, the potential publication of the measure in the register following a decision by the Secretaries-General of the European Parliament and of the European Commission and finally a formal decision to withdraw access to European Parliament premises following a decision by the College of Quaestors.
- + In contrast, the Office of the Registrar of Consultant Lobbyists in the UK has the power to impose civil and criminal sanctions in the event on non-compliance. The Registrar also has the power to publish the details of any investigations surrounding non-compliance on the register.
- + Of course, a strong system of sanctions would only work if the register was mandatory therefore a mandatory system along with a strong set of sanctions would ensure compliance and the utmost transparency.

b) Do you think that the names of organisations that are suspended under the alerts and complaints procedure should be made public?

- + Yes.
- + We fully agree that the names of organisations suspended should be made public on the register in the interest of transparency. The PRCA has the power – as defined in our PRCA Arbitration and Disciplinary Procedures – to, alongside termination of membership, warn, admonish or

reprimand. These may be published and we have chosen to do so in every recent case. Fuel PR, for instance, had its membership terminated in September 2015 and their managing director was stripped of her PRCA fellowship. At every stage, the PRCA published information relating to the case.

- + This procedure is clearly laid out alongside the PRCA Code of Conduct and members are obliged to familiarise themselves with both of these: professionals are not compelled to join the PRCA, and therefore these requirements represent something voluntarily taken on by the member when they join.

4. Register website – registration and updating

4.1 How user-friendly is in your opinion the Register website in relation to registration and updating?

- + Registration process: No opinion
- + Updating process (annual and partial): No opinion

5. Current advantages linked to registration

5.1 The European Parliament and the European Commission currently offer certain practical advantages (incentives) linked to being on the Register. The Commission has also announced its intention to soon amend its rules on Expert groups to link membership to registration.

Which of these advantages are important to you?

In the European Parliament:

- + Access to Parliament buildings: No opinion
- + Committee public hearings: No opinion
- + Patronage: No opinion

In the European Commission:

- + Meetings: No opinion
- + Public Consultations: No opinion
- + Patronage: No opinion
- + Mailing lists: No opinion
- + Expert groups: No opinion

6. Features of a future mandatory system

6.1 Do you believe that there are further interactions between the EU institutions and interest groups that could be made conditional upon prior registration (e. g. access to MEPs and EU officials, events, premises, or featuring on specific mailing lists)?

- + No.

- + As with the forthcoming Lobbying Register in Scotland, the PRCA has consistently argued that there should be a grace period to ensure no one is prevented from lobbying by having to register before carrying out work which might arise ad-hoc. A reasonable time period for lobbyists to submit information returns is two weeks after the lobbying occurred. Prior registration would potentially negatively affect normal business practices and lobbying activities. It also harms the individual's democratic right to lobby.

6.2 Do you agree with the Commission's view that the Council of the EU should participate in the new Interinstitutional Agreement on a mandatory Register?

- + Yes.
- + It would make sense for the Council of the EU to participate in new Interinstitutional Agreement on a mandatory register. The ministers in the Council of EU are lobbied and are as involved in the decision-making process as the European Parliament. They are heavily involved in amending legislation from the European Commission and as a result, lobbyists often target attachés who take part in Working Party negotiations.

7. Looking beyond Brussels.

7.1 How does the Transparency Register compare overall to 'lobby registers' at the EU Member State level?

- + It is better.
- + From a UK-wide perspective, the EU Transparency Register certainly excels in scope and its pool of registrants in comparison to the UK Register of Consultant Lobbyists and the forthcoming Lobbying Register in Scotland.
- + The transparency register covers everyone from consultant lobbyists, not-for profit organisations and trade associations. In contrast the UK Register of Consultant Lobbyists only extends to consultant lobbyists, effectively excluding 80% of the lobbying industry in the UK. The Lobbying Register in Scotland fares better in that it covers consultancy and in-house lobbyists, however it does exclude voluntary lobbying even though they are able to register voluntarily.
- + The transparency register has another advantage in that it covers all forms of lobbying whether indirect or direct and it covers all forms of communications. The Lobbying Register in Scotland in comparison only covers face-to-face communications and the UK Register of Consultant Lobbyists only covers written and/or oral communications. The scope of the transparency registers in the UK are extremely narrow and often organisations on the UK Register of Consultant Lobbyists will only declare a handful of clients in comparison to the number of clients they declare on the PRCA's voluntary register which includes a broader definition of lobbying.

- + Finally, we appreciate that organisations can register for free and have access to a range of benefits such as access to the European Parliament premises. The UK Register of Consultant Lobbyist is prohibitive in terms of its costs as registrants face an annual fee of £1000 pounds to register even if they do not declare any clients. Furthermore, the Cabinet Office has indicated that it will increase fees even further which will likely dissuade people from registering and push organisations to change their business practices. The deficit borne by the Office of the Registrar of Consultant Lobbyists could be remedied by extending the scope to in-house lobbyists.
- +
- + The Transparency Register does have its limitations and it could draw lessons from the Registers in the UK to enhance transparency.
- + As mentioned throughout this consultation, the fact that the Transparency Register is not mandatory and does not have a system of sanctions in place severely limits its ability to deter non-compliance. The authorities maintaining both registers in the UK have the ability to impose sanctions whether civil or criminal and can publish the details of the investigation process. This acts a deterrent for non-compliance and it also ensures that public is confident that any acts of non-compliance will not be tolerated. The PRCA clearly favours an educative approach and officials maintaining the register should always prioritise educating registrants and potential registrants but in the cases of extreme non-compliance, sanctions should be used if necessary.
- + Another limitation of the Transparency Register is its statutory code of conduct, like the Lobbying Register in Scotland because it lowers the bar and undermines established and successful codes. A statutory code of conduct risks creating a perception from the public's perspective that all the organisations on the register are committed to high levels of ethical standards. Finally, a statutory code does not have the advantage of flexibility, unlike the voluntary codes of conduct that can adapt to a changing political environment. For example, the PRCA code of conduct undergoes a review process every two years and it is often triggered by a changing environment in the industry.
- + Finally, the issue of financial disclosure is unworkable and does nothing to improve transparency, which is why neither transparency register in the UK require registrants to disclose their financial data. It is worth noting that there was an appetite for financial disclosure during the initial stages of the Lobbying Register in Scotland but the Bill team was dissuaded from implementing it as a result of our meetings with them.