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Lobbying in the EU: prospects and challenges of the mandatory transparency register

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Lobbying practice is an essential part of the decision-making process in the European Union. The promotion of the practice of lobbying in institutions of the European Union quite naturally raised the question of regulating this activity according to the standards that arise from the EU-founding treaties and the Charter of Fundamental Rights of the European Union. The European Parliament and the European Commission set up in 2021 the EU Transparency Register through an interinstitutional agreement, later joined by the Council. The interinstitutional agreement of 2021 states a mandatory register system to eliminate the deficiencies of the voluntary system and provide additional registration incentives. A big role for improving of lobbying regulations has been played by the Court of Justice of the European Union. In recent years, the ultimate interpreter of European law has passed several judgments that set lobbying activities boundaries and the rules applicable to conflict-of-interest situations. The objective of this work is to analyse the regulation and operation of the EU Transparency Register and the most relevant jurisprudential pronouncements as well as the prospects and challenges of the mandatory system recently implemented.

KEYWORDS

lobbying, European Union, transparency register, participation, accountability

1 Introduction

Nowadays, few decision-making processes remain unaffected by the influence exerted by lobbies. Indeed, regulation of interest groups is no longer exclusive to Anglo-Saxon or American law traditions, and it is now understood as a key element in achieving transparency and good governance in various types of political and institutional systems, including international organizations like the European Union, where lobbying activities have become somewhat naturally integrated into the functioning of different institutions (Ridao et al., 2024, p. 31).[1]

However, the exercise of power within the EU presents certain particularities that have inevitably impacted both the practice of lobbying activities and their regulation (Álvarez Vélez and De Montalvo Jääskeläinen, 2014; Araguàs Galcerà, 2016). Legislative power does not solely reside in the Parliament, as it also lies with the executives of the Member States and is expressed through the Council of the EU. Moreover, the executive power (the Council itself and, notably,

1 This option contrasts with the legal reality of the Member States, where the majority of countries do not have regulations on influence activities. Among the countries that have passed laws related to lobbying activities are: Germany (1951/1980/2022), Lithuania (2001); Poland (2003); France (2009); Slovenia (2010); Austria (2019); Lithuania (2015); and Ireland (2015).

the Commission) does not stem from parliamentary majority; it cannot dissolve Parliament, although it can censure it; and it becomes a legislative power through comitology (secondary legislation), meaning that all laws emanate from the European Commission, which holds a monopoly on legislative initiative, a power neither Parliament nor the Council possesses. Nonetheless, the Member States oversee this process through national experts, working groups, and advisory committees (Alonso Pelegrín, 2016, pp. 168–171).

In this context, the need to regulate lobbying activities in the European Union began to take shape in the mid-2000s and was reflected in various documents and initiatives that laid the groundwork for the current regulation. Among these, a prominent role was played by the *Green Paper on the European Transparency Initiative* (2006),[2] prepared by the Commission; the so-called *Stubb Report*, approved by the Plenary Session of the European Parliament in 2008; and the decision of the European Parliament, also adopted in 2008, to form an interinstitutional agreement with the Commission on this matter,[3] which resulted in the first European regulation concerning interest groups.

And indeed, through the Agreement of the Commission and Parliament of July 23, 2011 (OJ EU 22.07.2011), both institutions jointly implemented the first Transparency Register for organizations and self-employed individuals involved in the development and application of European Union policies. The register was created with the aim of making the EU's decision-making process as transparent and open as possible. In the words of the institutions that signed the Agreement, it was designed to address "basic questions such as what interests are being pursued, who is defending them, and with what budget." This Agreement only covered the two institutions that signed it, as was the case later with the Agreement regarding the same Register dated April 16, 2014 (OJ EU 19.09.2014).

Under the Interinstitutional Agreement of May 20, 2021 (OJ EU 11.06.2021), currently in force, the Register has finally extended to cover the activities of the Council. Furthermore, under this Agreement, registration is now mandatory, moving away from the voluntary system established in previous agreements. This shift raises the question of what results are expected from the change in the nature of the register and the main challenges it poses. This analysis must necessarily take into account the principles of Community Law, as well as the case law of the Court of Justice of the European Union, which has played a key role in establishing the rules and limits governing lobbying activities.

Given the above, the first part of this work is dedicated to examining the characteristics of lobbying activities aimed at European Union policies. This is followed by an analysis of the initial steps taken to regulate lobbying activities, focusing first on legislative initiatives, and then addressing the jurisprudence in this area. Certain judgments and pronouncements of the Court of Justice of the European Union have not only validated lobbying activities but also set important limits on them, significantly contributing to the current regulatory framework. Next, the various agreements related to the Transparency Register for lobbying activities will be studied, culminating with the aforementioned 2021 Interinstitutional Agreement. Finally, a series of reflections will be made on the mandatory registration system, highlighting the perspectives opened up by this change and the challenges yet to be resolved. Among these challenges is the significant gap revealed by the recent Qatargate scandal, which exposed the weaknesses of a registration system designed for individual lobbying activities and failed to account for the importance of transnational lobbying activities.

2 Analysis and diagnosis of lobbying based in Brussels

Brussels, the capital of the EU and the main seat of its institutions, hosts over 12,800 organizations that officially engage in lobbying, according to the EU's own Transparency Register.[4] These include professional federations, chambers of commerce, unions, individual entrepreneurs, banks, regions, religious organizations, and associations of all kinds. However, this number is far lower than the real figure. It is estimated that Brussels has nearly 30,000 lobbyists, almost as many as employees of the Commission (32,000).[5] This makes Brussels, after Washington, the city with the highest concentration of people seeking to influence legislative processes and general political decision-making, in a unique framework of 27 states and around 500 million citizens. It could be said that parallel to the gradual increase in the political power of European institutions over the last two decades, corporate lobbying has come to "colonize" large areas of the European district of the EU capital. This has created a complex universe that, until recently, was beyond the understanding of many activists. This complexity lies, of course, in the fact that lobbying activity often spreads through a multi-level strategy in order to build stronger legitimacy (Ridao, 2017, 2018).

Certainly, transparency and public awareness have begun to change some behaviours and even social perception in recent years. This has been the case, for example, in the discussions surrounding the US-EU trade agreement known as the Transatlantic Trade and Investment Partnership (TTIP), which covers a range of areas from pharmaceutical regulation and employment policy to data protection and agriculture.[6] The chapter on Investor-State Dispute Settlement

2 COM (2006) 194, of May 3, 2006. The initiative was launched in 2005 by the European Commissioner for Administration, Audit, and Anti-Fraud, Siim Kallas.

3 P7_TA (2011). Decision of the European Parliament, of May 11, 2011, on the conclusion of an interinstitutional agreement between the European Parliament and the Commission regarding a common Transparency Register [2010/2291(ACI)].

4 Consult: https://transparency-register.europa.eu/index_en [Last accessed: 25.07.2024].

5 Data provided by Corporate Europe Observatory in the report 'Lobby Planet Brussels.' It can be consulted at: https://corporateeurope.org/sites/default/files/lp_brussels_report_v7-spreads-lo.pdf [Last accessed: 25.07.2022].

6 It is estimated that during the preparation of the TTIP negotiations, more than 130 closed-door meetings took place, and at least 119 (more than 90%) were with corporations and their respective lobbying groups. There is also information indicating that the Directorate-General for Trade of the European Commission invited some of the corporate lobbying groups to meetings and requested their opinions. It can be consulted at: https://www.ahorasemanal.es/lobbies-en-la-union-europea,-quien-esta-al-mando [Last accessed: 25.07.2024].

(ISDS), which deals with arbitration between companies and states in the event of conflict, has been a focal point of lobbying efforts. With good reason, it is anticipated that major international corporations could create legal barriers against the democratic decisions of sovereign states or supranational associations whenever those decisions threaten their profits.

At the same time, this increased civic awareness has helped to expose episodes of questionable integrity on the part of lobbies, especially since 2011, the year the first EU regulations on lobbying were introduced. Notable examples include the so-called *Luxleaks* (2014), Volkswagen's *Dieselgate*[7] (2015), and, more recently, *Qatargate* (2022).[8]

All these cases highlighted the problems arising from insufficient or weak regulation, damaging the reputation of public institutions both in Brussels and at national level. Additionally, in the case of Qatargate, the weaknesses of a system designed to control potential interference by private actors in the activities of European institutions were revealed. One of the growing challenges, which remains unresolved, is the interference of third-party countries in the democratic life of the Union.

Beyond these new actors in lobbying activities, there are various types of corporate lobbies, each specializing in its own particular persuasion efforts. Their headquarters in the EU capital employ individuals who work directly on promoting their interests (oil companies, automotive firms, tobacco companies, etc.). For instance, there are European-level industrial federations and professional associations that represent their members at the sectoral level, directing and coordinating their lobbying activities in the EU, whether at the national federation level or among individual companies.[9] These lobbies, characterized by their cross-sector influence, include groups like the *European Roundtable of Industrialists* (ERT), which comprises the leaders of the 50 largest transnational companies in Europe. Another key player is *Business Europe*, considered the continent's main employers' organization, bringing together companies like Inditex, Vodafone, Heineken, Nestlé, and Siemens. These organizations are among the most influential in terms of political impact and access to the highest-ranking legislators.

We must also consider the lobbyist-consultant, who provides strategic advice. This category includes public relations experts, social media managers, consultants in institutional affairs, and law firms that engage in lobbying on behalf of their clients.[10] At times, these consultants are hired by non-democratic regimes seeking support for their agendas or even to mask their autocratic excesses or human rights abuses. Consulting firms often collaborate with influential figures within European institutions. To this end, they frequently recruit former high-ranking officials or employees of EU institutions, through a widespread practice known as the "revolving door," where individuals move between the public and private sectors.

3 The path toward lobbying regulation at the community level

3.1 Legal precedent for community-level regulation of lobbying activities

The current regulation of lobbying activities aimed at European institutions can be found in the previously mentioned *Interinstitutional Agreement between the European Parliament, the Council of the European Union, and the European Commission on a mandatory Transparency Register*, dated May 20, 2021, and published in the *Official Journal of the European Union* (OJ) on June 11, 2021. Under this Agreement registration becomes mandatory, moving away from the voluntary registration system established 10 years earlier by the *Agreement between the European Parliament and the European Commission*, dated July 23, 2011 (amended by an Agreement between both institutions on April 16, 2014). Despite the recent nature of the Agreements concerning the Transparency Register, consultation or intervention mechanisms for public and private interest groups have existed since the very creation of what is now the EU in the 1950s (Saurugger, 2010, p. 483). The need to adequately regulate interest groups has been a constant theme in the political and legal activities of the Union, with several significant milestones helping to understand the current regulation, which we will now proceed to analyse.

3.2 The emergence of lobbying activities and the shift to self-regulation

The significance of relationships between the economic and social elites of the member states was recognized early on by the "founding fathers" of the European Community, such as within the framework of the *High Authority of the European Coal and Steel Community* (ECSC), the predecessor of the current European Commission. By 1970, there were about 300 European groups recognised, and by 1980, a total of 439 organizations had been recorded.[11] On March 18, 1985, Danish parliamentarian Jens-Peter Bonde addressed the Commission

7 The LuxLeaks case, revealed by a consortium of 40 international media outlets, exposed the 'tax rulings' that 200 multinational companies signed with Luxembourg to avoid paying taxes in other EU countries. The Volkswagen Dieselgate scandal was uncovered by the U.S. Environmental Protection Agency, which accused the German automotive group of deliberately installing software in certain diesel vehicles sold between 2008 and 2015, designed to circumvent emission limits.

8 On December 9, 2022, it was made public that the Belgian Federal Prosecutor's Office was conducting a large-scale raid related to criminal acts aimed at gaining the favor of individuals with responsibilities in the European Union. These acts were allegedly carried out by countries such as Qatar or Morocco to illegitimately influence European institutions. Specifically, those arrested on charges of participating in a criminal organization, corruption, and money laundering included the Vice President of the European Parliament, Eva Kaili; former Italian MEP Pier Antonio Panzeri; and the Secretary-General of the International Trade Union Confederation, Luca Visentini.

9 According to a report by Ahora, it ranges from the Danish Electric Vehicle Alliance and the Standing Committee of European Doctors to CEFIC (European Chemical Industry Council), which employs 74 lobbyists and spends more than 10 million euros annually on these activities. Or the Association for Financial Markets in Europe, with an annual budget of over eight million euros to defend its interests and 69 lobbyists on its payroll. It can be consulted at: https://www.ahorasemanal.es/lobbies-en-la-union-europea,-quien-esta-al-mando [Last accessed: 25.07.2024].

10 Among the main consultants are Burson-Marsteller, Gplus y Hill&Knowlton.

11 Mazey and Richardson, 1990-1991, p. 319; Morata, 1995, p. 131.

of the European Communities, inquiring about the growth in the number of lobbies between 1972 and 1974 and asking about their relations with consumer associations, trade unions, companies, and professional bodies.[12] A few years later, on December 1, 1989, his Dutch colleague Alman Metten was more explicit when he suggested creating a common register for the Commission and Parliament, which would allow better identification of these groups and the provision of rules of conduct.

At this point, it is useful to look back at the negotiations for the Single European Act (SEA; 1987),[13] which addressed not only the expansion of the internal market (12 states and more than 250 million consumers)[14] but also the scope of the Community's competencies in areas such as social policy, environmental policy, and research and development. This raised intense debate about the influence of non-state actors in the process of European integration, given the significance of most regulations and Community funding, as well as the complexity, fragmentation, and competitiveness of its decision-making system.[15]

Until the creation of the SEA, interest groups exerted pressure through national administrative and political structures, given that the Council was the institution concentrating most power and that the individual states also had veto power over Commission proposals.[16] For this reason, Article 118 of the Treaty of Rome was modified, establishing the so-called "social dialogue" through consultations with trade unions and employers' organizations. However, it was the European Parliament, within the framework of the Committee on Rules of Procedure, Verification of Credentials, and Immunities (1991), that first considered the role of lobbies.[17] Later, both the *Declaration on the Right of Access to Information* and the *Birmingham Declaration* (Declaration 23), both annexed to the Maastricht Treaty, had as their primary objective the promotion of the participation of emerging NGOs (included in Article 138b of the SEA) in the European decision-making process (known as civil dialogue).

The European Parliament was the first EU institution to express concern about the increase in lobbying and the challenges in maintaining the independence of the chamber's activities following the loss of relevant and confidential or restricted official documents, episodes of some harassment of some parliamentarians aimed at modifying the drafting of future regulations, etc. The *Galle Report* (1992)[18] raised various issues in this context, such as the need to regulate "representation of interests" at the Community level, the criteria for accreditation and recognition of these groups, the consideration of compensation to be obtained by lobbyists, and the possibility of establishing a declarative obligation regarding lobbying activities, the definition of lobbying actions, or the establishment of ethical rules for parliamentarians in contact with pressure groups.

Since no consensus could be reached on any of these issues, Belgian MEP Marc Galle sought to broaden the range of proposals. Thus, the report defined pressure groups in great detail and recommended that Parliament draw up a code of conduct for them, restrict them to separate areas of MEPs' offices, and require them to register in a publicly accessible register. The register should specifically include "activities undertaken to influence members of the European Parliament directly or through staff or assistants and the budgets involved in doing so." Those who met the requirements would receive an annually renewable permit and access to the work facilities that Parliament grants to its visitors. Two other recommendations were addressed to the parliamentary institution and its staff: "To ensure that MEPs meet the same transparency standards as Parliament, its members should update their financial interests declaration at least annually and immediately introduce a register of members' staff financial interests." Lastly, the report suggested that the committee examine the extent to which intergroups and similar entities might be used for covert lobbying purposes without indicating exactly how this could be carried out.

Finally, the resistance, if not outright hostility, to these proposals from some MEPs partly explains why they were not initially considered, although the role of the European Commission was equally decisive. All things considered, a document made public in 1992 outlined the Commission's concern about this phenomenon and urged lobbyists to develop their own rules of (good) conduct and create their own representative professional associations. Results were not long in coming: in the same year, the Commission decided to create an internal database in the form of a single directory of non-profit organizations (European, national, and international associations and federations) acting before it as interest groups. This was intended to help Commission officials know their identity and work, urging representatives of for-profit interest groups (legal advisors, public and private companies, and consultants) to voluntarily prepare their own guide and codes of good conduct. This was to ensure maximum integrity in their activities, explicitly declaring the interest represented and committing to not disseminating misleading information or providing incentives for obtaining privileged information or treatment. Later, in September 1994, the Commission developed a self-regulation code, signed by several interest groups.[19]

12 Written question No. 2325/84 (85/C 228/25).

13 SEA, Luxembourg, February 17, 1986 (OJ L 169 of 29.06.1987).

14 Cano Montejano, 2013, p. 47.

15 Xifra, 2011, p. 175.

16 Mazey and Richardson, 1990-1991, p. 319.

17 The Belgian MEP Marc Galle produced a report (Proposal for an enlarged bureau with a view to laying down rules governing the representation of special interest groups at the European Parliament) (Committee on the Rules of Procedure, the verification of credentials and immunities, October 1992, PE 200.405/fin), designed to counteract the influence of pressure groups in the activities of Parliament.

18 *Proposals for an Enlarged Bureau with a view to laying down rules governing the representation of special interest groups at the European Parliament (Committee on the Rules of Procedure, the Verification of Credentials and Immunities)*, October 1992, PE 200.405/fin.

19 "Public affairs must: (A) Identify themselves by name and company; (B) Declare the interest represented; (C) Not intentionally misrepresent their position or the nature of inquiries directed at officials of EU institutions, nor create any false impression in relation to them; (D) Not directly or indirectly distort links with EU institutions; (E) Honor the confidentiality of information provided to them; (F) Not knowingly or recklessly disseminate false or misleading information and exercise appropriate care to avoid doing so inadvertently; (G) Not obtain copies of documents from EU institutions for profit-making purposes; (H) Not obtain information from EU institutions by

3.3 The rise of organized civil society as a key player in community policies

Continuing along these lines, in 1995, Social Platform (European Social NGOs) was created to represent a large number of social organizations, and in March 1996, the European Social Policy Forum was launched. That same year, the Commission issued the *Communication on Promoting Partnerships and Foundations in Europe*. The Commission referred to this new actor as "organized civil society," associating this concept with participatory democracy. The Economic and Social Committee would define it in 1999 in its Opinion on "The role and contribution of civil society organisations in the building of Europe."

During the 1996 Intergovernmental Conference, on the occasion of the preparation of the Treaty of Amsterdam, NGOs were, for the first time, given the opportunity to express their proposals (Declaration 38, annexed to the Treaty). They gained even more visibility at the 2000 Intergovernmental Conference (before the Nice Treaty) and the Convention on the ill-fated European Constitution. The Amsterdam Treaty explicitly formalized consultations with social partners in Article 118A (Article 138 of the European Community Treaty), and Protocol No. 7 on "the application of the principles of subsidiarity and proportionality" established the Commission's obligation to consult widely before proposing legislative texts, except in urgent cases.

On the other hand, as is known—and as stated in the introduction—the European Parliament, especially since the Maastricht Treaty (1992), has been gaining increasing influence, currently co-legislating with the Council of the European Union and blocking certain significant decisions in the event of disagreement. Not surprisingly, besides being the democratic control body of the institutions' activities, the Parliament has important competencies such as supervising and approving the budget jointly with the Council.[20] In this context of increased institutional prominence, the Parliament has even amended its Rules of Procedure "on account of interest groups." The reform introduced an access card system to Parliament, conditional upon registration and compliance with a code of conduct.[21]

By 2000, the Nice Treaty and the Charter of Fundamental Rights established the right to good administration in Article 41. Linked to this right, the *European Code of Good Administrative Behaviour* was enacted, codifying the ethical requirements of public employees and those relating to the function of government applicable to elected representatives,[22] establishing them as genuine legal obligations under the right to good administration, whose violation could result in criminal, civil, and disciplinary liability.

However, the most relevant document on this matter is undoubtedly the *White Paper on European Governance* (2001),[23] which aimed at "greater transparency and […] greater accountability for all participants […]" in the EU policy-making process.[24] The Communication "*Towards a Reinforced Culture of Consultation and Dialogue—General principles and minimum standards for consultation of interested parties by the Commission*" (2002) provided a decisive boost to the Commission's dialogue with representative organisations of civil society, even establishing a series of consultation procedures that would ensure the openness of institutions to the considerations expressed by interested parties.

Likewise, we cannot ignore the role that recognizing and regulating the right of access to the documents of the European Union institutions has played in regulating the activities of interest groups, as developed by Regulation (EC) No 1049/2001 of the European Parliament and the Council of May 30, 2001. This Regulation defines the principles, conditions, and limits on the right of access to the documents of the European Parliament, the Council, and the Commission, applying to all documents held by these institutions, including those produced by them as well as others they have received and have at their disposal. Under this regulation, any European citizen or any natural or legal person residing or established in a Member State may request access to public information, which allowed, albeit indirectly, some (small) part of the activity carried out by interest groups vis-à-vis the European institutions to be known, provided that the information requested was not affected by any of the exceptions and limits to access established by the Regulation itself (Article 4).

3.4 The first steps towards creating a transparency register for lobbying activities

In 2005, following an internal report and extensive debates within it, the Commission decided that the time had come to enhance lobbying transparency and considered creating a register of interest groups.[25] Several options were explored: the first was to transform its internal guide on non-profit interest groups into a mandatory register that would also include for-profit ones; the second was self-regulatory, inviting them to adhere to a code of conduct proposed by the Commission or developed by the interested parties themselves. The latter option was the Commission's preference.

dishonest means; (I) Avoid any professional conflict of interest; (J) Neither directly nor indirectly offer any financial incentive to an EU official."

20 The current European Parliament is composed of 751 members elected by 380 million voters through direct universal suffrage and according to the electoral procedures of each Member State. Its structure is based on four pillars: eight political groups, 20 committees, governing and political bodies (the Conference of Presidents, the Bureau, the Quaestors, the Conference of Committee Chairs, and the Conference of Delegation Chairs), and the Administrative Services. With the exception of the administrative or bureaucratic staff, all of these entities play a significant role in lobbying practices.

21 *Rules of Procedure of the European Parliament, amendment regarding interest groups, of February 19, 1997 (OJ L 49/10).*

22 *Commission Code of Good Administrative Behaviour, of October 20, 2000 (OJ L 267).*

23 COM (2001) 428 final, of October 12, 2001. It can be consulted at: http://eur-lex.europa.eu/legal-content/ES/TXT/?uri=URISERV%3Al10109 [Last accessed: 25.07.2024].

24 Amsterdam enshrined the principle of transparency as a means to bring the Union closer to its citizens, which led to the reform of the European administration through the White Paper on European Governance.

25 SEC (2005) 130075, of November 8, *Communication to the Commision from the President, Ms Wallström, Mr Kallas, Ms Hübner and Ms Fischer Boel. Proposing the lauch of a Euroepan Transparency Iniciative*.

Over time, the already mentioned *Green Paper on the European Transparency Initiative* (2006),[26] prepared by the Commission, which, as is usual with such documents, serves as a stimulus for reflection prompted by the Commission, was an invitation for all concerned parties to participate in the debate. The objective was to gather the necessary information to establish a structured framework for lobbying activities in the EU. In this debate process, the Commission explicitly recognised that lobbying is a legitimate activity in a democratic system, regardless of who engages in it, as it can help draw attention to important issues.

At the same time, it considered that its transparency measures were decisive elements in strengthening external control to discourage dubious practices and faithfully inform citizens of these groups' contributions to the Community institutions' decision-making processes. For this reason, the Commission justified soliciting opinions on improving the information available about these groups and the potential need to require a common or minimally regulated code of conduct for all of them. Initially, the Commission was not in favour of a mandatory register, leaning toward self-regulation, questioning whether a voluntary registration system with associated incentives for registered lobbies would work, alongside a monitoring and sanctions system in case of breach of the duties assumed with said code.

The outcome of this consultation process demonstrated broad acceptance of the Commission adopting a code of conduct, although some clarifications were requested about the activities that would be part of the Register, considering that the term "representation of interests" was too broad and that the specific characteristics of some regulated professions, such as lawyers, should be taken into account. Additionally, more information was requested regarding the monitoring process and the enforcement of sanctions. In this consultative process, the corporate sector was particularly concerned about the proportionality of the sanctions procedure, especially given the possibility of trivial complaints or false allegations. Meanwhile, NGOs requested that the Code have broader scope, covering issues like conflicts of interest or "revolving doors".[27]

Finally, the *Green Paper on the European Transparency Initiative* (2006) defined lobbying as activities aimed at influencing the policy-making and decision-making processes of European institutions, regardless of whether this activity is carried out by individual citizens, companies, civil society organizations, or other interest groups or even firms working on behalf of third parties, such as institutional relations officers, think tanks, or lawyers.

Regarding the means to strengthen external control of lobbying activities, the *Green Paper* (2006) considered options such as providing more complete information about the people who have contributed to developing a policy or legal framework or creating an incentive-based registration system. Concerning the first point, the Commission proposed ensuring that, within the framework of public consultations, interest groups would systematically be asked, with the help of an electronic questionnaire, to provide information on their objectives, sources of funding, and interests they represent. The Commission also foresaw the possibility of developing and managing an optional online registration system for all interest groups and lobby members who wish to be consulted on specific community initiatives. To appear in the register, interest groups or lobby members would have to provide information about the people they represent, their mission, and their funding sources, as well as agree to a code of ethics. What is significant is that the Commission did not consider a mandatory registration system appropriate, favouring a reinforced self-regulation system. However, it suggested that, after a certain period, it should be evaluated whether the self-regulation system was working well, and, if necessary, establish a system of mandatory measures.

Parallel to the external monitoring of contacts with lobby members, for the Commission the rules on integrity represented another essential contribution to transparency in lobbying activities, specifically the codes of ethics, which would be optional. The Commission understood that these could play a supportive role, recalling that, as early as 1992, in its Communication on interest groups, it had invited lobby members to adopt their own codes of conduct in light of several minimum criteria proposed by the Commission itself. In this context, the Commission considered it necessary to complete the framework by establishing a monitoring system and penalties in cases of incorrect registration and/or violation of the code of ethics.

3.5 The treaty of the European Union and the European Parliament resolution of May 8, 2008

Chronologically, we must mention Article 11.1 of the Treaty of the European Union (TEU), established by the Treaty of Lisbon (2007), which states that "The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action," adding later that "the institutions shall maintain an open, transparent, and regular dialogue with representative associations and civil society".[28] Thus, it allows citizens and representative associations the right to express and exchange their views publicly with European institutions and requires the latter to maintain an open, transparent, and regular dialogue with associations and civil society, urging the European Commission, in particular, to conduct broad consultations with stakeholders.

Similarly, Article 136a TEU, related to social policy, affirms that the EU shall recognize and promote the role of the social partners in its sphere and that it will facilitate dialogue between them, respecting their autonomy. With good reason, the regulation of lobbies is an expression of the principles of democracy and transparency, firstly

26 COM (2006) 194, of May 3, 2006. The initiative was launched in 2005 by the European Commissioner for Administration, Audit, and Anti-Fraud, Siim Kallas.

27 SEC 82008 1926 *Commission Staff Working Document – Results of the Consultation on the Code of Conduct for Interest Representatives. Accompanying document to the Communication from the Commission European Transparency Initiative – A framework for relations with interest representatives (Register and Code of Conduct)*.

28 Although it was the failed European Constitution that, for the first time, introduced this form of participation in Title VI, Article 8, regarding the democratic life of the EU.

because the regulation of pressure groups or interest representatives entails implementing participatory democracy enshrined in Article 11 TEU, that is, as "a means of access for civil society to the making of European Union law […] (and) it is articulated mainly through consultation mechanisms. Consequently, this regulation seeks to address the democratic deficit and bring citizens closer to the European Union." Secondly, because transparency is about administrative measures to make European institutions more efficient, accountable, and service-oriented, and to ensure that the power and resources of political and public bodies are managed carefully, without abuses for personal gain (Rodríguez Torres, 2016, p. 3).

On the other hand, the principle of transparency in European administration is developed in the Treaty on the Functioning of the European Union (TFEU; Article 298), which has led to various initiatives favouring external control measures (through an "Interest Group Register") and internal control measures (through a code of conduct) for interest groups in the Commission. This is relevant because it marks the point at which the Commission moves away from the concept of civil society and refers to all participating entities as pressure groups or interest representatives.

Finally, on May 8, 2008, the plenary of the European Parliament adopted a report—drafted by Finnish MEP Alexander Stubb of the European People's Party—on lobbying activities in the EU. According to the rapporteur, the approval of this report was a step towards increasing the transparency of the decision-making process in the Community institutions in order to increase their legitimacy. The so-called *Stubb Report*, a precursor to the Interinstitutional Agreement between the European Parliament and the Commission on adopting a regulatory framework for the activities of interest groups in the European institutions,[29] adopted the definition of an interest group from Article 9.4 of the Rules of Procedure of the European Parliament. According to that, interest groups are people who wish to frequently access the premises of Parliament to inform Members, within the framework of their parliamentary mandate, in their own interest or on behalf of third parties. This definition did not preclude the possibility, as it would eventually happen, of the register being common to both Parliament and the European Commission.

In another resolution of 2008,[30] the European Parliament welcomed the Commission's contributions in this regard, prompted by the conclusions of the Green Paper, recognizing the need to know the identity of organizations represented by interest groups and suggesting that both its MEPs and the Commission voluntarily attach a "legislative footprint"—expressing the relationship of representatives of interest groups consulted and with significant participation in the preparation of the document. The Parliament was clearly in favour of creating a single interinstitutional register or, if that were not possible, mutual recognition of the different registers. It also insisted on demanding that the Register clearly differentiate categories, according to the type of interest represented (professional associations, business representatives, unions, employer associations, law firms, NGOs, etc.), and called for negotiations between the Commission and the Parliament to establish common guidelines in the code of conduct, as well as providing sanctions that would include suspension and even expulsion in case of violation of the Code.

Meanwhile, on June 23, 2008, the Commission launched its Register of Lobbyists, which was voluntary for all those seeking to influence EU policies and decision-making, requiring disclosure of certain information (identity, objectives, areas of interest, key activities in representing interests and networking carried out, financial information to understand the driving force behind their activities, and, in the case of those conducting these activities on behalf of third parties, the clients) and signing a code of conduct prepared by the Commission itself. Later, the Parliament adopted a *Decision on the conclusion an Interinstitutional Agreement with the Commission*[31] in this regard, which resulted in the first European regulation concerning interest groups, which we will analyse below.

4 The jurisprudence of the court of justice of the European Union on lobbying activities

Alongside institutional activity aimed at achieving regulation of lobbying activities, jurisprudence has been developed at the Community level which has played a transcendental role in lobbying activities. Indeed, before the creation of the Transparency Register, Community jurisprudence accepted lobbying activities with a certain degree of openness, its main concern being that such activity be carried out within clear limits and in a transparent manner by all parties involved.

4.1 GCEU of May 12, 2010, and January 13, 2015: limits on lobbying activities

One of the first rulings to explicitly acknowledge lobbying activities was the Judgment of the General Court (Fifth Chamber) of May 12, 2010, in the case EMC Development AB v. European Commission, concerning possible collusive practices in the European cement market. This judgment is particularly relevant because the General Court of the European Union (GCEU) not only did not expressly prohibit lobbies but also recognized their legitimacy when such activity was limited to influencing and did not control or corrupt the decision-making process.

Specifically, the GCEU found that Cembureau's actions had not exceeded the normal lobbying activities conducted by any association of companies within a sector to protect and promote the interests of its members. Although the plaintiff contested this claim, it should

29 Draft Report on the conclusion of an interinstitutional agreement between the European Parliament and the Commission regarding a common transparency register [2010/2291(ACI)], Committee on Constitutional Affairs, 2008. It can be consulted online at: http://www.europarl.europa.eu/meetdocs/2009_2014/documents/afco/pr/856/856855/856855en.pdf

30 P6_TA (2008). European Parliament Resolution of May 8, 2008, on the development of the framework for the activities of interest groups in the European Institutions [2007/2114 (INI)].

31 P7_TA (2011). European Parliament Decision of May 11, 2011, on the conclusion of an interinstitutional agreement between the European Parliament and the Commission regarding a common Transparency Register [2010/2291 (ACI)].

be noted that they did not explain how Cembureau's actions in 1996 demonstrated control by this association over the procedure for adopting a Community regulation. On the contrary, according to the GCEU, as noted by the Commission in the Decision that was challenged and which motivated the litigation, Cembureau sought to defend its members' interests by approaching entities that could influence the drafting of the regulation, including the Commission services that drafted the M/114 mandate. Therefore, in the view of the GCEU, the plaintiff failed to demonstrate, based on this evidence, that the Commission had made a manifest error of assessment by not declaring that Cembureau had influenced the procedure to the extent of controlling and corrupting it. Furthermore, according to the Court, the plaintiff also presented its observations and reservations on the draft regulation to the Commission in 1997, which it acknowledged in its own reply.

Respect for the rules concerning the negotiation of standards was also enshrined in the judgment of the Court of Justice of the European Union (CJEU) of January 13, 2015 (Case C-404/12 P, Council and Commission v. Stichting Natuur en Milieu and Pesticide Action Network Europe). In this case, two NGOs (Stichting Natuur en Milieu and Pesticide Action Network Europe), suspecting that certain lobbies may have influenced the drafting of the technical regulation on maximum pesticide residue levels adopted by the Commission, requested in writing that this executive body conduct an internal review of its decision of January 29, 2008. Their claim was based on Article 10.1 of Regulation (EC) No 1367/2006 of the European Parliament and the Council of September 6, 2006, on the application to Community institutions and bodies of the provisions of the *Aarhus Convention on access to information, public participation in decision-making, and access to justice in environmental matters*, in force since October 30, 2001. The Commission rejected the NGOs' request on July 1, 2008. A month later, they appealed to the General Court, which annulled the Commission's decision in a judgment interpreted as a clear signal in favour of civil society when it comes to opposing regulations negotiated contrary to national and European law.

In the case at hand, the contested decision showed that the Federal Republic of Germany, from which the disputed document originated, opposed its disclosure based on an exception in Article 4, paragraph 2, first indent of Regulation No. 1049/2001, on the grounds that it would undermine the protection of the commercial interests of a particular natural or legal person, including intellectual property rights, and that there was no overriding public interest justifying its disclosure.

Rejecting the Commission's arguments, the CJEU ruled that Article 6(1), first sentence, of Regulation No. 1367/2006 requires any interested institution that is aware of a request for access to a document to disclose it when the requested information relates to emissions into the environment, even if such disclosure could harm the protection of the commercial interests of a particular natural or legal person, including intellectual property rights, under the first indent of Article 4(2) of Regulation No. 1049/2001.

For the Luxembourg Court, the Commission committed an error of assessment by refusing access to the disputed document, in so far as the request for access related to information concerning emissions into the environment, specifically, in the first instance, "the identity" and the quantity of all impurities contained in the active substance notified by all operators as specified in paragraph 70 above, appearing in Section C.1.2.1 of the first subdocument (pp. 11–61), Section C.1.2.1 of the second subdocument (pp. 1–6), and Section C.1.2.1 of the third subdocument (pp. 4 and 8–13); secondly, the impurities present in the different batches and the minimum, median, and maximum quantities of all these impurities, listed, for each operator, in the tables included in Section C.1.2.2 of the first subdocument (pp. 61–84) and Section C.1.2.4 of the third subdocument (p. 7); and thirdly, the composition of the plant protection products developed by the operators, which appears in Section C.1.3, entitled "Detailed Specifications of the Preparations (Annex III A 1.4)," of the first subdocument (pp. 84–88).

4.2 Judgment of the CJEU of February 25, 2021: the conduct of those who are lobbied

Another significant judgment defining the limits applicable to lobbying activities is the CJEU's ruling of February 25, 2021 (Case C-615/19-P, European Commission v. John Dalli), which resolved the so-called Dalligate case.

As with the earlier rulings, this judgment also makes it clear that there is no prohibition on lobbying activities within the EU, provided they do not entail control or corrupt the Community decision-making process. This ruling occurred after the European Anti-Fraud Office (OLAF) had concluded an investigation according to which the Commissioner for Health and Consumer Protection, John Dalli, a Maltese national, had engaged in a case of influence-peddling by amending the draft Directive on tobacco after "confidential and unofficial" meetings with the tobacco lobby in order to favour the industry's interests.[32]

On May 25, 2012, OLAF launched an investigation concerning the complaint under Articles 3 and 4 of Regulation (EC) No. 1073/1999 of the European Parliament and the Council of May 25, 1999, concerning investigations conducted by OLAF (OJ L 136, p. 1). The Anti-Fraud Office informed Dalli that he should consider himself a person of interest in the investigation, which was opened following a complaint about attempts to involve two economic operators in paying bribes to have the Commission adopt a measure in their favour, and took a statement from him. At the same time, the then-president of the European Commission, José Manuel Durao Barroso, met with the Commissioner in question, who denied the accusations, claiming he was unaware of any possible negotiations between the entities that filed the complaint and a "person in Malta," asserting that he was not involved in that matter in any way.

32 Specifically, on May 21, 2012, the Commission received a complaint from the company Swedish Match, which contained serious allegations regarding Dalli's behaviour. According to the complainant, the Maltese businessman Silvio Zammit had used his contacts with the commissioner to attempt to obtain an economic advantage from him, and from the European Smokeless Tobacco Council, in exchange for his intervention to influence a potential future legislative proposal on tobacco products, particularly regarding the European Union's ban on the sale of the product known as 'snus'.

After OLAF issued its report, and in light of the evidence gathered,[33] the Commission forced Dalli's resignation, which the former Commissioner contested before the CJEU.

The Court found that Dalli had voluntarily resigned, orally, during a meeting held on October 16, 2012, and that it was irrelevant whether this resignation had not been formalized in writing, thereby rejecting the appeal in which the former Commissioner had sought financial compensation from the Commission.

In its ruling, the CJEU noted that Article 17(6) TEU does not condition either the President's request or the resignation that must follow it to any formal requirements, particularly its formalisation in writing. According to the Court, since the Commission can be considered the main executive body of the international legal order that constitutes the Union, according to the common constitutional traditions of the Member States, the persons holding these functions in national executive bodies may be dismissed at the discretion of the head of the executive or the appointing authority. Therefore, the legality of his resignation could not be questioned by invoking the existence of a non-existent defect in consent.

4.3 CJEU judgment March 14, 2024: conflicts of interest in the functioning of collegiate bodies

Finally, one of the most recent rulings by the CJEU related to lobbying activities highlights the Court's concern for adequately preventing conflicts of interest. This is CJEU judgment No. 46/2024 of March 14, 2024 (Case C-291/22 P. D & A Pharma/Commission and EMA).

This ruling resolves the appeal brought by Debrégeas et associés Pharma SAS (D & A Pharma), seeking to annul the General Court's judgment of March 2, 2022, which dismissed its action for annulment of the Commission's Implementing Decision of July 6, 2020, rejecting the application for marketing authorization for the human medicinal product Hopveus — sodium oxybate (hereinafter "Hopveus"), under Regulation (EC) No. 726/2004 of the European Parliament and the Council of March 31, 2004, establishing Union procedures for the authorization and supervision of medicinal products for human use and creating the European Medicines Agency.

The facts date back to June 26, 2018, when D & A Pharma submitted a conditional marketing authorization application to the EMA for Hopveus under Commission Regulation (EC) No. 507/2006 of March 29, 2006, on the conditional marketing authorization for medicinal products for human use that fall within the scope of Regulation (EC) No. 726/2004 of the European Parliament and the Council (OJ 2006, L 92, p. 6). Hopveus, which contains sodium oxybate as its active substance, is intended to combat alcohol dependence.

On October 17, 2019, the CHMP issued a negative opinion on that application, and on October 29, 2019, D & A Pharma, under Article 9(2) of Regulation No. 726/2004, requested a re-examination of the CHMP's opinion and, for that re-examination, the CHMP convened an *ad hoc* expert group.

Following a new unfavourable opinion from the CHMP on April 30, 2020, the Commission rejected the application for conditional marketing authorization.

D & A Pharma appealed against the Commission and EMA, seeking annulment of the contested Decision and, following such annulment, requesting that the Psychiatry GCC be convened with the composition it had on the re-examination request date.

In support of this appeal, D & A Pharma put forward six grounds, one of which was based on the lack of impartiality of two members of that *ad hoc* expert group, specifically noting that one of them was the principal researcher of a product developed by another pharmaceutical company that considered it a rival product to Hopveus due to the identity of the clinical target and the similarity of the patients to whom it is directed, while the other provided consulting services for several pharmaceutical products.

In its contested judgment, the General Court dismissed the appeal on the grounds that the said experts did not exert decisive influence on the expert group's decision.

The CJEU upheld the appeal, finding that the objective impartiality of the CHMP is also compromised when an expert who is in a conflict-of-interest situation forms part of the expert group consulted by that Committee in the re-examination process leading to the EMA opinion and the Commission's decision on the MA application.

In this regard, it stated that the opinion formulated by the expert group convened by the CHMP has a potentially decisive influence on the EMA opinion and, through that opinion, on the Commission's decision. Within this framework, each group member can, if necessary, significantly influence the debates and deliberations held confidentially within that group. Therefore, the participation in the expert group consulted by the CHMP of a person in a conflict-of-interest situation creates a situation that does not provide sufficient guarantees to exclude any legitimate doubts about potential bias, following the CJEU's legal principles on the right to good administration and the area of conflicts of interest.

Consequently, contrary to what the General Court ruled, the CJEU concluded that a conflict of interest involving a member of the expert group consulted by the CHMP fundamentally undermines the procedure. The fact that this group of experts formulates its opinion collectively at the end of its discussions and deliberations does not eliminate such a defect. Indeed, this collegiality does not neutralize either the influence that the member in a conflict-of-interest situation may exert within that group nor the doubts about the impartiality of that same group that are legitimately based on the fact that the said member could have contributed to the discussions.

33 The OLAF report concluded that "[...] Commissioner Dalli held several conversations with representatives of the tobacco sector in the context of unofficial and confidential meetings, organized without the knowledge or involvement of the competent services. All of these meetings were arranged by Mr. Silvio Zammit, a Maltese businessman unaffiliated with the institutions and a close friend of Commissioner Dalli. [...] Although there is no conclusive evidence of Commissioner John Dalli's direct involvement as the instigator or mastermind of the request for money, various unequivocal and consistent circumstantial evidence gathered during the investigation suggests that he was indeed aware of Mr. Silvio Zammit's actions and that Zammit was using his name and position to obtain economic advantages. [...] Based on the facts uncovered in the OLAF investigation, it can be concluded that the image and reputation of the European Commission have been compromised in the eyes of tobacco manufacturers and, potentially, the general public [...]."

5 The creation of the transparency register in the European Union and the transition from a voluntary registration system to the current mandatory system

5.1 Nature and operation of the transparency register created in 2011

In 2011, the process of providing the European Union with a registration system for lobbying activities culminated with the Commission and the Parliament jointly establishing the first Transparency Register for organizations and self-employed individuals involved in developing and implementing EU policies (Agreement between both institutions of July 23, 2011).[34] This Register was created to make the EU decision-making process as transparent and open as possible and, in the words of the signatory institutions, to answer basic questions such as what interests are pursued, who defends them, and with what budget.[35]

The most notable feature of the Transparency Register created that year was the voluntary nature of registration, which generated significant criticism and malfunctions in its operation, unsuccessfully addressed by the Agreement of April 16, 2014,[36] and which ultimately led to the shift towards the current mandatory registration system in 2021, which otherwise retains much of the essence of the original regulation. Under the 2011 Agreement, voluntary registration in the Register was incentivized primarily by granting access cards to the premises of the European Parliament. Although these cards could only be issued to persons registered in the Register, registration did not automatically confer the right to receive them, as their issuing and control were configured as an internal procedure of the Parliament carried out under its responsibility (Article 29).

Additionally, the Agreement provided that both Parliament and the Commission would offer other incentives to encourage registration, such as measures to facilitate access to their premises, members and assistants, officials, and other agents; authorizations to organize or co-sponsored events on their premises; smoother transmission of information and, where appropriate, inclusion in specific mailing lists; participation as speakers at Commission hearings; or sponsorship by the European Parliament or the Commission.

Without any doubt, the Agreement's great virtue was the public nature of all the information subject to registration and its accessibility through the Register's web portal, with an easy-to-use search engine,[37] along with its publishing statistics on the portal itself based on the Register's database. This made it possible to shed light on general data, such as the number of organizations registered, broken down by category, as well as information related to the registrants. Specifically, according to Annex 2 of the Agreement, registrants had to provide "general and basic information" and "specific information." The first category included identification data of the entities engaged in lobbying activities, information on the level of dedication and the objectives or topics of this activity, the objectives or areas of interest, and the members of the organization. Concerning specific information, declarants had to provide details about the main legislative or policy proposals targeted by the declarant's activities covered by the Register, relations with EU institutions (i.e., membership in high-level groups, advisory committees, expert groups, or other structures and platforms supported by the Union, or intergroups of the European Parliament or industry forums), and financial information related to activities covered by the Register.

5.2 Rules applicable to registrants and problems related to non-compliance

The entry into force of the Agreement also entailed the establishment of rules of conduct for registrants, set out in the Code of Conduct incorporated in Annex III of the Agreement, including, among other things, the obligation always to indicate their name and registration number and the entity or entities represented; not to obtain or attempt to obtain information or decisions dishonestly or by applying undue pressure or engaging in inappropriate behaviour; not to imply, in their dealings with third parties, the existence of a formal relationship with the Union or any of its institutions; to ensure that the information provided is complete, up-to-date, and not misleading; and not to sell to third parties copies of documents obtained from the Union's institutions.

At the same time, the *Code of Conduct for Members of the European Parliament with respect to financial interests and conflicts of interest*, which entered into force on January 1, 2012, was adopted to regulate contacts between parliamentarians and persons outside the Parliament to avoid conflicts of interest and prevent, for example, the acceptance of gifts or establish certain limits on the "revolving door" phenomenon. Moreover, this regulation referred to the "legislative footprint," requiring parliamentarians to attach a document listing all the groups they had contacted during the preparation of any report or document related to a legislative process.

Responsibility for monitoring the Register's proper functioning and, in particular, ensuring registrants comply with their obligations was assigned to the Secretaries of the European Parliament and the European Commission, responsible for overseeing the system's general operation and key operational aspects, and jointly adopting the necessary measures to implement the Agreement. The Secretaries were also tasked with submitting an annual report on the Register's operation, providing objective information on its content and development.

34 OJ EU 22.07.2011.

35 This was stated on the Register's website at the time of its launch.

36 OJ EU 19.09.2014. The changes introduced, prompted by the review process initiated in 2013 by a working group of the Parliament and the Commission, consisted of introducing more precise definitions of the categories covered by the Register, defining the obligations of the Code of Conduct more clearly, and establishing greater incentives for registration.

37 As part of the consultation regarding the proposal for a mandatory Transparency Register carried out in 2016, it was highlighted that, in relation to the current system, the best-rated aspect was the design and structure of the Register's portal and its easy search function. In contrast, the worst-rated aspects were accessibility and access via mobile phones. *Analysis of responses to the Open Public Consultation on the proposal for a mandatory Transparency Register. Final report prepared by Secretariat-General, Risk & Policy Analysts, July 2016, available at:* http://ec.europa.eu/transparency/civil_society/docs/summary_report.pdf. [Last accessed: 25.07.2024].

To improve the Agreement's operability, the services of Parliament and the Commission established a common operational structure: the Joint Secretariat of the Transparency Register (JSTR), composed of a group of officials from both institutions and coordinated by a head of unit from each, responsible for developing application guidelines to facilitate a consistent interpretation of the rules by declarants and also conducting quality checks on the Register's content. The JSTR was also designated as the body to receive alerts or complaints about alleged breaches of the Agreement, investigate them, and, where appropriate, decide on the measure to be applied in case of non-compliance.[38] Given these characteristics, the trajectory of the European Transparency Register since its creation has been a history of light and shadows.

On the positive side, the Transparency Register grew steadily, from just 5,000 registrants in 2012 to 13,336 registrants on December 31, 2021. Moreover, as a dynamic Register where interest groups registered, deregistered, or withdrew depending on their activities at any given time, the number of new registrants also increased yearly, demonstrating the constant evolution of this instrument.

On the downside, or at least its most controversial aspect from the moment the Register was created, was the failure to comply with obligations, linked to the voluntary nature of the Register. In particular, various entities criticized the lack of a real supervisory zeal by the European institutions, which resulted in many pressure groups not registering or the information flow being considered unreliable, as interest groups often failed to provide business figures, the names of clients or contacts, or disguised themselves under acronyms or implausible names, clearly violating the Register's rules. Some studies also revealed that the official data was barely representative of the phenomenon's true magnitude, especially concerning the resources invested in lobbying or the number of employees dedicated to lobbying activities.[39]

Indeed, one of the Register's endemic issues since its creation was the problem related to data quality. Although the JSTR was entrusted from the outset with evaluating all new registration applications to verify compliance with the admissibility criteria and information requirements, over the years there were frequent failures by declarants to fulfil their obligation to review and update the information provided as soon as significant changes occurred, as well as to carry out the mandatory annual update to remain in the Transparency Register; a situation reflected in the control activities conducted by the JSTR itself. For example, in 2020, the Joint Secretariat carried out quality checks on 4,973 registrations, including data from new interest groups (2,843 checks), a specific review of data from interest groups registered before 2016 (1,748 checks), and random quality checks (382 checks). As a result of these checks, only 43% of the controlled declarants provided quality data, while 30% of the controlled declarants had to be contacted to update their entries, and 27% were removed from the register after the check, either for inadmissibility or for failing to update.[40]

5.3 The transition toward a mandatory register

Given the evolution of the Register launched in 2011, the path towards mandatory registration began in 2015, extending not only to Parliament and the Commission but also to the Council.[41] In this context, between March 1 and June 1, 2016, the European Commission conducted a public consultation involving the 28 Member States and other non-member states, receiving 1,758 responses (975 from individuals and 783 from organizations, including 620 from registered organizations). Overall, participants supported a new Interinstitutional Agreement regulating a mandatory Register.[42]

Consequently, on September 29, 2016, a *Proposal for an Interinstitutional Agreement on a mandatory Transparency Register* was adopted, which eventually crystallized in the *Interinstitutional Agreement between the European Parliament, the Council of the European Union, and the European Commission on a mandatory Transparency Register* (IIA), dated May 20, 2021, culminating the

38 The measures applicable in the event of non-compliance with the code of conduct, as outlined in Annex 4 of the Agreement, ranged from a written notification recording the facts and their correction, a measure applicable when the correction of erroneous or incomplete data occurred immediately; to the deletion of the registration and loss of incentives, in cases of non-cooperation with the SCRT or inappropriate behaviour; or the deletion of the registration and formal revocation of the authorization to access the premises of the European Parliament for a period of 1 or 2 years, in cases where there was, cumulatively, a lack of cooperation and recurrent and deliberate inappropriate behaviour or serious non-compliance.

39 According to the main platform for European transparency, Lobby Facts, it is estimated that the top 10 lobbyists alone handle around 40 million euros. Among them are major tobacco, tech, oil, and pharmaceutical companies such as Philip Morris, ExxonMobil, Bayer, and Microsoft. For the NGO Corporate Europe Observatory, author of the report *The Power of Lobbies* (April 2014), the reported lobbying expenditure of the financial sector in the Register at that time did not match the actual figures. Meanwhile, ALTER-EU has been denouncing that the number of entries for Google and Novartis exceeds the actual number of lobbyist employees or that consultancies like Bearing Point have declared their total turnover rather than the specific lobbying expenditure. It can be consulted at: http://www.legaltoday.com/practica-juridica/supranacional/d_ue/los-organismos-europeos-dispuestos-a-clarificar-sus-relaciones-con-los-lobbies?keepThis=true&TB_iframe=true&height=650&width=850&caption=Legal+Today+Pr%C3%A1ctica+Jur%C3%ADdica [Last accessed: 25.07.2024]; at https://corporateeurope.org/power-lobbies/expert-groups [Last accessed: 25.07.2024] and at https://www.alter-eu.org/press-releases/2017/02/20/lobby-transparency-loopholes-and-corporate-bias [Last accessed: 25.07.2024].

40 Annual Report on the Functioning of the Transparency Register 2020. https://www.europarl.europa.eu/at-your-service/files/transparency-and-ethics/lobby-groups/es-annual-report-on-the-operations-of-the-transparency-register-2020.pdf [Last accessed: 25.07.2024].

41 In this regard, the Vice President of the European Commission, Frans Timmermans, advocated before the European Parliament the need to establish a mandatory register, despite admitting that "it will be difficult because it represents a radical change from current practices." http://europa.eu/rapid/press-release_IP-16-3182_en.htm [Last accessed: 25.07.2024].

42 *Analysis of responses to the Open Public Consultation on the proposal for a mandatory Transparency Register. Final report prepared by Secretariat-General*, Risk & Policy Analysts, July 2016, available at: https://ec.europa.eu/commission/presscorner/detail/es/MEMO_16_3181 [Last accessed: 25.07.2024].

process toward a mandatory register. Thus, under the so-called "conditionality principle," registration in the Register is a precondition for carrying out certain activities. The IIA came into force on July 1, 2021, from which date a transition period was opened to introduce several adaptations to the Register related to its mandatory nature and also other matters, such as the new information requirements for applicants and registrants set out in Annex II of the IIA.

In this context, the Secretariat responsible for managing the Register published a new application/registration form on the Transparency Register website on September 20, 2021, for applicants and registrants to meet the new information requirements. All registrants already listed in the Register were informed that, during a six-month period (from September 20, 2021, to March 19, 2022), they were entitled to modify their registration according to the new form to remain in the Register. Additionally, to raise awareness and facilitate the registration of interest representatives and transition to the new system, the Secretariat conducted a consultation with Transparency Register stakeholders via an online questionnaire,[43] published new guidelines for applicants and registrants, and an expanded FAQ list on the Transparency Register website. It also held meetings with representative bodies, i.e., agents representing the various types of registrants listed in the Transparency Register, to present the new framework and address specific questions and requests for additional information and guidance.[44]

6 Main features of the transparency register for the European Parliament, the Council of the European Union, and the European Commission regulated by the interinstitutional agreement of May 20, 2021

The Interinstitutional Agreement between the European Parliament, the Council of the European Union, and the European Commission on a mandatory Transparency Register of May 20, 2021 (IIA) aims to open a new chapter in the EU's transparency policy by expanding, on the one hand, institutional cooperation, by adding the Council of the European Union as a signatory institution, and on the other, establishing the mandatory nature of registration in the Register, through the application of the so-called "conditionality principle."

The main features of the IIA[45] can be summarized as follows:

(1) As regards the scope of application of the Register, as was the case with its predecessor, the IIA focuses on activities rather than the entities carrying them out. In this sense, the Register covers all activities carried out by interest representatives intending to influence the formulation or implementation of policies or legislation, or decision-making processes of the signatory institutions or other institutions, bodies, and agencies of the Union.

Specifically, according to Article 3.2 IIA, the activities included comprise: (a) organizing meetings, conferences, or other events or participating in them, as well as maintaining any similar contact with Union institutions; (b) contributing to consultations, hearings, or other similar initiatives or participating in them; (c) organizing communication campaigns, platforms, networks, and on-the-ground initiatives; (d) preparing or commissioning policy documents, position papers, amendments, surveys, and opinion polls, open letters, and other communication or information materials, and commissioning and conducting research.

From a negative point of view, the following activities are considered to be not included (Art. 4.1): the provision of legal and professional advice when it is carried out within the framework of a conciliation or mediation, when it is aimed at ensuring that the client's activities comply with the current legal framework or involves the representation and defence of the client's fundamental or procedural rights.[46] Additionally, activities such as filing applications in the context of a judicial or administrative procedure, activities by social partners acting as participants in social dialogue, submitting documents in response to direct and specific requests from any Union institution, activities by individuals acting in a strictly personal capacity and not in association with others, and spontaneous, purely private or social meetings or those taking place in the context of an administrative procedure established by the TEU, the TFEU, or Union legal acts are not included in the Register's scope.

In accordance with the acting body and in line with Article 4.2 IIA, activities carried out by public authorities of Member States, associations, and networks of public authorities at the Union, state, or supra-state level, intergovernmental organizations, including agencies and bodies emanating from them, public authorities of third-party countries, political parties, except for organizations created by or affiliated with political parties, and churches or religious communities, as well as philosophical and non-confessional organizations referred to in Article 17 TFEU, are also not included in the register.

(2) As regards the nature of the Register, the main contribution of the IIA is, as already mentioned, the mandatory nature of registration, which requires interest representatives to register to carry out key lobbying activities within the Union's scope, covered by the Register.

The "conditionality principle," whereby registration in the Transparency Register is a precondition for carrying out certain activities, is the cornerstone of the IIA and is applied through individual measures adopted by each of the signatory institutions (Article 6 IIA).

43 The responses to the stakeholder consultation are available on EUSurvey at the link: https://ec.europa.eu/eusurvey/publication/2021-IIA-Guidelines-consultation. [Last accessed: 25.07.2024].

44 *Annual Report on the Functioning of the Transparency Register 2021*. It can be consulted at: https://www.europarl.europa.eu/at-your-service/files/transparency-and-ethics/lobby-groups/es-annual-report-on-the-operations-of-the-transparency-register-2021.pdf [Last accessed: 25.07.2024].

45 Its characteristics are also analysed in: RIDAO, ARAGUÀS (2024).

46 Specifically, Article 4.1.a, section (iii), refers to the representation of clients and the safeguarding of their fundamental or procedural rights, such as the right to be heard, the right to effective judicial protection, and defence rights in administrative proceedings.

Simultaneously, based on a broader concept of transparency than that contained in previous Agreements, besides the aforementioned "conditionality principle," the IIA includes complementary transparency measures to promote registration and strengthen the joint framework, also individualized for each of the signatory institutions, as well as the online publication of meetings.

Thus, in relation to the signatory institutions, the following distinctions can be made:[47]

(a) In the case of the European Parliament, the conditionality principle translates into the recommendation that MEPs only meet with interest representatives registered in the Transparency Register. All MEPs are "encouraged" to publish all scheduled meetings with interest representatives online. These meetings are published on the individual profile pages of each MEP on the official Parliament website. However, rapporteurs, shadow rapporteurs, and committee chairs are obliged to publish online all scheduled meetings with interest representatives for each parliamentary report. The published data shows the date and type of meeting held, the subject of the meeting, the interest representative met with, and the MEP's role (rapporteur, shadow rapporteur, committee chair, or MEP without specific responsibility in the dossier). As an additional transparency measure, registrants can sign up to receive automatic updates on committee activities by email.

Finally, it should be noted that, under commitments made before the IIA, particularly a plenary resolution adopted on April 27th 2021,[48] the Parliament has created an internal administrative working group to prepare the follow-up related to the IIA, and based on its recommendations, the Parliament's Bureau will decide on any new conditionality or transparency measures within this institution.

(b) In relation to the Council, and in accordance with Council Decision (EU) 2021/929 of 6 May 2021 on the regulation of contacts between the General Secretariat of this body and interest representatives,[49] registration in the Transparency Register is a precondition for interest representatives to meet with the Secretary-General of the Council or the Directors-General. This rule also applies to the participation of interest representatives, in a professional capacity, in thematic briefings organized by the General Secretariat or as speakers at public events organized by it, which must be verified by the institution's officials when checking the credentials of interest representatives.

(c) The European Commission is the EU institution that applies the strictest internal conditionality regime under the maxim "if you are not in the Transparency Register, there is no meeting," regarding contacts and interactions with interest representatives. In this sense, all Commission members, their cabinet members, and directors-general are required only to meet with interest representatives registered in the Transparency Register. This obligation is enshrined in the *Code of Conduct for Members of the European Commission*[50] (Article 7) and the *Working Methods of the Commission*; it is reinforced by the standard recommendation for all staff to check the credentials of interest representatives to ensure they are registered in the Transparency Register.

The above rules are complemented by a mandatory policy of publishing meetings with registered interest representatives, specifying the meeting date, location, name or member of the Commission or its Cabinet or the director-general concerned, the name of the interest representative, and the subject of the meeting. This information is systematically published in a standard format on the websites of the Commission members and directorates-general within 2 weeks of the meeting, and also in the registrant's profile.

As an additional measure to improve transparency and promote registration, the Commission provides registrants with automatic alerts regarding public consultations or roadmaps in the areas or policy fields they expressed interest in when registering, and processes contributions from registrants separately from unregistered respondents.[51]

(3) From an organisational point of view, the Register is binding for the three signatory institutions (i.e., the European Parliament, the Council of the European Union, and the European Commission), which must ensure it is provided with the necessary human, administrative, technical, and financial resources (Article 10 IIA), without prejudice to the possibility of other institutions, bodies, and agencies of the Union voluntarily deciding that certain activities be subject to registration or implementing complementary transparency measures.

As a new development, the IIA created a Management Board (Article 7 IIA), composed of the Secretaries-General of the signatory institutions, who preside over it on a rotating basis for one-year periods. Its functions include: overseeing the overall implementation of the Agreement; determining the Register's annual priorities and preparing budget estimates and the budget portion required to implement these priorities; issuing general instructions to the Secretariat; approving the annual report on the Register's functioning; and reviewing substantiated requests for review of the Secretariat's decisions to cancel a registration.

Similarly, as in previous Agreements, the IIA maintains the Secretariat as a joint operational structure established to manage the Register's functioning, composed of heads of units or other

47 On this matter, see the Annual Report on the Functioning of the Transparency Register 2021, which can be consulted at: https://www.europarl.europa.eu/at-your-service/files/transparency-and-ethics/lobby-groups/en-annual-report-on-the-operations-of-the-transparency-register-2021.pdf [Last accessed: 25.07.2024].

48 This Resolution is available at: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0130_EN.html [Last accessed: 25.07.2024].

49 [Last accessed: 25.07.2024].

50 Code of Conduct for the Members of the European Commission approved by the Commission Decision of January 31, 2018.

51 These complementary measures are included in the European Commission's Better Regulation Guidelines [SWD (2017)350], in Chapter II (Guidelines on Stakeholder Consultation).

equivalent positions responsible for transparency matters in each signatory institution. Its tasks include reporting to the Board of Directors, preparing its meetings, and assisting it in its duties, establishing guidelines for registrants to ensure consistent application of the Agreement, deciding on applicants' admissibility, and supervising the Register's content, providing technical assistance to applicants and registrants, conducting investigations and applying the measures provided for in Annex III of the IIA in case of non-compliance, and managing the Register's development and maintenance.

(4) As regards the rules applicable to declarants, by registering, all applicants agree, on the one hand, to comply with the norms and ethical behaviour principles established in the Code of Conduct of Annex I IIA and on the other hand to provide the information indicated in Annex II IIA, agreeing that such information will be publicly available.

Regarding the norms and principles established in the *Code of Conduct*, it essentially maintains the norms and principles of the *Code of Conduct* incorporated in the 2014 Agreement, which, among other issues, require registrants to identify themselves to Union institutions by name, registration number, and indicate the entity or entities they work for or represent, not to obtain or attempt to obtain information or decisions dishonestly, respect the implementation and application of all rules, codes, and guidelines established by the institutions, or not to induce members of institutions to violate their applicable conduct rules.

Beyond the fact that the *Code of Conduct* seems to overlook that the Transparency Register now also includes the Council, as it only expressly mentions Parliament and the Commission, the 2021 IIA delves deeper into certain aspects already implied by the previous regulation, such as the misuse of the Register for profit. In this regard, it is stipulated that registrants must not abuse the Register for commercial gain (d) or damage the Register's reputation or harm the Union's institutions, nor use their logos without express authorization (e). Moreover, it aims to encompass all those effectively involved in lobbying activities, expressly referring to the "intermediary," i.e., the lobbyist who exercises lobbying activities on behalf of the client (j), third parties not registered but carrying out activities because the registrant has "outsourced" them (k), and employees of registered interest groups participating in listed activities (n).

Regarding the information registrants must provide (Annex II), the Secretariat is responsible for verifying applicants' admissibility and the accuracy of the information submitted so that once all requirements are met, registration is activated. The most significant change from the previous regulation is the expansion of information related to "Links with Union Institutions" (formerly referred to as "Relations with Union Institutions"). This section includes information on legislative proposals, policies, or other EU initiatives targeted by included activities, membership in Commission expert groups and other EU-supported forums and platforms, membership or support for intergroups and other unofficial grouping activities organized on European Parliament premises, or participation in such intergroups or activities, and the names of persons authorized to access European Parliament premises.

(5) As regards control mechanisms, the IIA stipulates that the Secretariat may conduct investigations based on complaints alleging that a registrant has not observed the *Code of Conduct* and also on its own initiative, in light of information suggesting the registrant in question may no longer meet the admissibility requirements (Article 6.7).

Thus, the distinction established by the 2014 Agreement between complaints and "alerts," the latter referring solely to inaccuracies in the Register's data or inadmissible registrations, disappears. Currently, Annex III of the IIA provides that any natural or legal person may file a complaint with the Secretariat regarding an alleged non-compliance by a registrant, without distinguishing between the obligation breached. The Annex lays out a clearly structured procedure for how the Secretariat must proceed once the complaint is received, as well as when the investigation is conducted on its initiative, providing a series of steps to guarantee applicants' and registrants' rights, particularly their right to be heard.

Specifically, it provides that the investigation must conclude with a reasoned decision, which will be notified in writing to the parties, and if it finds that a registrant is inadmissible the registration will be cancelled from the Register. Furthermore, depending on the seriousness of the non-compliance, the Secretariat may adopt one of the following measures: (a) prohibit the representative from re-registering for a period of between 20 working days and 2 years; and (b) publish the measure adopted on the Register's website. These measures may be subject to a reasoned request for review by the Management Board, which may advise on but not suspend any measure adopted by the Secretariat. Finally, if the registrants are dissatisfied with the Management Board's decision, they may appeal to the Court of Justice of the European Union under Article 263 TFEU or file a complaint with the European Ombudsman under Article 228 TFEU. The express recognition of the European Ombudsman's involvement in decisions related to the Transparency Register represents a new feature compared to the 2014 Agreement, although this institution, in exercising its investigative functions on maladministration by EU institutions and bodies, has resolved numerous complaints in this area[52] in recent years and has even publicly called for improvements in the regulation of interest groups.[53]

52 For example, in Case 1499/2021/SF, the European Ombudsman resolved the complaint filed by a network of journalists from several European countries who had requested public access to the initial observations and questions of the Member States on the legislative proposal for the Digital Markets Act, which had been denied by the Council, claiming that full disclosure would jeopardize an ongoing decision-making process. In its recommendation, the European Ombudsman considered that the Council's refusal to grant public access to the positions of the Member States constitutes a case of maladministration. The full text is available at: [Last accessed: 25.07.2024].

53 Debate organized by the European Ombudsman, 'EU agencies – How to manage the risk of reputational damage, 'which took place on October 18,

6.1 Prospects and future challenges for the mandatory registration system: controlling transnational lobbying

The changes to the Transparency Register introduced by the Interinstitutional Agreement of May 20, 2021, are significant, although it seems unlikely that they will resolve the problems identified in the application of previous Agreements.

Indeed, the introduction of mandatory registration has not been accompanied, as would have been desirable, by a stringent sanction regime for breaches of the *Code of Conduct* and, more importantly, for engaging in activities covered by the Register without fulfilling the mandatory registration requirement. In this sense, the measure of cancelling registration in the event of a *Code of Conduct* breach is more typical of a voluntary registration system rather than a genuinely mandatory system, where violations of the rules and principles governing lobbying activities are subject to substantial financial penalties.[54]

These weakness in the design of the *Code of Conduct* are directly related to the deficiencies of the ethics body in the European Union, particularly when it comes to enforcement. This is an important gap in the enfocement landscape of the Union that has to be filled in the next years because, nowadays, the ethics body does not have the necessary authority over the EU institutions to apply sufficient pressure and effectively motivate behavioural change (Petropoulou and Năstase, 2024).

Additionally, the overly broad configuration of some excluded activities (particularly striking is the exclusion of "spontaneous meetings" and "purely private or social" ones) may make it easier for those who have so far resisted registration to remain in the shadows.

Furthermore, as noted at the beginning of this work, the 2021 Interinstitutional Agreement does not even address what will be one of the major challenges for the European institutions in the coming years: to make lobbying activities more transparent and correctly channelled when carried out by third-party countries.

The inadequacy of mandatory registration has been implicitly acknowledged by the European Union itself when announcing the "Defence of democracy package," announced on 3 may 2023, which will include several measures for the strengthening of the resilience of the EU space to foreign interference and several supporting measures such as recommendations on covert interference, secure and resilient electoral processes and civic engagement.[55]

Indeed, at the European level, the problematic issue of transnational lobbying has been present for years. For example, between 2012 and 2014, it was discovered that the Azerbaijani regime had funnelled millions of dollars through offshore companies to bribe Members of the European Parliament involved in the Italy-Azerbaijan mega-pipeline project, known as the "Southern Gas Corridor," which led to a major crisis of confidence in the institutions.

Greater implications and media impact have already been seen in the aforementioned Qatargate, which uncovered Qatar's ties with politicians and parliamentary staff through whom attempts were made to influence several MEPs to support the Qatari regime and, more specifically, the hosting of the FIFA World Cup in that country, in the face of questions about its taking place there due to human rights violations.

The arrest of the Vice-President of the European Parliament, as well as other high-ranking officials (current and former) of the European institutions on charges of participation in a criminal organization, corruption and money laundering, prompted an immediate reaction from representatives and an institutional response marked by haste, exposing the lack of control over the situation.

Thus, the then-president of the European Parliament, Roberta Metsola, declared shortly after the scandal broke that she had received more than a hundred gifts, none of which were recorded in the Transparency Register. At the institutional level, in addition to suspending the approval of the report on the elimination of visas for Qataris traveling to the Schengen Area, the European Parliament adopted the Resolution of December 15, 2022,[56] which contains various proposals to improve the Transparency Register's functioning, some of which are measures already provided for in the 2021 IIA but have not yet been implemented.

Specifically, the Resolution calls on the Commission to present a proposal to create an independent body responsible for ethics issues; it proposes introducing an incompatibility period for former MEPs to prevent the adverse effects of the so-called "revolving door" phenomenon; it calls for a thorough assessment of and for improvements to be made in the transparency of MEPs' legislative activities, specifically disclosing the legislative footprint of texts and proposed amendments; and prohibiting any external funding of MEPs' staff and groups, expressing the commitment to establishing a Union-wide ban on donations from third-party countries to MEPs and political parties in order to fill loopholes within Member States, and it calls on the Commission to urgently present a proposal to that effect.

In light of the above, it seems unlikely that these proposals will solve the phenomenon of transnational lobbying, which is of enormous scope, and goes far beyond the Qatargate scandal. Indeed, the size of the European Union, its power as an organization and its open political system are elements that determine that many third-party governments hire lobbying firms based in Europe to use their connections, experience and contributions to influence decisions made by the Institutions, whether to whitewash their image, achieve EU positioning in regional conflicts, or receive various forms of aid, which significantly impact the Union's political life, both internally and internationally.

2017. Available at: https://www.youtube.com/watch?v=erlNKKDF3HE. [Last accessed: 25.07.2024].

54 In the U.S. case, the LDA (Lobbying Disclosure Act) provides that, in the event of non-compliance with the provisions of the law, sanctions may be imposed, primarily of a pecuniary nature, which can reach up to $50,000 in fines, depending on the type of non-compliance and its severity.

55 "Defending European Democracy – Communication" (2023), https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13730-Defending-European-democracy-Communication_en [Last accessed: 20.11.2024].

56 European Parliament Resolution of December 15, 2022, on suspicions of corruption related to Qatar and the need to increase transparency and accountability in European institutions. Available at:https://www.europarl.europa.eu/doceo/document/TA-9-2022-0448_EN.html. [Last accessed: 25.07.2024].

These activities are conducted outside the framework of diplomatic relations between the European Union and these third-party countries and in a covert manner, which raises the question of whether the parliamentarians and staff targeted by these lobbying activities are genuinely safeguarding the interests of European citizens, especially when lobbying activities are conducted by authoritarian regimes.

Beyond the European institutions, the debate over transnational lobbying is present in most countries, although most do not have an adequate transparency regime regarding lobbying activities carried out by foreign countries and do not even consider foreign governments as interest groups,[57] with a few exceptions in the Anglo-Saxon realm. For instance, in Canada lobbyists representing foreign government interests are subject to the same requirements as any other actor under the Canadian Lobbying Act. In the United States, there is a specific legal framework for transnational lobbying activities, embodied in the *Foreign Agents Registration Act* (FARA), adopted in 1938 and amended on several occasions to adapt to the growing complexity of the international landscape; this latter model has also been adopted in Australia, which enacted the *Foreign Influence Transparency Scheme Act* in 2018 (Luneburg and Susman, 2005; Naurin, 2007).

From these regulations, some elements can be drawn up to improve regulation on this matter contained in the 2021 IIA, which can be summarized as follows:

(1) Firstly, from a subjective point of view, the current Interinstitutional Agreement covers lobbying activities carried out by third-party countries when conducted by legal entities, offices, or networks without diplomatic status or represented by an intermediary, but it does not establish any specific monitoring or tracking strategy distinct from those to which other registrants are subjected. In this regard, it cannot be ignored that when the lobbyist is a State, the type of information to be provided and how this information is handled and publicized should be treated differently from private individuals and entities. At the same time, the code of conduct should include a specific control regime for lobbying activities from questionable regimes and distinguish, as Australian legislation does, foreign influence, considered a legitimate activity, from foreign interference, which is carried out covertly, deceptively, or coercively, with the risk of corrupting institutional integrity.[58]

(2) From an objective standpoint, specific treatment should be given to lobbying activities conducted by third-party countries which usually do not materialize through the traditional meetings, conferences, or "contacts" covered by Article 3.2(a) of the Interinstitutional Agreement. Instead, they are carried out by other means, such as funding organizations, foundations, or think tanks that support their objectives, or through gifts or other benefits (e.g., trips) for public decision-makers. Particular attention should be paid to the funding of grassroots organizations, to distinguish genuinely emerging networks or platforms from astroturfing, a technique that involves pretending to be a spontaneous grassroots movement in support of a specific policy, creating confusion in public opinion and public policies.

(3) Finally, at an institutional level, there is a requirement for a body with the necessary powers and resources to proactively supervise and investigate violations of the rules, ensuring that all information is published in a timely manner and in an accessible format. Under this paradigm of maximum transparency and accountability, violations and breaches detected should be made public, as the U.S. Department of Justice does through its publication of the most recent cases in which FARA has been applied.[59]

In conclusion, much work remains in the coming years, including the development of new control mechanisms, but above all ensuring that existing mechanisms function correctly.

7 Conclusion

The Interinstitutional Agreement between the European Parliament, the Council of the European Union, and the European Commission on a mandatory Transparency Register of May 20, 2021 (IIA) aims to open a new chapter in the EU's transparency policy by expanding, on the one hand, institutional cooperation, by adding the Council of the European Union as a signatory institution, and on the other, establishing the mandatory nature of registration in the Register, through the application of the so-called "conditionality principle."

The "conditionality principle," whereby registration in the Transparency Register is a precondition for carrying out certain activities, is the cornerstone of the IIA and is applied through individual measures adopted by each of the signatory institutions. Simultaneously, based on a broader concept of transparency than that contained in previous Agreements, besides the aforementioned "conditionality principle," the IIA includes complementary transparency measures to promote registration and strengthen the joint framework, also individualized for each of the signatory institutions, as well as the online publication of meetings.

The changes to the Transparency Register introduced by the IIA are significant, although it seems unlikely that they will resolve the problems identified in the application of previous Agreements. Indeed, the introduction of mandatory registration has not been accompanied, as would have been desirable, by a stringent sanction regime for breaches of the *Code of Conduct* and, more importantly, for engaging in activities covered by the Register without fulfilling the mandatory registration requirement.

Furthermore, the 2021 Interinstitutional Agreement does not even address what will be one of the major challenges for the European institutions in the coming years: to make lobbying activities more transparent and correctly channelled when carried out by third-party countries.

57 Lobbying in the 21st Century. Transparency, Integrity, and Access," OECD (2021), p. 45. Available at: https://www.oecd-ilibrary.org/deliver/c6d8eff8-en.pdf?itemId=%2Fcontent%2Fpublication%2Fc6d8eff8-en&mimeType=pdf [Last accessed: 03/09/2024].

58 *Australian Government Attorney General's Department*. https://www.ag.gov.au/integrity/foreign-influence-transparency-scheme [Last accessed: 03.09.2024].

59 https://www.justice.gov/nsd-fara/recent-cases [Last accessed: 03.09.2024].

A real improvement in this field would require a specific tracking strategy for lobbying activities that come from a Sate and to distinguish between foreign influence from foreign interference. It is also necessary to give a specific treatment to lobbying activities conducted by third-party countries through grassroots organizations. Finally, at an institutional level, there is a requirement for a body with the necessary powers and resources to proactively supervise and investigate violations of the rules, ensuring that all information is published in a timely manner and in an accessible format.

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