



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 25 November 2013

16711/13

**INST 631
POLGEN 234
INF 210
AG 10**

NOTE

from: General Secretariat of the Council
to: Delegations

No. prev. doc.: 14983/13 INST 539 POLGEN 194 INF 176 AG 9

Subject: Report of the GSC on the review process of the Transparency Register - meetings of the Working Group on 6 and 13 November 2013

1. The sixth and seventh meetings of the high level working group on the revision of the Transparency Register took place on 6 and 13 November 2013.
2. The meeting held on 6 November focussed essentially on **the legal framework of the Transparency Register**. The Working Group had invited four experts¹ to set out their views on this issue at a public hearing.

¹ János Bertok, Head of the Department for Public Sector Integrity, OECD, Paris; - Prof. Justin Greenwood, Robert Gordon University, Aberdeen, UK; Prof. Markus Krajewski, University of Erlangen-Nuremberg; Prof. Martin Nettesheim, University of Tübingen Law School.

While one of the experts suggested that Article 298 TFEU, which provides for the adoption of regulations aiming at ensuring an open, efficient and independent European administration, could possibly serve as a legal basis for creating a legally binding register system, it was concluded at the meeting by other experts and, subsequently, by the legal service of the European Parliament and the Commission that the only appropriate legal basis for introducing such a legally binding system would be Article 352 TFEU² in view of the need to cover the legislative process. Both legal services underlined also the procedural difficulties (unanimity in the Council and consent of the European Parliament) entailed by this legal basis.

3. At the meeting of 13 November, the Working Group **continued the debate on the legal framework of the Transparency Register** in the light of the conclusions reached at the previous meeting, discussing in particular the modalities and procedure related to the legal basis for introducing a mandatory register system. Several members of the Working Group took the view that the move towards a mandatory regime should be taken into consideration and a number of prerequisites would need to be met before this could happen. During the discussion, the need for a clear definition of the scope and consequences of any compulsory scheme was stressed, and it was recalled that the existing joint transparency register had the widest embrace in the world in terms of scope, even with its present voluntary registration basis.
4. The Working Group then proceeded to an exchange of views on an **indicative list of measures and elements of suggested improvements to take into account in the review of the Transparency Register**. The indicative list included both a series of modifications on which consensus had emerged during the previous discussions in the Group and a number of additional measures, which were examined.

² Article 352 TFEU allows for the adoption of measures aiming at achieving one of the EU's objectives for which the treaties do not provide the necessary powers. In case of recourse to this Article, the appropriate measures shall be adopted by the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament.

5. Among the suggested **modifications of direct interest to the Council**, the indicative list of measures, on which an agreement has been reached, included the **exemption of Member States' governments**, third countries governments as well as intergovernmental public organisations **and their diplomatic missions from the scope of the register**. The same applied to **activities directed at Member States national structures**, including their **Permanent Representations** in Brussels.
6. As regards the **sub-national entities**, it is suggested that **Regions should not be expected to register**, although the possibility to register should remain open for those who wish to do so on a voluntary basis. All other sub-national entities (including cities) or any mixed entity should be expected to register when engaged in activities falling under the scope of the register directed at the EU institutions.
7. Among the measures discussed is notably the inclusion of a possible additional provision in the Interinstitutional Agreement (IIA) to the effect that each institution, party to the agreement, will recommend incentives to encourage registration of interest representatives, as far as is possible within its own powers of organisation, using internal rules or administrative codes, which should possibly be amended to attain that end after the adoption of the new IIA. The Working Group will resume its deliberations at a meeting to be held on 3 December in Brussels. An additional meeting has been scheduled for 12 December in Strasbourg.