



Brussels, 21 June 2019
(OR. en)

9688/19

AG 18
INST 148
POLGEN 108
JUR 286

REPORT

From: Presidency

To: Permanent Representatives Committee

No. prev. doc.: 15332/17
15332/17 COR 1 et 2
15336/17

Subject: Interinstitutional negotiations on the Commission proposal for an interinstitutional agreement on a mandatory Transparency Register
- Progress report

I. INTRODUCTION

1. The Transparency Register concerns the contacts between the Commission, the Council and the Parliament and the lobbyists ('interest representatives'). On 28 September 2016, the Commission presented its proposal for a new, tripartite Interinstitutional Agreement (IIA) on a *mandatory* Transparency Register¹, in order to replace the current bilateral *voluntary* one².
2. The main objective of the proposal is to establish a framework for transparent interactions between interest representatives and the three EU institutions. The registration of interest representatives in the Transparency Register should become a precondition for their interactions with decision-makers in the three EU institutions (the 'no registration - no

¹ 12882/16.

² In 2011, the Commission and the European Parliament (EP) signed an IIA establishing a common Transparency Register, providing for *voluntary* registration of lobbyists; this was revised in 2015. The Council decided not to participate but made a unilateral statement, expressing its support. In 2014, President Juncker included the establishment of a *mandatory* Transparency Register in his political priorities.

meeting' principle, or 'conditionality principle'), in line with the internal rules the Commission introduced for itself in 2014. In the Commission proposal no reporting commitments are foreseen.

II. WORK IN THE EUROPEAN PARLIAMENT

3. In June 2017, the European Parliament Conference of Presidents (CoP) adopted the EP negotiating mandate³, which took the form of a set of negotiating goals. In October 2016, the CoP had appointed Sylvie GUILLAUME (S&D, FR), Vice-President in charge of transparency, and Danuta HÜBNER (EPP, PL), Chair of the Committee on Constitutional Affairs (AFCO), as its lead negotiators. A Contact group with political groups' representatives was also established.
4. A revised EP mandate was adopted by the CoP in June 2018, listing ten measures to be implemented by the EP, including a *voluntary* declaration by the MEPs that they will apply the conditionality principle⁴.
5. Furthermore, with the revision of its Rules of Procedure in January 2019, the EP updated its commitments, but without making the conditionality principle binding⁵.

III. WORK WITHIN THE COUNCIL

6. The Permanent Representatives Committee approved, and made public, the Council's negotiating mandate in December 2017⁶. It consists of a package of two instruments - a draft IIA (amended Commission proposal)⁷ and a draft Council decision (new document)⁸.
7. The Presidency regularly reported to the General Affairs Working Party on interinstitutional negotiations.

³ [http://www.europarl.europa.eu/RegData/publications/reg/2017/602260/EP-PE_REG\(2017\)602260_XL.pdf](http://www.europarl.europa.eu/RegData/publications/reg/2017/602260/EP-PE_REG(2017)602260_XL.pdf)

⁴ http://www.epgencms.europarl.europa.eu/cmsdata/upload/0797dae0-9ac7-4df0-b8f7-de9c16a613ae/2018_06_27_EP_transparency_package_-_proposals_to_strengthen_conditionality.pdf

⁵ Rules 11a and 34(5); <http://www.europarl.europa.eu/sides/getLastRules.do?language=EN&reference=TOC>

⁶ 15173/17.

⁷ 15332/17, 15332/17 COR1, 15332/17 COR2.

⁸ 15336/17.

IV. INTERINSTITUTIONAL NEGOTIATIONS

8. After two preliminary political level meetings during the Estonian Presidency⁹, negotiations started in January 2018. Eleven technical level meetings under the Estonian, Bulgarian and Romanian Presidencies¹⁰ and three political level meetings under the Bulgarian and Romanian Presidencies¹¹ took place until April 2019.
9. The institutions quickly identified difficulties in reaching an agreement, the most significant being the scope of the conditionality principle. Difficult issues were set aside at technical level, in view of political guidance, while talks permitted to register progress on several other provisions.
10. The Commission suspended negotiations from June 2018 to February 2019, establishing its request for *binding* commitments from the Council Presidency and MEPs to only meet registered lobbyists as a pre-condition for the resumption of negotiations.
11. On 13 February 2019, at the political meeting under the Romanian Presidency, the negotiators agreed to continue discussions at technical level and to reserve the sensitive issues for political talks.

V. MAIN ISSUES

12. The scope (i.e. who should be committed by the conditionality principle) is the main difficulty. The issue is addressed in Article 5 of the Commission's proposal.
 - a) Council position: A provision on coverage of the GSC (SG and Directors-General) has been included in the draft Council Decision, which is a part of the negotiating mandate. On the other hand, in line with the Council Legal Service opinion, delegations considered that interactions between lobbyists and Member States' organs (including Permanent Representatives exercising the Presidency) should not be submitted to the conditionality principle via an IIA, as these interactions were under the exclusive competence of the Member States.

⁹ On 6 September 2017, at a tripartite kick-off meeting at political level, the Council presented its proposal on a 'new legal architecture' of the dossier. At the second political meeting on 12 December 2017 it was decided to start negotiations early in 2018.

¹⁰ 29 January, 26 February, 26 March, 4 and 27 June and 4 September 2018; 7 and 22 February, 4 and 15 March and 8 April 2019.

¹¹ 16 April and 12 June 2018; 13 February 2019.

However they have not ruled out participating under their national rules, where applicable, and a proposal for a provision on the possible use of the Transparency Register by the Member States has been included in the negotiating mandate (Article 13 IIA).

Two additional steps forward were also secured under the Austrian Presidency: (i) the expression by a high number of Member States of their readiness to sign a voluntary political declaration to respect the conditionality principle when they are the current or incoming Presidency, subject to agreement on the whole package; and (ii) the immediate readiness of the next Trio Presidencies (RO, FI, HR) to make use of the Transparency Register.

- b) The EP's position is against the inclusion of MEPs, due to concerns over their 'freedom of mandate'. However, according to the Parliament's Rules of Procedure, MEPs 'should adopt the systematic practice of only meeting with registered interest representatives'¹². The EP also considers that all officials from the institutions down to Head of Unit level should be covered. In its revised mandate (June 2018), the EP commits itself to putting in place ten internal measures and to introducing a voluntary declaration by MEPs to apply the conditionality principle.

As mentioned above, in January 2019 the EP adopted its revised Rules of Procedure, with important amendments regarding the Transparency Register: the rule remains that MEPs should adopt the systematic practice of only meeting registered lobbyists (voluntarily). They should also publish information on these meetings. At the same time, rapporteurs, shadow rapporteurs and committee chairs will have binding obligations: they shall, for each report, publish online all scheduled meetings with interest representatives (registered or not). These amendments were assessed by the Commission as being insufficient, even though it agreed to resume negotiations.

- c) Commission position: it maintains its proposal and insists especially on the inclusion in the scope of MEPs and the Presidency. During the meetings in 2019, the Commission placed emphasis on the *implementation* of the new measures and rules.

¹² Rule 11 (2). This provision was set out in the EP Rules of Procedure even before its 2019 revision.

13. The legal architecture is also an issue, and is linked to the scope. There are different views on where (in which instrument) the institutions' commitments on conditionality should be made. Pursuant to the Council's mandate, these commitments should be made through individual decisions of the institutions, rather than through an IIA. The three Legal Services together tried to establish a pragmatic proposal regarding the legal architecture¹³, but divergences seem to be confirmed and political guidance will be needed.
14. The issues regarding the staff, resources and organisation of the Register Secretariat were addressed briefly at technical level at the end of this stage of negotiations. Discussions revealed significant differences at concept level, mainly between the Commission and the EP, based on their experience with the current IIA.
15. Progress was made in identifying common ground on a number of issues, for instance several provisions regarding definitions, the bodies not covered by the agreement, the eligibility and registration of applicants, the Management Board, and the majority of provisions in the Annexes.

VI. STATE OF PLAY AND CONCLUSIONS

16. After the five technical meetings held under the Romanian Presidency, it became clear that the file would not be finalised before the end of the legislative term, despite the efforts, flexibility and willingness of delegations and several Presidencies.
17. Progress was reached on a number of provisions, as mentioned, but divergences persist between the institutions on a couple of political issues. Political guidance will be needed in the respective institutions on the issue of the conditionality principle, but also on the legal architecture, the organisation of the Register Secretariat and the allocation of resources.
18. The Presidency complied with its negotiating mandate, while trying to be cooperative and flexible during negotiations. The Presidency hopes that negotiations will quickly resume during the new legislative term.

¹³ Meeting on 11 March 2019.

19. The present report aims to facilitate future work under the incoming Presidencies and with the newly elected Parliament and the Commission.
 20. In the light of the above, the Permanent Representatives Committee is invited to take note of the progress made on the file.
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