

AmCham EU's response to the public consultation on a proposal for a mandatory Transparency Register

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AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €2 trillion in 2015, directly supports more than 4.3 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

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CONSULTATION RESPONSE

31 May 2016

QUESTIONNAIRE

*** Are you responding as:**

- An individual in my personal capacity
- The representative of an organisation registered in the [Transparency Register](#)
- The representative of an organisation not registered in the Transparency Register

*** Please provide your Register ID no:**

5265780509-97

*** Name of the organisation:**

The American Chamber of Commerce to the European Union (AmCham EU)

*** The organisation's head office is in:**

- | | |
|--|---|
| <input type="checkbox"/> Austria | <input checked="" type="checkbox"/> Belgium |
| <input type="checkbox"/> Bulgaria | <input type="checkbox"/> Cyprus |
| <input type="checkbox"/> Czech Republic | <input type="checkbox"/> Germany |
| <input type="checkbox"/> Denmark | <input type="checkbox"/> Estonia |
| <input type="checkbox"/> Greece | <input type="checkbox"/> Spain |
| <input type="checkbox"/> Finland | <input type="checkbox"/> France |
| <input type="checkbox"/> Hungary | <input type="checkbox"/> Croatia |
| <input type="checkbox"/> Ireland | <input type="checkbox"/> Italy |
| <input type="checkbox"/> Lithuania | <input type="checkbox"/> Luxembourg |
| <input type="checkbox"/> Latvia | <input type="checkbox"/> Malta |
| <input type="checkbox"/> Netherlands | <input type="checkbox"/> Poland |
| <input type="checkbox"/> Portugal | <input type="checkbox"/> Romania |
| <input type="checkbox"/> Sweden | <input type="checkbox"/> Slovenia |
| <input type="checkbox"/> Slovak Republic | <input type="checkbox"/> United Kingdom |
| <input type="checkbox"/> Other country | |

*** Your organisation belongs to the following type:**

- Professional consultancies
- Law-firms
- Self-employed consultants
- Companies and groups
- Trade and business associations
- Trade unions and professional associations
- Other organisations including: event-organising entities (profit or non- profit making); interest-related media or research oriented entities linked to private profit making interests; ad-hoc coalitions and temporary structures (with profit-making membership)

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- Non-governmental organisations, platforms, networks, ad-hoc coalitions, temporary structures and other similar organisations
- Think tanks and research institutions
- Academic institutions
- Organisations representing churches and religious communities
- Regional structures
- Other sub-national public authorities
- Transnational associations and networks of public regional or other sub-national authorities
- Other public or mixed entities, created by law whose purpose is to act in the public interest

Contact for this public consultation:

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A. GENERAL PART

1. Transparency and the EU

1.1 The EU institutions interact with a wide range of groups and organisations representing specific interests. This is a legitimate and necessary part of the decision-making process to make sure that EU policies reflect the interests of citizens, businesses and other stakeholders. The decision-making process must be transparent to allow for proper scrutiny and to ensure that the Union's institutions are accountable.

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

- Fully agree
- Partially agree
- Disagree
- No opinion

The American Chamber of Commerce to the European Union (AmCham EU) is a unique organisation representing over 160 companies from a broad range of sectors. AmCham EU stands for an open and transparent European dialogue and policy-making process and is a long-standing supporter of EU efforts to enhance transparency. It is committed to assisting and providing quality input to ensure more transparency and legal certainty in relations between stakeholders and all European bodies. Indeed, interest representation constitutes a vital element of a healthy EU decision-making process, where policy makers depend on input from experts in order to deliver effective regulation.

AmCham EU believes transparency and ethical behaviour benefit policy development, as they ensure proper scrutiny from stakeholders and accountability of the EU institutions. Finally, AmCham EU

encourages the European Commission to structurally and openly involve all stakeholders in the policy-making and implementation process.

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

More than one answer possible

- Integrity
- Equality of access
- Other (please elaborate in the comment box below)
- No opinion

AmCham EU has always strived to work to the highest standards of integrity and transparency in its relations with the EU institutions. It believes that establishing appropriate lobbying regulation goes further than transparency. In this context, rules and values such as equality of access (as fair and impartial for all), same level playing field, and quality of information are vital.

Comments or suggestions (Optional) (3000 characters maximum):

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

- They are highly transparent
- They are relatively transparent
- They are not transparent at all
- No opinion

Comments or suggestions (Optional) (3000 characters maximum):

AmCham EU welcomes the Commission's Better Regulation Agenda, the recent Inter-institutional Agreement (IIA) on Better Law-making and the ambition to propose a mandatory Transparency Register. It also welcomes the Commission's commitment to propose new professional and high ethical standards in order to be a more modern and transparent public administration. Indeed, Commission President Jean-Claude Juncker's 'Political Guidelines for the next European Commission' clearly state that transparency is a top priority.

Nevertheless, AmCham EU believes that there are areas where transparency in the EU decision-making process can be further improved. Notably, AmCham EU invites the institutions to improve transparency of trilogues. It would also welcome a greater insight into the work of the European Council through increased access to documents, meeting agendas and minutes. Moreover, AmCham EU encourages the Commission to increase transparency in the functioning of expert groups and related sub-groups, as well as ensure systematic and timely communication of preparatory documents like agendas and draft delegated acts. Too often documents are incomplete with no inclusion of

deliberations or only a vague summary of the discussion.

Finally, AmCham EU would recommend a consistent application of the Commission policy of publishing information on stakeholder meetings in order to avoid a situation where each Directorate-General can make its own rules. AmCham EU believes that the reformed Transparency Register should be applicable across the board with a 'one-stop shop' approach, resulting in reduced administrative burden for registrants and less risk of confusion and duplication of rules.

*** 1.2 The Transparency Register provides information to politicians and public officials about those who approach them with a view to influencing the decision-making and policy formulation and implementation process. The Register also allows for public scrutiny; giving citizens and other interest groups the possibility to track the activities and potential influence of lobbyists.**

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

- Very useful
 Somewhat useful
 Not useful at all
 No opinion

Comments or suggestions (Optional) (3000 characters maximum):

The Transparency Register is an important tool for regulating lobbying. It provides a code of conduct establishing the underlying principles for interactions with the EU institutions, an alerts and complaints mechanism and access to the European Parliament premises for registrants. Moreover, the Transparency Register allows the public and the European institutions to know with whom they are interacting with and the areas of interests of the registrant.

However, AmCham EU invites the Commission to further inform the public by providing better communication and explanation on what the Transparency Register constitutes in order to not misinterpret the information declared. There is also a lack of clarity regarding financial disclosure leading to misinterpretation (please see examples under section B 2.2).

Furthermore, AmCham EU underlines the importance of structurally involving all relevant stakeholders in the proposed reform of the Transparency Register. This public consultation is therefore welcomed. Given the impact the reform will have on the very profession of interest representation, AmCham EU would recommend the establishment of an advisory council to facilitate the widest-possible stakeholder input in the development of the proposed mandatory Register.

2. Scope of the Register

*** 2.1 Activities covered by the Register include lobbying, interest representation and advocacy. It covers all activities carried out to influence - directly or indirectly - policymaking, policy implementation and decision-making in the European Parliament and the European**

Commission, no matter where they are carried out or which channel or method of communication is used.

This definition is appropriate:

- Fully agree
 Partially agree
 Disagree
 No opinion

Comments or suggestions (Optional) (3000 characters maximum):

AmCham EU would like to note that while some of its members may find the definition of 'direct and indirect' influence clear, others may not.

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

The scope of the Register should be:

- Changed to exclude certain types of entities (please elaborate in the comments box below)
 Changed to include certain types of entities (please elaborate in the comments box below)
 Preserved the same as currently
 No opinion

Comments or suggestions (Optional) (3000 characters maximum):

AmCham EU believes that a mandatory Register should include all applicable entities.

3. Register website

3.1 What is your impression of the Register [website](#)?

* Design and structure

- Good Average Poor No opinion

* Availability of information / documents

- Good Average Poor No opinion

* Ease of search function

- Good Average Poor No opinion

* Accessibility (e.g. features for visually impaired persons, ease of reading page)

Good Average Poor No opinion

* Access via mobile devices

Good Average Poor No opinion

Comments or suggestions (Optional) (3000 characters maximum):

AmCham EU takes note of the Transparency Register Implementing Guidelines' clarification of elements to be included in the estimation of annual costs covered by the Register. These costs include office and administrative expenses, staff costs, in-house operational expenditure, representation costs, outsourced activity costs, membership and related fees, and other relevant costs. However, the Transparency Register website does not currently provide clear enough information for those unfamiliar with the Register on what the financial declaration could cover.

4. Additional comments

Final comments or ideas on any additional subjects that you consider important in the context of this public consultation (Optional) (3000 characters maximum):

If you wish you may provide additional information (position papers, reports, etc) in support of your answers to this public consultation. Please upload no more than three files of up to 1Mb each. Attachments above this number will not be considered.

B. SPECIFIC PART

1. Structure of the Register

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

Have you encountered any difficulties with this categorisation?

Yes
 No
 No opinion

Comments or suggestions (Optional) (3000 characters maximum):

However, some of AmCham EU's members have experienced difficulties with the categorisation of law firms under the Register.

2. Data disclosure and quality

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

The right type of information is required from the registrant:

- Fully agree
- Too much is asked
- Too little is asked
- No opinion

Comments or suggestions (Optional) (3000 characters maximum):

AmCham EU fully agrees that the right type of information is currently required from registrants. However, it believes that the nature of the information requested is not clear enough. Uncertainties remain regarding how and what elements should be declared. Examples are provided under question 2.2.

*** 2.2 It is easy to provide the information required:**

- Fully agree
- Partially agree
- Disagree
- No opinion

Comments or suggestions (Optional) (3000 characters maximum):

AmCham EU welcomes the Transparency Register Implementing Guidelines, which provide more clarity on some of the operational methodology. AmCham EU notes that the Commission does not ask for accounted financial costs but an estimation of costs related to activities covered by the Register. AmCham EU believes this the right methodology to employ. However, the current methodology infers a degree of precision that is not possible to declare. In this regard, certain sections require greater clarity:

- 1) The staff costs: the current guidelines state that all shares of staff costs including gross/fees allowances, bonuses and benefits should be declared. However, data privacy laws within companies or at the national level might restrain access to such information.*
- 2) The methodology used to count the number of people involved in lobbying activities (25%, 50%, 75%, 100%) is not clear enough and leaves too much room for interpretation on the effective lobbying time spent. AmCham EU therefore proposes to return to the former system*

of calculating the number of people based on a calculation of the time spent on lobbying pro rata temporis.

- 3) *AmCham EU is not comfortable with the definition of representation costs as currently provided by the guidelines.*
- 4) *Consultancies and law firm annual costs related to activities: AmCham EU believes that this information is not relevant for professional consultancies, law firms and self-employed consultants (Sub-section I). It is relevant in a transparency context to know that a client is paying a consultancy/law firm a certain amount of money for an assignment. It is not relevant to disclose the cost carried by the consultancy/law firm for delivering the assignment. For transparency purpose, revenue should be registered both in total and as per client.*

Moreover, AmCham EU would also welcome more clarity on the given possibilities of an enforcement mechanism overseeing compliance with the Code of Conduct.

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

- Yes
 No
 No opinion

Comments or suggestions (Optional) (3000 characters maximum):

Please see 2.2 above.

*** 2.4. What is your impression of the overall data quality in the Register?**

- Good
 Average
 Poor
 No opinion

Comments or suggestions (Optional) (3000 characters maximum):

AmCham EU takes note that the Transparency Register suffers from disparity in the disclosure of information. It believes that greater consistency would be positive and that a simpler set of guidelines would allow for better compliance.

3. Code of Conduct and procedure for Alerts and Complaints

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

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

- Fully agree

- Partially agree
 Disagree
 No opinion

Comments or suggestions (Optional) (3000 characters maximum):

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

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

- Fully agree
 Partially agree
 Disagree
 No opinion

Comments or suggestions (Optional) (3000 characters maximum):

AmCham EU believes that the appeal process needs to be confidential until fully finalised. Moreover, if a registration is challenged, the registrant should have the right to access the identity and reasons of the complainer.

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

- Yes
 No
 No opinion

Comments or suggestions (Optional) (3000 characters maximum):

No suspension should be made until the final outcome of the appeal process has been reached. Names of registrants found to have been fraudulent in their submission should be made public if the reasons are clearly outlined.

4. Register website – registration and updating

4.1 How user-friendly is in your opinion the Register [website](#) in relation to registration and updating?

* Registration process

- Straightforward Satisfactory but can be improved Cumbersome No opinion

* Updating process (annual & partial)

Straightforward Satisfactory but can be improved Cumbersome No opinion

Comments or suggestions (Optional) (3000 characters maximum):

5. Current advantages linked to registration

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

In the European Parliament (EP)

* **Access to Parliament buildings:** long-term access passes to the EP's premises are only issued to individuals representing, or working for registered organisations

Very important Somewhat important Not important No opinion

* **Committee public hearings:** guests invited to speak at a hearing need to be registered

Very important Somewhat important Not important No opinion

* **Patronage:** Parliament does not grant its patronage to relevant organisations that are not registered

Very important Somewhat important Not important No opinion

In the European Commission

* **Meetings:** organisations or self-employed individuals engaged in relevant activities must be registered in order to hold meetings with Commissioners, Cabinet members and Directors-General

Very important Somewhat important Not important No opinion

* **Public consultations:** the Commission sends automatic alerts to registered entities about consultations in areas of interest indicated by them; it differentiates between registered and non-registered entities when publishing the results

Very important Somewhat important Not important No opinion

* **Patronage:** Commissioners do not grant their patronage to relevant organisations that are not registered

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Very important Somewhat important Not important No opinion

* **Mailing lists:** organisations featuring on any mailing lists set up to alert them about certain Commission activities are asked to register

Very important Somewhat important Not important No opinion

* **Expert groups:** registration in the Transparency Register is required in order for members to be appointed (refers to organisations and individuals appointed to represent a common interest shared by stakeholders in a particular policy area)

Very important Somewhat important Not important No opinion

Comments or suggestions (Optional) (3000 characters maximum):

Currently, the European Parliament allows up to four long-term passes for an organisation to be active at the same time. While AmCham EU appreciates and fully subscribes to the Parliament security arrangements, it would welcome if the Parliament could offer a higher number of long-term passes for larger organisations.

6. Features of a future mandatory system

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

Yes
 No
 No opinion

Comments or suggestions (Optional) (3000 characters maximum):

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

Yes
 No
 No opinion

Comments or suggestions (Optional) (3000 characters maximum):

AmCham EU would welcome a Council decision to participate in the Transparency Register.

7. Looking beyond Brussels

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

- It is better
- It is worse
- It is neither better, nor worse
- No opinion

Good practices or lessons learned at the EU Member State level to be considered, or pitfalls to be avoided. (Optional) (4000 characters maximum)

The EU and Member States undertake different approaches to lobbying regulation. AmCham EU believes that best practices and lessons learned at the member state level or outside the EU should inform developments in a reformed Transparency Register. Moreover, AmCham EU encourages the Commission to scrutinise different existing national systems in order to ensure that overlaps and inconsistencies are kept to a minimum.

8. Additional comments

Final comments or ideas on any additional subjects that you consider important in the context of this public consultation (Optional) (3000 characters maximum):

*** Publication of your consultation**

- I agree to my contribution being published
- I do not agree to my contribution being published