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1. Background and common elements

Following the Commission's 2008 voluntary register of "interest representatives", a common "transparency" register between the Commission and the European Parliament was launched in June 2011. The common register widens the scope of those expected to register.

http://europa.eu/transparency-register/index_en.htm

Scope

The guideline on who is expected to register is for all organizations and self employed individuals engaged in "activities carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and decision-making processes of the EU institutions".

Registrants are required to provide financial information relevant to the "activities" defined above. This information has a different form depending on the type of organisation.

Consultancies and law firms - turnover corresponding to the total revenue from all relevant clients together with a list the clients in decreasing order of contract value.

In-house lobbyists and trade associations - estimate of the cost associated with relevant "activities" .

NGOs and think-tanks - total budget and a list of the main sources of funding.

Insufficient guidance has been provided on how estimates are to be calculated. This creates a risk that conflicting or incompatible information provided by registrants of the same type will undermine the credibility of the information provided. SEAP is therefore providing such guidelines.

Objective of the SEAP guidelines

To provide a consistent methodology for the provision of information in the register.

Duplication and double counting

As a principle SEAP recommends that registrants avoid double counting. However, the current official recommendation is to explicitly ALLOW double counting for consultants fees but not for (registered) trade associations. Reluctantly therefore SEAP recommends following this official recommendation (and SEAP will continue to dialogue with the authorities on this).

SEAP recommends that corporates request the consultant, legal firm or association they use to themselves make a registration.

Transparency & complying with the SEAP code of conduct

Each SEAP member subscribes to the organisation's code of conduct. Article 2 states that "European affairs professionals when making representations to the EU institutions shall be open and transparent in declaring their name, organisation or company, and the interest they represent." In keeping with the spirit of this article SEAP recommends registrants, while NOT counting the fees, do declare their memberships of trade associations and the consultancies and legal offices they use.

VAT

All estimates should exclude VAT.

Statement on SEAP code and SEAP guidelines

All registrations should state:

- a) the registrant is a signatory of the SEAP code,
- b) this registration is calculated according to the SEAP guidelines.

Balancing accounting with reputation

While SEAP does not recommend overstating lobbying costs, there is a risk in being challenged for providing figures which are perceived by third parties as too low and being accused of dishonesty as a result. Erring on the side of generosity may be a better course where there is uncertainty.

2. Trade associations

Background

The Registration FAQ states:

"trade or professional associations are expected to provide an estimate of the cost associated with the activities falling under the scope of the register. This estimate does not have to satisfy conventional financial reporting and accountancy requirements and therefore has no legally binding characteristics or effects".

And the relevant guideline states:

"The estimate of the cost of the activities falling under the scope of the register by the registrant should be established by adding the following elements:

1. Staff cost: to be calculated on the basis of staff time (Calculated pro rata temporis) devoted to activities falling under the scope of the register and expressed in number of person/year. The share of personnel costs devoted to these activities will then be the sum of the respective shares.
2. Administrative costs (including costs of offices in Brussels): to be calculated by applying the share of staff cost, resulting from the above approach, to the administrative costs.
3. Outsourced activity costs, consultancies fees and subcontracted activities related to activities falling under the scope of the register.
4. In-house operational expenditures: cost all operational expenditures related to activities falling under the scope of the register".
5. Full Membership fees, contributions and participation cost in all: trade or professional associations, think tanks, special event organized by third parties, which have not registered themselves in the joint Transparency register. These costs should not be taken into account for those organizations which have registered themselves. But in those cases, for transparency reasons, the list of these organizations should also be included in the list to provide under the label "networks" in the registration form".

Methodology and what to declare

SEAP recommends that all direct and indirect forms of interest representation by trade associations are quantified for the purposes of ETI registration. As a general rule there can be three headings:

- (1) a share of '**staff costs**' devoted to lobbying (guideline category 1)
- (2) a share of '**administrative and in-house costs**' (guideline categories 2,4)
- (3) actual '**outsourced costs and fees**' such as consultancy and legal fees and trade associations not registered (guideline categories 3,5)

(1) Guidance on calculating the share of 'staff costs'

SEAP recommends that the share of staff costs is calculated on the basis of staff time devoted to lobbying: e.g. a director general might spend 10% of their time, an EU affairs manager 40%, and a communications manager 25%. The share of staff costs devoted to direct lobbying would then be the sum of the respective shares.

(2) Guidance on calculating the share of 'administrative and in-house costs'

SEAP recommends the inclusion of other expenses which may be relevant such as entertainment, events, travel, and communication (but excluding fees paid to external bodies). These costs will vary widely and may be costly to accurately estimate. SEAP therefore recommends a simple formula to apply the aggregate percentage of staff time from (1) above, to the estimate of all heading (2) items.

(3) Actual costs of consultants/legal fees (registered or not) + actual trade association/think-tank fees (only if the trade association/think-tank is NOT registered).

For example:

Director General:	10 / 100
EU affairs manager:	40 / 100
Communications manager:	25 / 100
Secretary:	0 / 100

Total: 75 / 400 (i.e. 19%)

The amount declared is thus:

19% of total staff costs

+ 19% of administrative and in-house costs

+ actual outsourced costs and fees.

A note of caution

Associations should take into account local legal provisions. In some member states there are case by case agreements with the tax authorities on VAT exemptions with respect to lobbying. Associations should consider the respective political risks and benefits inherent in the amount they declare as lobbying cost.

3. Corporates

Background

The Register FAQ states:

"trade or professional associations are expected to provide an estimate of the cost associated with the activities falling under the scope of the register. This estimate does not have to satisfy conventional financial reporting and accountancy requirements and therefore has no legally binding characteristics or effects".

And the relevant guideline states:

"The estimate of the cost of the activities falling under the scope of the register by the registrant should be established by adding the 5 following elements:

1. Staff cost: to be calculated on the basis of staff time (Calculated pro rata temporis) devoted to activities falling under the scope of the register and expressed in number of person/year. The share of personnel costs devoted to these activities will then be the sum of the respective shares.
2. Administrative costs (including costs of offices in Brussels): to be calculated by applying the share of staff cost, resulting from the above approach, to the administrative costs.
3. Outsourced activity costs, **consultancies fees** and subcontracted activities related to activities falling under the scope of the register.
4. In house operational expenditures: cost all operational expenditures related to activities falling under the scope of the register.
5. Full Membership fees, contributions and participation cost in all: **trade or professional associations**, think tanks, special event organized by third parties, which have not registered themselves in the joint Transparency register. These costs should not be taken into account for those organizations which have registered themselves. But in those cases, for transparency reasons, the list of these organizations should also be included in the list to provide under the label "networks" in the registration form".

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SEAP recommends that all direct and indirect forms of interest representation by trade associations are quantified for the purposes of ETI registration. As a general rule there can be three headings:

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- (3) actual '**outsourced costs and fees**' such as consultancy and legal fees and trade associations not registered (guideline categories 3,5)

(1) Guidance on calculating the share of 'staff costs'

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(2) Guidance on calculating the share of 'administrative and in-house costs'

SEAP recommends the inclusion of other expenses which may be relevant such as entertainment, events, travel, and communication (but excluding fees paid to external bodies). These costs will vary widely and may be costly to accurately estimate. SEAP therefore recommends a simple formula to apply the aggregate percentage of staff time from (1) above, to the estimate of all heading (2) items.

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The amount declared is thus:

19% of total staff costs

+ 19% of administrative and in-house costs

+ actual outsourced costs and fees.

Transparency under the SEAP code

SEAP recommends corporates declare the lists of their memberships of trade associations and the consultancies and legal offices they use.

4. Public affairs consultancies

Background

The Register FAQ states:

"professional consultancies and self employed consultants are expected to disclose the turnover of their organisation linked to activities falling within the scope of the register, based on the latest annual accounts. This turnover should correspond to the registrant's total revenue from all clients but only related to the eligible activities. Registrants will then be asked to list the clients on behalf of whom they have been active toward the European institutions. This list, established in decreasing order of contract value, will be presented through the placing of their client in boxes representing ranges in absolute amounts."

And the following exclusions are explicitly mentioned in the FAQ:

"However, activities of law firms, public affairs consultants, certified accountants etc. giving assistance to a client for an individual case submitted to the Court of Justice or directly related to a competition case, or an access-to-document request handled by the Commission services do not fall within the scope of the Register".

Methodology and what to declare

Public Affairs consultancies' principal income takes the form of professional service fees which are generally charged on an hourly/daily basis, or as a retainer.

SEAP recommends Public Affairs consultancies disclose the total share of their turnover related to providing relevant activities.

SEAP recommends Public Affairs consultancy disclose turnover shares by client, based on the Commission's annual budget bands indicating annual turnover.

Transparency under the SEAP code

SEAP recommends public affairs consultancies declare their client lists.

5. Law firms

Background

The Register FAQ states:

“Law firms are expected to disclose the turnover of their organisation linked to activities falling within the scope of the register, based on the latest annual accounts. This turnover should correspond to the registrant's total revenue from all clients but only related to the eligible activities. Registrants will then be asked to list the clients on behalf of whom they have been active toward the European institutions. This list, established in decreasing order of contract value, will be presented through the placing of their client in boxes representing ranges in absolute amounts.”

And the following exclusions are explicitly mentioned in the FAQ:

“However, activities of law firms, public affairs consultants, certified accountants etc. giving assistance to a client for an individual case submitted to the Court of Justice or directly related to a competition case, or an access-to-document request handled by the Commission services do not fall within the scope of the Register.

And these exclusions in the EC/EP agreement:

“activities concerning the provision of legal and other professional advice, in so far as they relate to the exercise of the fundamental right of a client to a fair trial, including the right of defence in administrative proceedings, such as carried out by lawyers or by any other professionals involved therein.

The following do not fall within the scope of the register (irrespective of the actual parties involved): advisory work and contacts with public bodies in order to better inform clients about a general legal situation or about their specific legal position, or to advise them whether or not a particular legal or administrative step is appropriate or admissible under the law as it stands; advice given to clients to help them ensure that their activities comply with the law; representation in the context of a conciliation or mediation procedure aimed at preventing a dispute from being brought before a judicial or administrative body.

This applies to all business sectors in the European Union and is not restricted to certain specific procedures (competition). In so far as a company and its advisers are involved as a party in a specific legal or administrative case or proceeding, any activity relating directly thereto which does not seek as such to change the existing legal framework does not fall within the scope of the register”.

Methodology and what to declare

Law firms principal income takes the form of professional service fees which are generally charged on an hourly/daily basis, or as a retainer.

SEAP recommends law firms disclose the total share of their turnover related to providing relevant activities.

SEAP recommends law firms disclose turnover shares by client, based on the Commission's annual budget bands indicating annual turnover.

Transparency under the SEAP code

SEAP recommends law firms declare their client lists.

Relationship to national groups of law firms and national law

Law firms should ensure compliance with professional duties before registering and disclosing client matters. Bars and law societies should be consulted for further advice.

6. NGOs and think tanks

Background

The Register FAQ states:

“NGOs and think-tanks as well as other organisations have to publish their overall budget i.e. the total budget of the organisation. Once this amount has been entered, the main sources of its funding, such as public (European, national or sub-national) funding, donations, membership-fees, etc. have to be indicated. In all the categories, registrants will always have the possibility to give more information and explanations on the figures presented. They will be able to explain how they were calculated. They will have the possibility to describe more fully what activities are covered by these figures. They could refer to guidelines of their associations or organisations. Furthermore, registrants may provide more detailed financial information, if they wish to do so”

Methodology and what to declare

SEAP recommends NGOs and think tanks follow this simple procedure above and register their total budget and declare the full list of all their sources of funding.

Transparency under the SEAP code

SEAP recommends NGOs declare their sources of funding.

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