



POSITION ON THE PROPOSAL FOR AN INTERINSTITUTIONAL AGREEMENT ON A MANDATORY TRANSPARENCY REGISTER AND THE EUROPEAN PARLIAMENT MANDATE

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Contextual Revision

Introduction

A joint European Parliament and European Commission Transparency [Register](#) was launched on 23 June 2011. It has been the subject of annual reports. The joint secretariat has issued guidelines and since the start of 2013 an inter-institutional high-level working group has been conducting a review.

On 28 September 2016, the Commission published [COM \(2016\) 627](#) and [annexes](#), a proposal for an Interinstitutional Agreement (IIA) on a Mandatory Transparency Register covering the three institutions of the European Parliament, the Council of the European Union and the European Commission. In June 2017, the European Parliament approved its [negotiating mandate for the IIA](#).

SEAP has actively participated in numerous rounds of consultation on this proposal. Following the kick-off meeting and subsequent technical and political trilogue meetings, SEAP is once again reaching out to institutional officials in order to ensure the voice of EU affairs professionals is also represented in this important debate.

SEAP believes that the adoption of the IIA should establish a definitive set of principles **applying equally** to all public affairs professionals and **maximise transparency** between registered lobbyists and EU officials. It should set out **clear guidance** on engagement to stakeholders and high **universal standards**, that would foster a culture of transparency and integrity in the profession.

SEAP is deeply committed to the highest standards of ethical conduct in public affairs. It promotes transparency and openness in EU decision-making and acts as the voice of the profession to the EU institutions'. It also promotes self-regulation and its Code sets out the ethical standards that all our members must observe when interacting with policy-makers.

Most recently, prior to the restarting of the negotiations on this file, SEAP ran a campaign ([The Transparency Pledge](#)) aimed at once again raising attention to the issue, sending out a letter to all MEP's¹ and co-organising an event² with various stakeholders involved in these negotiations. So far, SEAP has gathered more than 320 signatures from EU affairs professionals of all backgrounds, demonstrating that the industry is strongly advocating in favour of achieving a fruitful outcome on these negotiations.

We would like to use this opportunity to reiterate our position outlined in our earlier paper³ (also transcribed below), putting forward some technical considerations on the IIA and on the European Parliament negotiating mandate. We would also very much welcome the integration of this position paper in the designated European Parliament web page referring to the negotiations⁴.

¹ [Letter and Policy Brief sent to MEP's \(July 2020\)](#)

² [Good Governance in a Time of Crisis: Post-event Report \(July 2020\)](#)

³ [SEAP's Position Paper \(September 2017\)](#)

⁴ [Transparency Register Negotiations - Stakeholder Interactions](#)

SEAP's position and technical considerations on the IIA

Transparency

SEAP supports the ethos of whereas clause 3 *"The three institutions affirm that transparency and accountability are essential to maintain the trust of European citizens in the legitimacy of the political, legislative and administrative processes in the Union"*, and notes its resonance with SEAP's Code of Conduct article 2.

The mandatory nature of the IIA

SEAP notes the definition of mandatory in whereas clause 6 of the IIA; *"The three institutions recognise the necessity to establish a mandatory Transparency Register by making certain types of interactions with them conditional upon prior registration, thereby making registration a de facto precondition for interest representation, and thus ensuring that such representation occurs according to the rules and principles enshrined in the Code of Conduct"*. Consistent with previous SEAP positions, SEAP supports this definition.

The Activities

SEAP notes the proposed activities in Article 3 within the scope of the IIA and supports the proposal.

Bodies covered by the proposal

SEAP notes Article 4's proposed bodies covered and bodies exempted and Article 12's bodies encouraged to voluntarily participate. SEAP supports this balance.

Interaction conditional upon registration

SEAP notes the proposed interactions of Article 5 and notes these are broadly consistent with SEAP's own proposal made in October 2013. SEAP supports the proposal. SEAP reiterates its earlier advice that registration of the organisation and its regular lobbyist should be sufficient to allow a senior representative or expert of the organisation to interact in the ways described in Article 5.

Code of Conduct

SEAP notes the references in Article 6 and annex III to the Register's Code of Conduct. SEAP recalls that many articles of this code are consistent with the SEAP code and SEAP's submission of a joint code originally made to Vice President Kallas. SEAP supports that the Register's Code continues to be a code of transparency and differs markedly from SEAP's own [Code](#) which covers both transparency and conduct.

Management Board and role of Secretariat

SEAP notes the proposed Management Board of Article 8 with a representative from each institution. SEAP requests that the Management Board and the Secretariat is advised by an Advisory Committee representing the profession and including a SEAP representative. The Advisory Committee would advise on certain details or mechanisms of registration and also advise the Secretariat in its activities relating to Annex IV Investigations and Measures.

Possible competition issue in financial disclosure system

SEAP notes that within annex 2 of the proposal are the following requirements for *“specific information obligations”* for *“not-for-profit entities”*:

- a) the total budget of the registrant for the most recent financial year closed;*
- b) the main sources of funding by category...;*
- c) amount of each contribution exceeding 10% of the total budget, if the contributions are above 10. 000€ euros, and the name of the contributor.*

This will cover most business associations and may infringe competition law rules in revealing the market share of a company when the business association charges fees in relation to market share. This effect will be the more intense the more concentrated the market. SEAP requests clarification from the Commission as to how they would avoid this possible infringement of competition law. This has so far not been clarified in the negotiations.

SEAP's position on the European Parliament's negotiating mandate¹

Transparency of process

SEAP agrees with the overall goal of increasing transparency of the EU policy process and enabling citizens to participate more actively in the democratic life of the EU. However, SEAP believes that the negotiations of the new IIA must remain transparent and open to the public. At the moment, it is not the case.

The legal nature of the IIA

SEAP notes the mandate's recognition of the legal limitations of the IIA which is not binding on third parties but only on its signatories.

Definition of lobbying

The old EC EP agreement referred to: *"activities, ..., carried out with the objective of directly or indirectly influencing ..."*

The current IIA proposal refers to: *"activities which promote certain interests by interacting with any of the three signatory institutions...with the objective of influencing ..."*

SEAP welcomes this change in that it increases legal certainty but urges the negotiating parties to make sure that any definitions used in the new IIA are clear and precise to enable the registrants to determine which part of their activities is lobbying and which is not.

Providing clarity and guidance

SEAP welcomes the recognition of the importance of guidance to registrants given by the Institutions. In particular, SEAP would urge the negotiating parties:

- to make sure that the final text of the IIA makes it clear how the two-tier system of registration will work in practice;
- to provide more legal certainty regarding the Code of Conduct's 'inappropriate behaviour' and 'sincere and constructive' cooperation;
- to provide guidance to membership organisations providing lobbying and nonlobbying services as to the methodology of separating the relevant funding for the financial declaration.

About SEAP

SEAP is the Society of European Affairs Professionals established in 1997. It is the recognised organisation of all EU public affairs professionals including those operating in trade associations, corporations, consultancies and other representative bodies. SEAP encourages the highest standards of professionalism for European affairs. For more see www.seap.be

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