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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a Interinstitutional Agreement on a mandatory Transparency Register

Delegations will find attached document COM(2016) 627 final.

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EUROPEAN
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COM(2016) 627 final

Proposal for a

Interinstitutional Agreement

on a mandatory Transparency Register

THE EUROPEAN PARLIAMENT, THE COUNCIL OF THE EUROPEAN UNION AND
THE EUROPEAN COMMISSION

Having regard to the Treaty on the Functioning of the European Union (TFEU), in particular Article 295 thereof, and the Treaty establishing the European Atomic Energy Community (EURATOM), in particular Article 106a thereof,

Whereas:

(1) The European Parliament, the Council of the European Union and the European Commission ('the three institutions') maintain an open, transparent and regular dialogue with representative associations and civil society in accordance with the Treaty on European Union (TEU), in particular Article 11(1) and (2) thereof.

(2) This openness allows for all stakeholders to present their views on decisions that may affect them and hence contribute effectively to the evidence base on which policy proposals are made. Engaging with stakeholders enhances the quality of decision-making by providing channels for the input of external views and expertise.

(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.

(4) Transparency of interest representation is especially important in order to allow citizens to follow the activities and potential influence of interest representatives. The three institutions consider that such transparency is best ensured by a Code of Conduct which contains the rules and principles applicable to interest representatives signing up to a Transparency Register and, thereby, to the Code.

(5) In view of the positive experience with the Transparency Register for organisations and self-employed individuals engaged in EU policy-making and policy implementation established by the agreement of the European Parliament and the European Commission of 16 April 2014¹, the three institutions consider that such an agreement should be extended in an appropriate way.

(6) The three institutions recognise the necessity to establish a mandatory Transparency Register ('the 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.

¹ Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation, OJ L 277, 19.9.2014, p. 11.

(7) The three institutions respond hereby to the need to adopt as swiftly as possible an interinstitutional agreement establishing a mandatory register, in accordance with the European Parliament's resolution of 28 April 2016 on public access to documents².

(8) The operation of this register shall not impinge on the competences of any of the three institutions or affect their respective internal organisational powers, without prejudice to the agreement they shall conclude in respect of the modalities on their contributions to the administrative and financial resources of the Secretariat of the register.

(9) The three institutions shall act in mutual sincere cooperation in implementing this agreement.

(10) Any of the three institutions may pursue other good governance and transparency policies outside the framework of this agreement to the extent that such policies do not interfere with the implementation and the objectives pursued by this agreement.

(11) The agreement shall be without prejudice to the exercise of rights under Article 11(4) TEU (European citizens' initiative) and Article 227 TFEU (the right to petition the European Parliament),

AGREE AS FOLLOWS:

Article 1

Purpose and scope of the interinstitutional agreement

This interinstitutional agreement establishes a framework for a transparent and ethical interaction between interest representatives engaging in activities covered by this agreement and any of the three institutions.

Article 2

Definitions

For the purposes of this interinstitutional agreement, the following definitions shall apply:

- a) '*Interest representatives*' shall mean any natural or legal person, or formal/informal groups, associations or networks thereof, engaging in activities covered by this agreement;
- b) '*Applicant*' shall refer to any interest representative applying to join the register;
- c) '*Registrant*' shall refer to any interest representative with an existing entry in the register;
- d) '*Client*' shall mean an interest representative that has instructed an intermediary to represent the client's own interests vis-à-vis any of the three institutions;

² Resolution of 11 March 2014 on public access to documents (Rule 104(7)) for the years 2011-2013), text adopted P8_TA(2016)0202.

- e) '*Intermediary*' shall mean an interest representative that represents the interests of a client vis-à-vis any of the three institutions;
- f) '*Client – intermediary relationship*' shall mean any contractual relationship between a client and one or more service (sub)providers concerning the provision of a covered activity;
- g) '*Officials*' shall refer to all categories of staff of any of the three institutions.

Article 3

Activities covered and not covered by the interinstitutional agreement

- 1) This agreement applies to activities which promote certain interests by interacting with any of the three signatory institutions, their members or officials, with the objective of influencing the formulation or implementation of policy or legislation, or the decision-making process within these institutions, unless an exception defined in paragraph 2 or in Article 4 applies.
- 2) The following activities are not considered to be activities in the sense of paragraph 1:
- a) The provision of legal and other professional advice in the context of a client-intermediary relationship, where:
- it consists of representation in the context of a conciliation or mediation procedure aimed at preventing a dispute from being brought before a judicial or administrative body;
 - it consists of advice given to clients to help them ensure that their activities comply with the existing legal framework; or
 - it relates to representing clients and safeguarding their fundamental or procedural rights, such as the right to be heard, the fundamental right of a client to a fair trial, including the right of defence in administrative proceedings, such as activities carried out by lawyers or by any other professionals involved therein.
- b) Submissions made as a party or a third party in the framework of a legal or administrative procedure established by EU law or by international law applicable to the Union and submissions based on a contractual relationship with the institution or based on a grant agreement financed by EU funds.
- c) Activities of the social partners as participants in the social dialogue pursuant to Article 152 TFEU.
- d) Submissions made in response to direct and specific requests from any of the three institutions, their members or officials, such as requests for factual information, data or expertise.

e) The communication of citizens, acting solely in their personal capacity, with any of the three institutions.

Article 4

Bodies not covered by the interinstitutional agreement

- 1) Political parties are exempt from registration. However, any organisations created or supported by them which are engaged in activities covered are not exempt from registration.
- 2) Churches and religious associations or communities as well as philosophical and non-confessional organisations foreseen in Article 17 TFEU are exempt from registration. However, the representative offices or legal entities, offices and networks created to represent churches, religious communities or philosophical and non-confessional organisations in their relations with the EU institutions, as well as their associations, are not exempt from registration.
- 3) The public authorities of the Member States (including their permanent representations and embassies), at national and subnational level, are exempt from registration, as well as any association of public authorities at the European, national or subnational level, under the condition that they act uniquely on behalf of the relevant public bodies.
- 4) The public authorities of third countries (including their diplomatic missions and embassies) are exempt from registration.
- 5) Intergovernmental organisations, including agencies and bodies emanating from them, are exempt from registration.

Article 5

Interactions conditional upon registration

- 1) The three institutions agree to make the following types of interaction conditional upon prior registration of interest representatives:

In the European Parliament

- Access to Parliament buildings: eligibility for applying for long-term access passes to the European Parliament premises of individuals representing, or working for, interest representatives;
- Committee public hearings: possibility for interest representatives to be invited to speak at a committee hearing as a guest, without prejudice to the provisions of Article 3(2)(b);
- Patronage: granting of patronage to events organised by interest representatives;

- Meetings: meetings between interest representatives and members of the European Parliament ('MEPs'), the Secretary-General, Directors-General and Secretaries-General of political groups;
- Events: hosting of events organised by interest representatives on the European Parliament's premises;
- Notices: sending of automatic messages about the European Parliament's activities to interest representatives.

In the Council of the European Union

- Meetings: meetings between interest representatives and the Ambassador of the current or forthcoming Presidency of the Council of the EU, as well as their deputies in the Committee of the Permanent Representatives of the Governments of the Member States to the European Union, the Council's Secretary-General and Directors-General;
- Notices: sending of automatic messages about the Council's activities to interest representatives.

In the European Commission

- Meetings: meetings between interest representatives and members of the Commission, their Cabinet members and Directors-General;
- Expert groups: appointment of certain types of expert group members;³
- Public consultations: sending of automatic alerts about the Commission's consultations to interest representatives; the Commission will differentiate between registered and non-registered entities by publishing their contributions separately;
- Patronage: granting of patronage to events organised by interest representatives;
- Mailing lists: sending of alerts by means of mailing lists to interest representatives about certain Commission activities.

2) Each of the three institutions shall take the necessary internal measures to give effect to the types of conditionality referred to in paragraph 1.

³ This refers to individuals appointed to represent a common interest shared by stakeholders in a particular policy area, who do not represent an individual stakeholder, but a policy orientation common to different stakeholder organisations ('Type B members') and to organisations in the broad sense of the word, including companies, associations, NGOs, trade unions, universities, research institutes, law firms and consultancies ('Type C members'), as laid down in Commission Decision C(2016) 3301 of 30.5.2016.

3) Each institution may decide to make other types of interaction conditional upon registration, as long as these additional types of conditionality have the aim of further strengthening the current framework.

4) The types of conditionality referred to in paragraphs 1 and 3 shall be made public on a dedicated webpage of the register.

Article 6

Eligibility and registration of applicants

1) When applying for registration, applicants need to demonstrate their eligibility in terms of carrying out activities covered by this agreement.

2) To this effect, applicants need to provide the information detailed in Annex II, and to agree for that information to be in the public domain.

3) Applicants may be requested to present supporting documents demonstrating their eligibility and the accuracy of the information submitted.

4) Applicants are entered into the register as registrants once their eligibility has been established and the registration is considered to satisfy the provisions of Annex II regarding information to be provided.

Article 7

The Code of Conduct applicable to registrants and its enforcement

1) The rules and principles that the registrants need to comply with are laid down in the Code of Conduct annexed to this agreement (Annex III). By registering, registrants agree to abide with these rules and principles.

2) As provided in the Code of Conduct, a failure to comply with its provisions may be subject to investigations and measures laid down in the procedures set out in Annex IV to this agreement.

Investigations may be carried out following complaints received or at the Secretariat's own initiative.

The three institutions shall take the necessary internal measures to apply any measures imposed in accordance with Annex IV.

3) As provided in the Code of Conduct, registrants shall in particular:

- present, if requested, the documents and any other supporting materials demonstrating that the information submitted is accurate;

- agree to cooperate sincerely and constructively with requests for clarification and updates;
- accept that they may be subject to the investigation procedures and, where applicable, measures laid down in Annex IV.

Article 8

Management Board of the register

1) The Management Board of the register shall consist of the Secretaries-General of the three institutions.

2) The Management Board shall:

- oversee the overall implementation of this agreement by the Secretariat and issue general instructions to that effect;
- approve the rules of procedure of the Secretariat;
- approve the issuance of guidelines as provided for in Article 9(4);
- examine and decide upon reasoned requests for review, submitted by registrants, of the Secretariat's decisions as laid down in Annex IV to this agreement;
- accept notifications for voluntary involvement under Articles 12 and 13 of the agreement.

3) The Management Board shall decide by consensus.

4) The Management Board may adopt rules of procedure governing the exercise of its responsibilities.

Article 9

The Secretariat of the register

1) The Secretariat is a joint operational structure made up of a Coordinator and the members of the Secretariat, which reports directly to the Management Board.

2) The Secretariat shall operate under the coordination of an official in the Secretariat-General of the European Commission ('the Coordinator'). The members of the Secretariat shall be staff of the European Parliament, the Council and the European Commission seconded to the Secretariat by their respective institutions.

The Coordinator shall assume the overall responsibility for the work of the Secretariat and oversee the day-to-day operations.

3) The main tasks of the Secretariat shall be:

- drafting the rules of procedure of the Secretariat, for approval by the Management Board;
- reporting to the Management Board on the overall implementation of this agreement;
- monitoring the content of the register and ensuring that only eligible applicants are registered with the aim to achieve an optimal level of data quality in the register, with the understanding, however, that registrants are ultimately responsible for the accuracy of the information they have provided;
- providing helpdesk support to registrants, the three institutions and any entities participating on a voluntary basis pursuant to Articles 12 and 13;
- carrying out investigations, removing registrations and adopting measures in accordance with Annex IV to this agreement;
- organising awareness-raising actions;
- producing an annual report for the preceding calendar year;
- ensuring the development and maintenance of the register website and online registration form, as well as other related IT resources;
- exchanging good practice and experience in transparency of interest representation with similar bodies;
- carrying out any other activities necessary for the implementation of the present agreement.

4) The Secretariat may propose for the approval of the Management Board guidelines for registrants to ensure the consistent application of Articles 2 to 6 (definitions, activities, bodies not covered, interactions conditional upon registration, eligibility and registration of applicants), as well as of the annexes of this agreement.

Article 10

Decision

The three institutions shall establish the Secretariat and the Management Board by means of a separate Decision, commonly adopted by the three institutions before the entry into force of this Agreement.

Article 11

Resources

- 1) The three institutions shall ensure that the Secretariat has at its disposal the human, administrative and financial resources required for the proper implementation of its tasks.
- 2) The three institutions shall provide the necessary human resources to the Secretariat, in case of the European Parliament and the Council of the European Union by means of a secondment to the Commission pursuant to Articles 37(a) and 38 of the Staff Regulations of the Officials of the European Communities.
- 3) The three institutions contribute equally to the functioning of the Secretariat and the register. They shall conclude a separate agreement detailing the arrangements regarding their contributions to the administrative and financial resources of the Secretariat.

Article 12

Voluntary involvement of other EU institutions, bodies, offices and agencies

- 1) Other EU institutions, bodies, offices and agencies are encouraged to use the framework created by this agreement themselves as a reference instrument for their own interactions with interest representatives.
- 2) Other EU institutions, bodies, offices and agencies may, on a voluntary basis, notify the Secretariat that they wish to make certain interactions conditional upon registration in the Transparency Register. The notification shall contain details of the types of interaction proposed and their conditions.
- 3) Where the Management Board considers that the types of interaction proposed are consistent with the objectives pursued by the register, the EU institutions, bodies, offices and agencies concerned may make those types of interaction conditional upon registration and shall benefit from the Secretariat's assistance and helpdesk support, in return for a proportionate contribution to the costs of functioning of the Secretariat and register.
- 4) The acceptance of the notification in the preceding paragraph will not confer the notifying EU institutions, bodies, offices and agencies the status of a party to this interinstitutional agreement.
- 5) The types of conditionality accepted under paragraph 3 shall be published on the register website.

Article 13

Voluntary involvement of Member States' permanent representations to the EU

- 1) Without prejudice to Article 4(3) of the present agreement, Member States may, on a voluntary basis, notify the Secretariat that they wish to make certain interactions of interest representatives with their permanent representations to the EU conditional upon registration in the Transparency Register. The notification shall contain details of the types of interaction proposed and their conditions.

- 2) Where the Management Board considers that the types of interaction proposed are consistent with the objectives pursued by the register, the relevant permanent representation may make those types of interaction conditional upon registration and shall benefit from the Secretariat's assistance and helpdesk support, in return for a proportionate contribution to the costs of functioning of the Secretariat and register.
- 3) The acceptance of the notification in the preceding paragraph will not confer the notifying Member State the status of a party to this interinstitutional agreement.
- 4) The types of conditionality accepted under paragraph 2 shall be published on the register website.

Article 14

Final and transitional provisions

- 1) This interinstitutional agreement is of a binding nature for the signatory institutions.
- 2) This agreement shall replace the agreement between the European Parliament and the European Commission of 16 April 2014 whose effects shall cease to apply on the date of application of this agreement.
- 3) This agreement shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. It shall apply from [xx xx xxxx].
- 4) Interest representatives registered at the date of application of this agreement shall amend their registration to satisfy the new requirements resulting from this agreement within a period of six months following that date.
- 5) Any investigations following alerts and complaints opened under the agreement between the European Parliament and the European Commission of 16 April 2014 shall be carried out under the procedure of that agreement.
- 6) This agreement shall be subject to a review four years after its entry into force.

Done at [place], [date].