

GOVERNMENT RELATIONS

European Union



Government Relations

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights, including into applicable forms of government and opportunities to influence legislation; regulation of lobbying regulation; political finance; ethics and anti-corruption; recent cases; sanctions; and other recent trends.

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FORM OF GOVERNMENT

Constitution

What is the basic source of law? Describe the scope of, and limitations on, government power relevant to the regulation of lobbying and government relations.

The basic sources of EU law are the Treaty on the EU and the Treaty on the Functioning of the EU (TFEU).

The TFEU requires that, in carrying out their missions, EU administrations must be open, efficient and independent.

EU institutions must give representative associations the opportunity to make known and publicly exchange their views in all areas of EU action as well as to maintain an open, transparent and regular dialogue with these associations. The European Commission has, in addition, the obligation to carry out broad consultations with parties concerned to ensure that the EU's actions are coherent and transparent.

Law stated - 29 December 2021

Legislative system

Describe the legislative system as it relates to lobbying.

EU decision-making is the result of interaction between the European Parliament, the Council of the EU and the European Commission. The European Parliament is composed of representatives of the EU citizens, who elect them directly. The Council consists of one representative per member state at the ministerial level. The Commission is the executive branch of the EU, responsible for proposing legislation, implementing decisions, enforcing EU law and managing the EU's policies.

Legislation (normally a regulation, directive or decision) is in general adopted through the ordinary legislative procedure. This procedure starts with a legislative proposal from the Commission and comprises up to three readings by the European Parliament and the Council, which can agree on a joint text at any reading. Between the second and third reading, the Council and the Parliament negotiate to reach an agreement on a joint text (conciliation procedure). During the three readings, the three institutions organise inter-institutional meetings (trilogues) among them to negotiate on the text and reach a provisional agreement. Once a text is agreed in trilogues, it must still be formally adopted by the European Parliament and the Council. More information can be found in the Parliament's Handbook on the ordinary legislative procedure .

A legislative act may delegate to the Commission the power to supplement or amend certain non-essential elements of the legislation. It may also confer implementing powers on the Commission. When adopting implementing decisions, the Commission is monitored by committees made up of member state representatives via 'comitology procedures' (article 290.3 TFEU and Comitology Regulation 182/2011). In these procedures, a committee composed of EU member states' representatives provide a formal opinion on the Commission's proposed measures. Depending on the procedure (examination or advisory procedure), these opinions can be binding on the Commission.

Law stated - 29 December 2021

National subdivisions

Describe the extent to which a legislative or rule-making authority relevant to lobbying practice also exists at regional, provincial or municipal level.

Not applicable. See www.lexology.com/gtdt .

Consultation process

Does the legislative process at national or subnational level include a formal consultation process? What opportunities or access points are typically available to influence legislation?

Stakeholders are consulted in different manners throughout the legislative process.

The Commission officially consults stakeholders before launching a formal legislative process or when evaluating existing legislation. To this end, the Commission publishes different types of documents on which feedback is asked from stakeholders (by way of open feedback or questionnaires). These documents include:

- road maps (which describe the problem, the objectives, the need for EU action and the policy options);
- inception impact assessments (which set out in greater detail the problem, the policy objectives, the options and their possible impact);
- green papers (which detail key issues and lay out possible courses of action in terms of policy and legislation); and
- white papers (which set out precise legislative proposals).

Stakeholders providing feedback are actively asked to register in the EU's Transparency Register.

Law stated - 29 December 2021

Judiciary

Is the judiciary deemed independent and co-equal? Are judges elected or appointed? If judges are elected, are campaigns financed through public appropriation or candidate fundraising?

The Court of Justice of the European Union is deemed independent. Judges and advocate-generals are appointed by common accord of the governments of the member states for six years following an opinion on their suitability to perform their duties.

Law stated - 29 December 2021

REGULATION OF LOBBYING**General**

Is lobbying self-regulated by the industry, or is it regulated by the government, legislature or an independent regulator? What are the regulator's powers? Who may issue guidance on lobbying? What powers of investigation does the regulator have? What are the regulators' or other officials' powers to penalise violators?

On 20 May 2021, the European Parliament, the Council of the EU and the European Commission have adopted an inter-institutional agreement (IIA) on a 'mandatory transparency register'. The IIA marks the latest stage in an evolution of the EU Transparency Register (EUTR) towards a more compelling framework for interest representation regarding EU institutions. The EUTR does not have a formal basis in EU treaties. Therefore, EU institutions have chosen to agree between themselves by means of IIAs to make certain activities of interest representation conditional upon

registration. Although the registration itself remains voluntary, the EUTR is mandatory to the extent that interest representatives will not be able to carry out certain activities regarding EU institutions unless they are registered.

EU institutions recognise that engaging with stakeholders enhances the quality of decision-making. However, transparency and accountability in this dialogue are essential for maintaining the trust of the EU citizens in the legitimacy of the political, legislative and administrative processes of the EU.

The EUTR is managed by a joint transparency register secretariat (JTRS), in which the three EU institutions participate on equal footing. The JTRS publishes a regularly updated practical guide for registrants, the implementing guidelines, but it can by no means be considered a regulator. A new version of these implementing guidelines was published on 1 September 2021. The JTRS is led by a management board, consisting of the secretaries general of the three institutions.

Non-compliance with the scheme does not give rise to any sanctions other than removal from the register by the JTRS, with some eventual naming and shaming.

Law stated - 29 December 2021

Definition

Is there a definition or other guidance as to what constitutes lobbying?

One of the distinctive features of the EU Transparency Register is that it follows an activity-based approach and has a very broad definition of the activities that it covers.

The IIA defines these covered activities as any activities carried out by interest representatives with the objective of influencing EU policy or decision-making.

The IIA further clarifies that the following activities are, for example, included in its scope:

- organising or participating in meetings, conferences or events, as well as engaging in any similar contacts with EU institutions;
- contributing to or participating in consultations, hearings or other similar initiatives;
- organising communication campaigns, platforms, networks and grassroots initiatives; and
- preparing or commissioning policy and position papers, amendments, opinion polls and surveys, open letters and other communication or information material, and commissioning and carrying out research.

The IIA excludes the following legal and other professional advice from covered activities:

- advice that consists of representing clients in the context of a conciliation or mediation procedure aimed at preventing a dispute from being brought before a judicial or administrative body;
- advice on the compliance of a client's activities with the law; and
- advice that consists of representing clients and safeguarding their fundamental or procedural rights, and includes activities carried out by lawyers or by any other professionals involved in representing clients and safeguarding their fundamental or procedural rights.

However, legal or other professional advice is included to the extent it is intended to influence decision makers either by means of providing argumentation and drafting or by providing strategic advice.

The following are generally excluded from covered activities:

- submissions as a party or a third party in the framework of a legal or administrative procedure established by EU law and submissions based on a contractual relationship with any of the signatory institutions or based on a grant agreement financed by EU funds;
- activities of the social partners as participants in the social dialogue (trade unions, employers' associations, etc);
- activities in response to direct, individual and specific requests from any of EU institutions, their representatives or staff, such as ad hoc or regular requests for factual information, data or expertise;
- activities carried out by natural persons acting in a strictly personal capacity; and
- spontaneous meetings, meetings of a purely private or social character and meetings taking place in the context of an administrative procedure established by the Treaty on the EU or Treaty on the Functioning of the EU or legal acts of the EU.

Law stated - 29 December 2021

Registration and other disclosure

Is there voluntary or mandatory registration of lobbyists? How else is lobbying disclosed?

Registration with the EUTR is in principle voluntary, but incentives to register have steadily increased over the past years. Therefore, it has become increasingly difficult to practise as a lobbyist without being registered.

The principal consequence of registration is the obligation to enter information into the online database where it can be viewed by the public. Since July 2021, entities' registrations are verified before they are posted online. This must improve the quality and reliability of information in the EUTR. There is also a system of alerts and complaints to tackle inaccurate registrations.

Incentives to register with the EUTR had gradually increased under the prior scheme. Under the currently applicable IIA, a distinction is made between 'conditionality measures' and 'complementary transparency measures'. EU institutions may adopt conditionality measures when they decide to make certain interest representation activities subject to prior registration in the EUTR. Registration thereby becomes a prerequisite for carrying out the activity in question. EU institutions may also adopt complementary transparency measures that are mere incentives for registration.

Most importantly, since 2014, interest representatives must register to be able to meet with the European Commission's high-level decision makers (commissioners, members of Cabinet and directors general). Civil servants at lower levels within the European Commission are generally advised to check whether interest representatives are registered before accepting an invitation to a meeting or to an event. Registration is also required to be appointed to certain expert groups.

Since September 2021, the Rules of Procedure of the European Parliament require its members to 'adopt the systematic practice' of only meeting interest representatives that have registered in the EUTR.

Since July 2021, interest representatives must also register to be able to attend meetings with the Secretary-General and Directors General of the General Secretariat of the Council of the European Union.

Complementary transparency measures include access passes to the premises of the European Parliament and the General Secretariat of the Council of the European Union and eligibility to be a speaker at public hearings held by parliamentary committees. Registrants are also kept informed of any upcoming legislative initiatives.

Since 1 December 2014, the European Commission's high-level decision makers (commissioners, members of Cabinet and directors general) must publish lists of all meetings that they have with interest representatives. Since 31 January 2019, rapporteurs, shadow rapporteurs and committee chairs within the Parliament must also publish, for each rapport, the list of all scheduled meetings with interest representatives. Since September 2021, individual members of the European Parliament must also make these publications.

Activities subject to disclosure or registration

What communications must be disclosed or registered?

The disclosures that registrants must make differ according to the category they belong to, whether professional lobbying consultants, in-house lobbyists or other interest groups.

All registrants must provide information on their organisation, goals, fields of interest and which of their activities are covered by the EUTR. Furthermore, they must indicate the number of full-time equivalents involved in activities covered by the EUTR, their memberships and information on their members.

All registrants must furthermore reveal the amount of EU funding that they receive and the annual amount spent on activities covered by the EUTR. The latter includes, among other things, any staff, representation and administrative costs as well as fees paid to lobbyists and subcontractors and membership fees.

Professional consultants, law firms and self-employed consultants must make more detailed disclosures. They must, in addition to the above, provide turnover figures (according to predefined thresholds) for representation activities per client, and they must also list the names of these clients. The clients themselves are also expected to register.

Not-for-profit organisations must provide information on their sources of funding.

Registrants are expected to update the information on an annual basis.

Under the EU Transparency Register scheme, there is no obligation for registrants to actively disclose individual communications with officials. However, the members of the European Commission, their Cabinet members and directors general are expected to disclose all meetings held with lobbyists on any matter related to EU policymaking and implementation. Since 24 July 2018, a list of all such registered meetings is automatically reproduced on each registrant's EUTR page. Similarly, individual members of the European Parliament must publish online all meetings with interest representatives. Rapporteurs, shadow rapporteurs and committee chairs must also publish, for each rapport, the list of all scheduled meetings with interest representatives.

Law stated - 29 December 2021

Entities and persons subject to lobbying rules

Which entities and persons are caught by the disclosure rules?

The EUTR is addressed to professional consultancies, law firms, self-employed consultants, in-house lobbyists, and trade, business and professional associations. Think tanks, research and academic institutions, non-governmental organisations, organisations representing local, regional and municipal authorities, and some other public or mixed entities are also expected to register. However, public authorities of member states, including their permanent representations and embassies are not eligible for registration.

Although churches and public authorities are not eligible for registration, organisations representing them are not. Individuals following EU law or policy developments or exercising their rights are not eligible for registration.

There are no minimum thresholds for registration.

There is a difference between entities and persons lobbying on behalf of themselves and those that lobby for third parties. Although the EUTR is in principle addressed to both groups, the latter have additional disclosure obligations in relation to the activities they perform for their clients.

Typical activities of law firms are expressly excluded if they remain within the framework of specific legal or

administrative procedures or if they relate to advice on the current state of the law or compliance with it. However, lawyers cannot rely on client confidentiality in relation to those activities that are covered by the EUTR. This has led to sharp criticism from European bar associations. However, a significant number of law firms have chosen to register and be transparent about their lobbying activities.

Law stated - 29 December 2021

Lobbyist details

What information must be registered or otherwise disclosed regarding lobbyists and the entities and persons they act for? Who has responsibility for registering the information?

The information that the registrants must provide is divided into three categories: general information, information on links to EU institutions and financial information.

General information concerns the contact details and the characteristics of the organisation, such as the form of the entity, its goals, its geographical level of engagement, its fields of interest and which of its activities are covered by the EUTR. Furthermore, they must indicate the number of full-time equivalents involved in those activities and their memberships, as well as any affiliation of the organisation with relevant networks and associations.

Information on links to EU institutions consists of, inter alia, EU legislative proposals, policies or initiatives targeted by the covered activities, membership of Commission expert groups and other EU-supported platforms, and other unofficial grouping activities organised on the Parliament's premises.

All registrants must furthermore reveal the amount and source of EU funding that they receive to cover their operation costs and an estimate of the annual amount spent on activities covered by the EUTR, such as staff costs, office and administrative expenses, fees for consultants and subcontractors, the cost of media and public affairs campaigns, and membership fees in trade associations and similar lobbying entities. Professional consultants, law firms and self-employed consultants must, in addition to the above, also provide turnover figures (according to predefined thresholds) for representation activities per client, and they must also list the names of these clients.

A list of all meetings with commissioners, members of their Cabinet and director generals is automatically generated by the EUTR.

Law stated - 29 December 2021

Content of reports

When must reports on lobbying activities be submitted, and what must they include?

Registration occurs online, and a registrant's information will be included in a searchable online database. All of a registrant's information must be updated on an annual basis, effectively instituting an annual reporting obligation. This information includes the estimate of annual costs and, for lobbyists lobbying on behalf of third parties, turnover and client information.

Law stated - 29 December 2021

Financing of the registration regime

How is the registration system funded?

There is no registration fee. The three signatory institutions co-finance the scheme, ensuring the necessary resources.

Public access to lobbying registers and reports

Is access to registry information and to reports available to the public?

A registrant's information will be included in a searchable online database, accessible to the public.

The JTRS monitors the accuracy of the information provided by registrants by verifying the quality of the data of new registrations and by performing regular checks. When the JTRS finds potential inconsistencies, errors or omissions, it will contact the registrant requesting an update or an explanation.

There is a system of 'alerts' whereby third parties can notify the JTRS of potential factual inaccuracies or 'complaints' whereby third parties can notify the JTRS of potential breaches of the Code of Conduct. The JTRS may also carry out investigations at its own initiative.

Law stated - 29 December 2021

Code of conduct

Is there a code of conduct that applies to lobbyists and their practice?

Registration also implies a commitment to comply with the Code of Conduct, a one-page document with some essential ethical principles laid out in Annex I of the IIA of 20 May 2021. Most importantly, the Code requires that interest representatives identify themselves, disclose who they represent and declare the interests and objectives they promote. Registrants may also not try to obtain information dishonestly, exert undue pressure, abuse their registration or damage the reputation of the register. Furthermore, they must allow EU officials and former officials to respect the rules and standards that are applicable to them, such as the rules on conflicts of interests and revolving doors.

Law stated - 29 December 2021

Media

Are there restrictions in broadcast and press regulation that limit commercial interests' ability to use the media to influence public policy outcomes?

Not applicable. See www.lexology.com/gtdt.

Law stated - 29 December 2021

POLITICAL FINANCE

General

How are political parties and politicians funded in your jurisdiction?

European political parties

European political parties (EPPs) operate transnationally and are generally made up of national political parties from several EU member states.

EPPs are entitled to annual funding from the EU general budget if at least one of their members is a member of the European Parliament (MEP) and if they fulfil the others conditions laid down in article 18 of Regulation No 1141/2014.

Eighty-five per cent of the part of the EU general budget that is allocated for this purpose is distributed among the EPPs in proportion to their share of MEPs. The other 15 per cent is distributed in equal shares among the EPPs. The funding from this budget may not exceed 90 per cent of the (annual) reimbursable expenditure of a party and may not be used to fund national parties or candidates.

Members of the European Parliament

Members of the European Parliament (MEPs) receive a monthly salary and, when they turn 63, a pension from the European Parliament's budget. They are also entitled to several allowances, including allowances for travel expenses, general expenditure and accommodation. In addition, the Parliament has a separate budget for the costs of the MEPs' personal assistants and other service providers (such as experts).

Law stated - 29 December 2021

Registration of interests

Must parties and politicians register or otherwise declare their interests? What interests, other than travel, hospitality and gifts, must be declared?

Yes, pursuant to article 4 of their Code of Conduct, MEPs must declare their financial interests and conflicts of interest to the President of the European Parliament. This declaration must be done after their election to Parliament and any subsequent changes must be notified to the President within 30 days.

MEPs may in principle not accept any gifts or similar benefits over €150. Benefits under €150 may be accepted subject to the conditions laid down in the Code of Conduct. As an exception, MEPs may accept reimbursement of their travel, accommodation and subsistence expenses, or the direct payment of these expenses by third parties, when they attend, pursuant to an invitation and in the performance of their duties, an events organised by third parties.

MEPs must declare:

- any occupation during the three-year period before the MEP took up office, and any memberships or board positions during that period;
- any salary that the MEP receives for the exercise of a mandate in another parliament;
- any regular remunerated activity that the MEP undertakes alongside the exercise of his or her office;
- membership of any boards or committees of any companies, non-government organisations, associations or other bodies established in law, or any other relevant outside activity that the member undertakes;
- any occasional remunerated outside activity (including writing, lecturing or the provision of expert advice), if the total remuneration for all these activities exceeds €5,000 in a calendar year;
- any holding in any company or partnership, where there are potential public policy implications or where that holding gives the member significant influence over the affairs of the body in question;
- any support, whether financial or in terms of staff or material, additional to that provided by Parliament and granted to the MEP in connection with his or her other political activities; and
- any other financial interests that might influence the performance of the MEP's duties.

Law stated - 29 December 2021

Contributions to political parties and officials

Are political contributions or other disbursements to parties and political officials limited or regulated? How?

Yes. Pursuant to article 20 of Regulation No 1141/2014 , donations to EPPs may not exceed €18,000 per year and per donor (legal or natural person) and must be reported to the authority that monitors the EPPs.

EPPs may accept contributions from party members that are civilians, unless they are an elected member of the European, national or regional parliament (or assembly). These contributions may not exceed €18,000 per year and per member and must be limited to 40 per cent of the party's annual budget.

Furthermore, EPPs may not accept any of the following:

- anonymous donations or contributions;
- donations from the budgets of political groups in the European Parliament;
- donations from any public authority from a member state or a third country; or
- donations from any private entities based in a third country or from individuals from a third country who are not entitled to vote in elections to the European Parliament.

Law stated - 29 December 2021

Sources of funding for political campaigns

Describe how political campaigns for legislative positions and executive offices are financed.

European political parties may use the funds they receive from the EU general budget or from any other source to finance their elections campaigns for the European Parliament. The funding (and possible limitation) of election expenses made by political parties and candidates in their elections to the European Parliament is governed by the laws of the EU member states.

Law stated - 29 December 2021

Lobbyist participation in fundraising and electioneering

Describe whether registration as a lobbyist triggers any special restrictions or disclosure requirements with respect to candidate fundraising.

Not applicable. See www.lexology.com/gtdt .

Law stated - 29 December 2021

Independent expenditure and coordination

How is parallel political campaigning independent of a candidate or party regulated?

EU law does not regulate political campaigning independent of a candidate or party.

Law stated - 29 December 2021

ETHICS AND ANTI-CORRUPTION

Gifts, travel and hospitality

Describe any prohibitions, limitations or disclosure requirements on gifts, travel or hospitality that legislative or executive officials may accept from the public.

European Parliament

Members of the European Parliament (MEPs) may in principle not accept any gifts or similar benefits over €150. Benefits under €150 may be accepted under the conditions laid down in their Code of Conduct . As an exception, MEPs may accept reimbursement of their travel, accommodation and subsistence expenses, or the direct payment of these expenses by third parties, when they attend, pursuant to an invitation and in the performance of their duties, an event organised by third parties.

European Commission

Under article 6 of the Code of Conduct for the members of the European Commission (also known as 'commissioners'), members of the Commission are prohibited from accepting any gift with a value exceeding €150. When, in accordance with diplomatic and courtesy usage, they receive gifts worth more than this amount, they must hand them over to the Commission's Protocol Department.

EU staff members

The Staff Regulations for officials of EU institutions generally prohibit the acceptance of any honour, decoration, favour, gift or payment of any kind, unless they permission is granted by the relevant institution.

A Communication from the Commission's Vice-President on Guidelines on Gifts and Hospitality for the staff members of the European Commission in relation to gifts clarifies that:

- prior permission is presumed for gifts whose value does not exceed €50;
- prior permission will be granted on a case-by-case basis by the relevant Institution for gifts whose value is between €50 and €150; and
- permission is refused for gifts whose value exceeds €150.

Offers of any type of money must always be refused.

Regarding hospitality, the Communication clarifies that prior permission is presumed for hospitality in the form of (1) lunches or dinners strictly linked to the function of the official, and as such not prejudicial to the interests and public image of the Commission, and in which the official participates in agreement with his hierarchy and in the interest of the service and (2) occasional offers of simple meals, refreshments, snacks, etc. Other forms of hospitality require prior approval.

Law stated - 29 December 2021

Anti-bribery laws

What anti-bribery laws apply in your jurisdiction that restrict payments or otherwise control the activities of lobbyists or holders of government contracts?

The EU and its member states have adopted the Convention against corruption involving public officials . This Convention requires the member states to take the necessary measures to criminalise both active and passive corruption by public officials and company officials (persons acting on behalf of a company or under its authority). Active corruption is defined as the deliberate action of promising or giving, directly or through an intermediary, an advantage of any kind whatsoever to an official for him or herself or for a third party for him or her to act or refrain from acting in accordance with his or her duty or in the exercise of his or her functions in breach of his or her official duties.

Similar rules are laid down in Framework Decision 2003/568/JHA of the Council of the EU on combating corruption in the private sector (including rules on liability and penalties).

The Financial Regulation 2018/1046 provides for sanctions in the case of fraud or irregularities in the context of an award procedure for public procurement contracts with EU institutions. Tenderers for such contracts who exercise undue influence may be barred from on-going and future contracts.

In addition, Directive 2017/1371 establishes minimum rules concerning the definition of criminal offences and sanctions with regard to combatting fraud and other illegal activities affecting the European Union's financial interests.

Law stated - 29 December 2021

Revolving door

Are there any controls on public officials entering the private sector after service or becoming lobbyists, or on private-sector professionals being seconded to public bodies?

European Parliament

Pursuant to article 6 of their Code of Conduct , former MEPs who engage in professional lobbying or representational activities directly linked to the EU decision-making process must inform the European Parliament and may not, throughout the period in which they engage in those activities, benefit from the facilities granted to former MEPs under the rules laid down by the Bureau to that effect.

European Commission

Pursuant to article 11 of their Code of Conduct , members of the European Commission have a duty of integrity and discretion and continue, after their office, to be bound by the duties of collegiality and discretion with respect to the Commission's decisions and activities during their office.

Former members of the Commission must inform the Commission with a two months' prior notice of their intention to engage in a professional activity during a period of two years after they have left office. The Commission will verify whether the nature of the activity is compatible with the duties of integrity and discretion and if the planned activity is related to the portfolio of the former member, and it must only decide after having consulted the Independent Ethical Committee.

Former members must not lobby members or their staff on behalf of their own business, that of their employer or client, on matters for which they were responsible within their portfolio for a period of two years after ceasing to hold office.

In the case of a former president of the Commission, the above cooling-off period is extended to three years.

A violation of the above rules may result in disciplinary sanctions, including deprivation of pensions and benefits and public reprimands.

EU staff members

The Staff Regulations for officials of EU institutions provide that officials, after leaving the service, must continue to respect the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

If a former official intends to engage in an occupational activity, whether gainful or not, within two years of leaving the service, they must inform their institution. If the activity is related to the work carried out by the official during the last three years of service and could lead to a conflict with the legitimate interests of the institution, the institution may, having regard to the interests of the service, either forbid him or her from undertaking it or give its approval subject to any conditions it thinks fit.

Former senior officials, during the 12 months after leaving the service, are in principle prohibited from engaging in lobbying or advocacy regarding staff of their former institution for their business, clients or employers on matters for which they were responsible during the last three years in the service.

Former EU staff members who act in breach of these rules may be subject to disciplinary proceedings.

More information (including guidelines and staff regulations) can be found on the European Commission's website .

Law stated - 29 December 2021

Prohibitions on lobbying

Is it possible to be barred from lobbying or engaging lobbying services? How?

No. However, legal entities that are registered in the EU Transparency Register and that engage former public officials in breach of the staff rules may be considered to act in breach of the Code of Conduct. Sanctions include removal from the EU Transparency Register, which will result in the de facto loss of access to the highest levels within the European Commission.

Law stated - 29 December 2021

RECENT CASES AND SANCTIONS

Recent cases

Analyse any recent high-profile judicial or administrative decisions dealing with the intersection of government relations, lobbying registration and political finance?

We are not aware of any case law of the EU Courts in relation to the EU Transparency Register (EUTR) at this time. Given the new possibilities to appeal decisions of the EUTR's Secretariat, this may change in the future. The European Ombudsman, who investigates complaints about maladministration, has at times issued opinions in relation to the EUTR and revolving door issues.

There are a number of non-governmental organisations that are active around lobbying transparency issues in Brussels. There has also been increased scrutiny of this type of issues since the news organisation Politico started their coverage of EU issues in 2015.

Many cases that are reported on include entities that are active in lobbying but that are not registered with the EUTR. Although there is no legal obligation to register, the top levels within the European Commission may not meet with

unregistered lobbyists. Other typical issues relate to inaccurate entries in the EUTR, such as under-reporting lobbying expenditure or failure to declare all clients.

Revolving door issues are also regularly reported on. One high-profile case concerned former Commission president José Manuel Barroso's taking up of a position with Goldman Sachs. The Commission had consulted the Ethics Committee, which concluded that there were not sufficient grounds to establish a breach of the duty to act with integrity and discretion under article 245 of the TFEU. However, in its assessment, the Ethics Committee had taken into account the former Commission President's written statement that he had not been engaged to lobby on behalf of Goldman Sachs and that he did not intend to do so. It was later shown, however, that Barroso had met with a Commission's Vice-President to discuss trade and defence matters. The Ombudsman found that there was maladministration in the Commission's handling of the matter and formulated recommendations to increase transparency and reinforce the Commission's Code of Conduct.

There are a few high-profile cases involving the misuse of EU funding by EU civil servants or members of the European Parliament (MEPs). In 2006, there was the case of Commissioner Édith Cresson, who was deprived of her pension rights by the Court of Justice for circumventing the rules when appointing a member of her Cabinet. More recent cases concern MEP Marine Le Pen and European auditor Karel Pinxten. Le Pen was ordered to repay funds from the European Parliament because they were paid to an assistant who did not perform any parliamentary work (but worked for Le Pen's political party). This decision was upheld by the Court of Justice in 2018 and 2019. In 2019, the European Court of Auditors (ECA) found one of its members, Pinxten, in breach of rules on conflicts of interest and engagement in political activity while in office at the ECA. Proceedings are currently pending before the Court of Justice (case C-130/19).

Law stated - 29 December 2021

Remedies and sanctions

In cases of non-compliance or failure to register or report, what remedies or sanctions have been imposed?

EU Transparency Register

A lack of registration will result in the interest representatives in question not being able to make certain contacts or carry out certain activities in relation to the signatory institutions, as this scheme should be regarded as a de facto and therefore indirectly mandatory mechanism. Consequently, an organisation cannot be directly obliged to register.

Sanctions for non-compliance and breach of the Code of Conduct are limited to removal from the EUTR for periods up to two years, deactivation of the access passes to the European Parliament and loss of other incentives, and publication of these sanctions. The removal from the EUTR means a de facto bar from access to certain top officials and appointment to roles within certain bodies.

The decisions by the EUTR's Secretariat will be subject to review by the management board, consisting of the secretaries general of the participating EU institutions, and may ultimately be challenged before the Court of Justice of the EU.

Financing of political parties and MEPs

Infringements of the EU rules on party funding may lead to serious sanctions. European political parties may, among others, be excluded from EU funding for up to 10 years and be ordered to pay a fine (of up to 50 per cent percentage from its annual budget or up to 300 per cent of the irregular sums received or not reported).

Sanctions for MEPs that fail to report or register in compliance with their Code of Conduct, range from a reprimand

and temporary suspension from participating in parliamentary activities, to the removal from one or more of the offices held by the MEP in question.

Ethics and anti-corruption

Breaches by EU officials of the staff rules may give rise to disciplinary sanctions upon the individual. However, under the Code of Conduct of the EUTR, entities that would induce EU officials to breach the rules and standards of behaviour applicable to them may also be sanctioned with removal from the EUTR.

National legislation in relation to bribery may also lead to criminal sanctions.

Law stated - 29 December 2021

UPDATE AND TRENDS

Key developments of the past year

Are there any emerging trends or hot topics in government relations, lobbying or related law and regulation? Have changes occurred recently or are changes expected in the near future (through either legislation or court decisions) that will have an impact on the practice of government relations or lobbying disclosure?

The key development of 2021 was the adoption and entry into force of the new inter-institutional agreement on a genuinely mandatory transparency register. In addition, the European Parliament amended its Rules of Procedure requiring its members to adopt the systematic practice of only meeting interest representatives that have registered in the EU Transparency Register. In a similar fashion, the Council of the EU has decided that meetings with the Secretary General and Directors General of the General Secretariat of the Council of the EU are conditional upon prior registration. However, there remains some controversy over the fact that a mandatory register has no proper basis in the EU treaties.

An updated version of the implementing guidelines was published on 1 September 2021.

Law stated - 29 December 2021

Jurisdictions

	Brazil	MJ Alves & Burle Advogados e Consultores
	Eurasian Economic Union	Kesarev
	European Union	Loyens & Loeff
	Italy	Gianni & Origoni
	Kazakhstan	Kesarev
	Russia	Kesarev
	Taiwan	Formosa Transnational Attorneys at Law
	Ukraine	Kesarev
	USA	Squire Patton Boggs