

DECISION ADOPTED BY THE BUREAU

C.6

Bureau meeting No	713
Date	21/03/2023
Subject	EESC participation in the Transparency Register – Legal and practical implications

1. Background

Over the last few years, the European Parliament has repeatedly asked the EESC about its plans to adhere to the EU Transparency Register in the context of the discharge. In the report on discharge in respect of the implementation of the general budget of the European Union for the financial year 2019, the Parliament "*encourage[d] the Committee to join the Union Transparency Registry on the basis of a service level agreement in order to increase the transparency of lobbying meetings*"¹. For the following financial year 2020: "*53. [The Parliament...] urges the Committee to join the Transparency Register with a view to improving the transparency of its interactions with external interest representatives.*"² In its vote on 28 February 2023 on EESC's discharge for 2021, the European Parliament's Committee on Budgetary Control "*strongly encourages the Committee to further explore its participation to the Interinstitutional Transparency Register through the assessment process launched, to that aim, in 2022*".

On 25 October 2022, the EESC Bureau decided in principle on the EESC participation in the EU Transparency Register established by the Interinstitutional Agreement (IIA) of 20 May 2021 between the European Parliament, the Council of the European Union and the European Commission³, by means of the following measures:

- the online publication of meetings of office-holding members with interest representatives;
- the introduction of a voluntary legislative "footprint".

¹ https://www.europarl.europa.eu/doceo/document/TA-9-2021-0169_EN.html.

² https://www.europarl.europa.eu/doceo/document/A-9-2022-0079_EN.html.

³ [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021Q0611\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021Q0611(01)).

On that occasion, the Bureau instructed the secretariat to carry out an analysis of the legal and practical implications of those measures, after which the matter would be referred back to the Bureau for a final decision.

The present memo, which takes into account the remarks of the EESC Legal Service, is intended to provide further guidance to the Bureau, illustrating the concrete consequences of the EESC involvement in the Transparency Register.

It is based on three overarching principles that it seems appropriate to emphasize:

- the measures proposed for the EESC are in line, with the necessary adaptations, with those already in place in the European Parliament and the European Commission⁴;
- the participation of the EESC in the Transparency Register does not entail nor require the registration of EESC members. The proposed measures will have an impact on a limited number of members (office-holding members and, only on a voluntary basis, rapporteurs, but in no case would those members be subject to registration);
- the information which it is proposed to disclose in the framework of the EESC participation in the Transparency Register is already available and accessible. Retrieving and arranging this information can be done through automatized systems of reporting.

2. The proposed measures

According to Article 2(h) IIA, "*conditionality means the principle whereby registration in the register is a necessary precondition for interest representatives to be able to carry out certain covered activities*". This occurs, for example, when the registration of interest representatives in the register is a necessary precondition for EESC office-holding members to meet with interest representatives. If there is no such obligation, the measure is to be seen as a "*transparency measure*". Indeed, Article 5(2) IIA defines "*conditionality and complementary transparency measures*" as those measures intended "*to encourage registration and strengthen the joint framework established by*" the IIA. In other words, transparency measures also need to have a connection with the EU Transparency Register. Bearing in mind the above distinction, all measures proposed in this memo and in the draft decision are to be seen as transparency measures, and would be publicised as such in the website of the EU Transparency Register.

The present memo only focuses on the measures referred to in the decision taken by the 25 October Bureau. Of course, this would not prevent the Committee from adopting any other conditional and transparency measures, when and as deemed appropriate: for instance, following the current reflection at the European Parliament to tighten the transparency requirements at interinstitutional level.

⁴ As for the Committee of the Regions, its political instances examined the possible involvement of the CoR in the Transparency Register in 2022, but so far have taken no formal decision to join the Register fully or partially. The CoR's Practical guide on the interaction of staff with external entities does not refer to the Transparency Register.

In the present memo it is proposed that all measures be regulated by the same EESC decision. A draft decision is included in the Annex 1 to the present memo, whereas Annex 2 presents a possible model of voluntary legislative "footprint".

2.1 Online publication of meetings between office-holding members and interest representatives

2.1.1 General remarks

The first measure intended is to invite Committee office-holding members (namely, EESC President and Vice-Presidents, the Groups' and the section/CCMI presidents), in their official capacities, to meet only with interest representatives that have registered in the Transparency Register; and, on the other hand, to introduce the obligation for the EESC to publish online the list of meetings between office-holding members and interest representatives.

The proposed decision would not oblige the Committee office-holding members to meet only with interest representatives registered in the register. This is similar to the regulation in force at the European Parliament. According to Rule 11(2) of the Rules of Procedure of the European Parliament, "*members should adopt the systematic practice of only meeting interest representatives that have registered in the Transparency Register established by means of the Agreement between the European Parliament and the European Commission.*" This means, as confirmed by informal contacts with the secretariat of the Parliament, that MEPs have no legal obligation to meet only with registered interest representatives.

Conversely, the online publication of the lists of meetings for office-holding members would be an obligation for the Committee office-holding members, as decided by the October Bureau of the EESC.

2.1.2 Proposed methodology

Based on the equivalent measure in force for MEPs and European Commissioners, it is proposed that the following information be disclosed:

- (a) meeting date,
- (b) organization or self-employing individual met,
- (c) meeting subject,
- (d) meeting venue.

It is proposed that, as in the case of MEPs or European Commissioners, the list of meetings be made available within a month from the date of the meeting on the EESC office-holding member's own webpage.

2.1.3 Legal and data protection framework

In order to implement this option, the EESC would have to put in place a specific decision providing for a measure "of equivalent effect" to the ones adopted in each of the other signatory organizations, namely European Parliament, European Commission and Council of the European Union.

If the EESC decides that information on meetings between EESC office-holding members and interest representatives shall be mandatorily disclosed by publication in internet, the legal basis for the processing of personal data would be Article 5.1.a of [Regulation \(EU\) 2018/1725](#), hereafter "EUDPR": "*processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Union institution or body*".

In that case, the persons concerned by the publication, namely EESC office-holding members and self-employed interest representatives, should be informed beforehand (for example by a privacy statement) and may exercise their right to object, on grounds relating to their particular situation, under Article 23 EUDPR. In case of exercise of the right to object, the EESC must no longer process the personal data (i.e., must refrain from publishing the information) unless it demonstrates compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims.

It is suggested to draft the EESC decision along the lines of Rule 11(2) and (3) of the Rules of Procedure of the European Parliament, as well as of the Commission Decision of 25 November 2014 on the publication of information on meetings held between Members of the Commission and organisations or self-employed individuals.

2.2 Introduction of a voluntary "legislative footprint"

2.2.1 General remarks and proposed methodology

The second measure agreed in principle by the EESC October Bureau concerns the requirement for rapporteurs to attach a voluntary "legislative footprint" to their opinions listing the interest representatives (organisations or self-employed individuals) from whom they received input. This measure might be similar to the one in use at the EP⁵, according to which MEPs drafting reports or opinions can choose to attach a "legislative footprint" to their legislative and non-legislative reports, showing the range of outside expertise and opinions the rapporteur has benefited from. Concerning the notion of "interest representatives", the remarks made under 2.1.1 above apply also in this case.

By analogy with the practice followed at the EP, the "legislative footprint" could be attached to the opinion after its adoption at the section level, in order for people to see whom the rapporteur has heard when the document is submitted to the EESC plenary for final adoption.

2.2.2 Legal and data protection framework

Similar to the previous measure, in this case as well the EESC will have to adopt a specific decision serving as a legal basis, delineating the required measure (see Annex 1, Article 3 of the proposed decision).

⁵ [Decision of the Bureau](#) of the European Parliament of 4 July 2016.

Should the EESC decision provide that an optional and non-exhaustive list of organisations and individuals from whom rapporteurs received input as regards the drafting of opinions may be attached to the opinion on a voluntary basis, as is currently the case at the European Parliament, the legal basis in the EUDPR for the processing of personal data would be Article 5.1.d: "*the data subject has given consent to the processing of his or her personal data for one or more specific purposes*".

It should be noted that the EUDPR applies to the publication of the names of individuals, while the simple publication of the name of an organization is not subject to the EUDPR. Having said that, the persons who gave input to the rapporteur should be informed beforehand (for example by a privacy statement) and may give their consent⁶ to the publication of their names. They may give their consent, for example, by filling in an online form or by signing a paper form. In accordance with Article 7.1 EUDPR, the EESC should keep the files proving that the persons concerned have given their consent. If the person does not give his or her consent to the publication of his or her name, the name must not be published, but the name of the organization may be published.

It is proposed here to proceed along the same lines of the Decision of the Bureau of the European Parliament of 4 July 2016. Accordingly, the list would be drawn up on a purely voluntary basis, under the exclusive responsibility of the rapporteur. The list would not need to be exhaustive and the entries on the list submitted by the rapporteur would not be verified by the section secretariat.

3. Conclusion and way forward

As highlighted by the European Ombudsman, "*while the global regulatory influence of the EU is now widely recognised, this makes the issues of lobbying transparency and ethics even more relevant in relation to the protection of the public interest. If the EU sets high standards in this area, it can then set the global standard for lobbying transparency and ethics (...)*"⁷.

The consultation of the EESC, which forms an integral part of the EU ordinary legislative procedure, justifies the Committee's involvement in the effort already carried out at the level of European Parliament, Commission and Council to ensure the utmost transparency of the EU decision-making process.

The transparency measures outlined above can be considered in line with the spirit of the IIA. They can therefore reinforce the EESC's image of committing to the ethical principles of integrity, openness, diligence, honesty and accountability, as outlined under Article 1 of its Code of Conduct.

As a way forward, the EESC will have to notify the Management Board of the Transparency Register of these transparency measures. Where the Management Board considers that the measures adopted by the Committee are consistent with the objectives pursued by the IIA, it may decide, in accordance with article 11 IIA, to publish them on the website of the Register.

⁶ Under Article 3(15) EUDPR, consent of the data subject means "*any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her*".

⁷ European Ombudsman strategy: 'Towards 2024' - Sustaining Impact' (<https://www.ombudsman.europa.eu/en/strategy/our-strategy/en>).

ANNEX 1 - EESC decision

DECISION

of 21 March 2023

on transparency measures in accordance with the Interinstitutional Agreement of 20 May 2021 between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register

THE BUREAU OF THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE,

Having regard to the Treaty on European Union (hereinafter "TEU"),

Having regard to the Treaty on the Functioning of the European Union (hereinafter "TFEU"), and in particular Article 300(1) and (4) thereof,

Having regard to the Committee's Rules of Procedure, and in particular Rule 98,

Having regard to the Code of Conduct for the members of the Committee, and in particular Article 1(2), (3) and (4),

Having regard to the Interinstitutional Agreement of 20 May 2021 between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register, and in particular its recital no. 9,

Whereas:

- (1) In accordance with Article 11(1) and (2) TEU, the institutions must, "by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action" as well as "maintain an open, transparent and regular dialogue with representative associations and civil society".
- (2) Citizens have a right of access to documents of the institutions, as provided for in Regulation (EC) No 1049/2001 of the European Parliament and of the Council⁸. This Decision does not concern access to documents nor the application of Regulation (EC) No 1049/2001.
- (3) The European Economic and Social Committee is committed to ensure the transparency of its decisions as openly as possible.
- (4) Within the European institutional set-up, the Committee's consultative role enables European civil society to participate in the European Union decision-making process. This expertise and the search for convergence resulting from these discussions and negotiations improve the quality and credibility of the European Union decision-making process, insofar as they make it

8

Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

more comprehensible and acceptable for Europe's citizens and increase the transparency which is so vital for democracy.

- (5) As a chamber for debating and for drawing up opinions, the Committee helps to strengthen the democratic credentials of the process of building the European Union.
- (6) On 25 October 2022, the EESC Bureau decided in principle on the Committee's participation in the EU Transparency Register.
- (7) The Bureau decided on an approach taking into consideration that the EESC's participation to the EU Transparency Register is not mandatory for EU consultative bodies.
- (8) The Bureau decided to retain the following measures: an invitation for Committee office-holding members (namely, EESC President and Vice-Presidents, the Groups' and the section/CCMI presidents,) only to meet in their official capacities with interest representatives that have registered in the Transparency Register; the obligation to publish online the list of meetings between office-holding members and interest representatives; and the inclusion on a voluntary basis of a legislative "footprint" in EESC opinions and reports.
- (9) By adopting these measures, the Bureau aims to lay down the foundations for an improved transparency policy for the EESC.
- (10) Moreover, when Committee office-holding members meet with interest representatives who are not registered, they shall promote the Transparency Register and explain the advantages to be registered in order to improve transparency at EU level and to give them further opportunities to present their positions to EU institutions.

HAS ADOPTED THIS DECISION:

Article 1

1. The Committee shall participate on a voluntary basis in the Transparency Register established by means of the Interinstitutional agreement of 20 May 2021 between the European Parliament, the Council of the European Union and the European Commission.
2. The Committee's involvement in the Transparency Register shall take place through the measures outlined in Articles 3 and 4.

Article 2

For the purpose of this decision the following definitions shall apply:

- (a) 'Committee office-holding member' means the President, the vice-presidents, the Groups' presidents, and the sections and CCMI presidents.

- (b) 'Meeting' means a bilateral encounter organised at the initiative of an interest representative or a Committee office-holding member to discuss an issue related to policy-making and implementation in the Union.
- (c) 'Interest representatives' means any natural or legal person, or formal or informal group, association or network, that engages in covered activities.

Article 3

1. Committee office-holding members as defined in Article 2(a) are invited to meet only interest representatives that have registered in the Transparency Register.
2. Committee office-holding members shall make public information on all meetings held by them with interest representatives on issues relating to policy-making and implementation in the Union. The secretariat shall provide for necessary infrastructure on the Committee's website.
3. The information to be made public shall consist of the date of the meeting, the location, the name of the Committee office-holding member, the name of the interest representative and the subject of the meeting.

Article 4

A model for a voluntary "legislative footprint", collecting a non-exhaustive list of organisations and individuals from whom the rapporteur has received input in drawing up the opinion or report, is established. This legislative footprint shall be drawn up under the exclusive responsibility of the rapporteur and attached to opinions or reports on a purely voluntary basis.

Article 5

This decision shall not cover the activities of the social partners acting as participants in social dialogue pursuant to Article 152 TFEU, nor the activities that are outside the scope of the EU Transparency Register⁹.

Article 6

1. The information set out in Article 3(3) shall be published in a standardised format on the web pages of the Committee members within a period of one month following the meeting.
2. The publication of the information may be withheld where such publication could undermine the protection of one of the interests referred to in Article 4(1), (2) and (3) of Regulation (EC) No. 1049/2001, in particular the life, the integrity or privacy of an individual, the financial,

⁹ See Article 4(2) of the Interinstitutional Agreement of 20 May 2021 between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register.

monetary or economic policy of the Union, the market stability or sensitive commercial information, the proper conduct of court proceedings or inspections, investigations, audits or other administrative procedures; or the protection of any other important public interest recognised at Union level.

3. Interest representatives shall be informed of the fact that the information set out in Article 3(3) will be made public.
4. The names of individuals (acting on behalf of interest representatives) or Committee officials attending meetings shall not be made public unless they have unambiguously given their consent.

Article 7

1. This decision shall enter into force on 1 June.
 2. The general secretariat shall be responsible for implementing this decision.
-

ANNEX 2 – Voluntary "legislative footprint" (specimen)

Annex to the opinion / report

LIST OF INTEREST REPRESENTATIVES

FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following interest representatives (organisations and/or self-employed individuals) in the preparation of the [opinion / report]:

<i>Organisations and/or self-employed individuals</i>

Explanatory note on the use of this annex

- 1. The filling in of this annex is purely voluntary.*
- 2. Filling in this annex is the exclusive responsibility of the rapporteur. The list need not be exhaustive. The entries on the list as submitted by the rapporteur will not be verified by the secretariat.*
- 3. Names of individuals acting on behalf of organisations or self-employed individuals shall only be listed in this annex if they have unambiguously given their consent. By including names of individuals in the annex, the rapporteur acknowledges that the individuals listed have been duly informed about, and agree to, disclosure of their names in public.*
- 4. The annex will appear in the published document only when it is filled in and submitted by the rapporteur within the applicable deadline.*
- 5. The secretariat will inform the rapporteur about the applicable deadline for the submission of the annex, i.e., when the draft report or section opinion is submitted to translation.*
- 6. The secretariat should inform the rapporteur about the voluntary nature and use of this annex, and provide him/her with the appropriate model.*
- 7. The content of the list will not be translated.*