



## **Reply of the General Secretariat of the Council to the special report “EU Transparency Register - provides useful but limited information on lobbying activities”**

### **1) Legal framework of the 2021 IIA**

The General Secretariat of the Council (GSC) would like to emphasize that the 2021 IIA aims at making interest representation (“lobbying”) more accountable and transparent. The EU Transparency Register (EUTR) is an important transparency tool that has shown remarkable resilience over time, as demonstrated by the consistently high rates of registration and its considerable size (over 12 000 interest representatives). The EUTR is valued as an example for regulators across the EU and globally.

Although the IIA is not a legislative act and therefore cannot impose sanctions on interest representatives, it contains a set of important enforcement measures (Annex III). These measures include removal from the register following quality checks, complaints and investigations, which taken together, have been applied very frequently as demonstrated by the EUTR Annual Reports. In addition, the signatory institutions established in the IIA the possibility of prohibiting a registrant from re-registering for a period of up to two years and the accompanying publication of that prohibition as a powerful measure to restrict access to the EU institutions in light of the seriousness of non-observance of the EUTR code of conduct. In addition, since March 2023, suspended registrants appear on the EUTR website on a dedicated page.

These measures have proven effective in maintaining continuous rates of registration and updating, and in increasing awareness on the importance of data quality and the observance of the code of conduct, as well as about the reputational risks associated with any breaches of it.

The GSC is of the view that such measures constitute an efficient framework to ensure compliance with the code of conduct and the transparency obligations that lobbyists must respect. As a result, the GSC considers that the 2021 IIA framework succeeded in providing “mechanisms for effective implementation, compliance and review” [table 1, IV.9.].

The 2021 IIA establishes legal certainty in the regulation of contacts between the signatory institutions and interest representatives, while providing for the necessary flexibility. It covers all lobbying activities, by means of a broad definition in its Article 3, subject to the exceptions set out in its Article 4. In addition, it requires each signatory institution to adopt its own conditionality and complementary measures, thus taking into account their different roles and structures, which have a direct impact on the regulation of contacts.

It is for these reasons that the three signatory institutions have agreed to implement a coordinated approach and adopt measures of equivalent effect, which take account of their institutional differences.

As a result, the GSC considers that the 2021 IIA framework succeeded in building an “effective and fair framework for openness and access” [table 1, I.1.].

## **2) Functioning of the TR Secretariat**

The EUTR Secretariat is a sui generis joint administrative structure without legal personality. Due to the interinstitutional nature of the EUTR, its operation naturally requires significant cooperation and coordination between the three institutions. As such, the EUTR Secretariat is a unique example of successful interinstitutional cooperation and should be seen as a positive and constructive element in furthering the transparency of lobbying activities in the EU and not as a possible risk or impediment to efficiency. While there are no formally adopted Rules of procedure, the 2021 IIA sets out clearly the main tasks of the Secretariat (monitoring, complaints handling, own investigations, etc.) and procedures for approving applications for registration and for handling of monitoring and investigation. The Secretariat has developed common and consistent guidance and practices, agreed between the institutions, and dedicates considerable time and efforts to coordination in order to ensure consistency and proper information-sharing between the teams.

Regarding the observations on data quality (in particular paragraphs 67-71), a general comment needs to be made regarding the focus period for the audit report (2019-2022), as well as the related data samples. This period covers partly the framework under the previous 2014 IIA, partly the transition period before the effective implementation of the 2021 IIA, and a very short period of the actual operation under the 2021 IIA. Therefore, the findings related to the data quality in the EUTR in this period naturally present certain limitations and do not reflect the current overall data quality in the EUTR since the end date of the audit.

Constantly improving the data quality in the EUTR has been a paramount priority for the EUTR Secretariat, which is demonstrated by the high number of checks, helpdesk queries and other tasks carried out by the EUTR Secretariat in order to improve the quality of the applications and registrations. While applicants are responsible for the accuracy of the information provided (Article 8(3)(c) of the IIA), each application for a new registration is checked for completeness and compliance with the requirements of the 2021 IIA, before the registration is activated in the EUTR. This is demonstrated by the number of recorded instances where further corrections or updates were requested by the Secretariat before validation or during quality checks.

## **CONCLUSIONS AND RECOMMENDATIONS**

### **Recommendation 1 – Strengthen and harmonise the implementation of the EUTR framework**

The recommendation partly concerns political choices made by the 2021 IIA signatory institutions at the time of its adoption. The GSC is not in a position to pre-empt political choices that would be made by the signatory institutions in the context of any future review.

The GSC partially accepts recommendation 1a) on a common definition of ‘what constitutes a meeting’. because any possible harmonisation will need to properly reflect the different nature and working practices of each of the signatory institutions.

The GSC notes in any case that the current definition of “meetings”, as set out in the GSC’s internal rules for the implementing of the EUTR notified to all staff (Staff note CP 35/21), already captures all scheduled exchanges with lobbyists, including video, audio or phone meetings.

The GSC does not accept recommendation 1b), as it pertains to political choices which are the prerogative of the signatory institutions. However, the GSC notes that the recommendation corresponds to a very large extent to the rules in force in the GSC, under which “members of staff other than the Secretary-General and Directors-General are encouraged to verify whether interest representatives have an entry in the transparency register before accepting to participate in a meeting with them. If the interest representatives are not registered, staff members must carefully consider the appropriateness of such a meeting and consult with their line manager”.

### **Recommendation 2 – Publish information on non-scheduled meetings with lobbyists**

The GSC does not accept the Court’s recommendation.

The recommendation partly concerns political choices made by the 2021 IIA signatory institutions at the time of its adoption. The GSC is not in a position to pre-empt political choices that would be made by the signatory institutions in the context of any future review.

The GSC considers anyhow that such an obligation would require an in-depth assessment of its administrative and legal implications since non-scheduled meetings are excluded from the IIA and therefore are not subject to the prior registration requirement. As a result, an obligation to publish information on non-scheduled meetings with lobbyists may raise a risk of encouraging lobbyists to deregister and opt for non-scheduled meetings thus curtailing transparency. It would also present enforcement, reputational and monitoring challenges.

### **Recommendation 3 – Improve data quality checks**

The GSC accepts recommendation 3a).

According to the EUTR annual priorities for 2022 and 2023, the EUTR Secretariat’s monitoring exercise covered the entire content of the EUTR further to the transition of registrants to the mandatory register. In addition, under the 2021 IIA all new applications for registration are checked for eligibility and fulfilment of the information requirements before they are published on the EUTR. Therefore, the GSC, together with the Parliament and the Commission, has already taken steps to address the ECA’s recommendation and will ensure to plan regular data quality checks covering all registrants.

The GSC partially accepts recommendation 3b). The GSC is open to explore the use of additional cross-checking tools in order to improve the completeness and accuracy of financial data, subject to the availability of the necessary budget and resources that any IT development requires, and within a timeline compatible with budgetary procedures.

