

A Call to Members of the European Parliament Take transparency seriously and enact the 'legislative footprint'

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The code of conduct that was agreed by a cross-party working group of the European Parliament (EP), the EP Bureau and Conference of Presidents, is a watered-down compromise that lacks provision for the introduction of the 'legislative footprint' that the plenary requested the Bureau to set up. The legislative footprint is a document that would detail the time, person and subject of a legislator's contact with a stakeholder. Published as an annex to legislative reports, it would provide insight into who gave input into draft legislation. Unfortunately, the Constitutional Affairs (AFCO) Committee with Carlo Casini (EPP) as Chair and Rapporteur has so far failed to improve the draft in this respect. Against a backdrop of past scandals and recent criticism of early agreements negotiated in trilogues behind closed doors, the EP is about to miss an opportunity to show that it has learnt its lesson, and that it takes seriously its role as guarantor of legitimacy in EU decision-making. Transparency means proactive action: by adding a provision for a legislative footprint that identifies the interest representatives with whom key actors met and from whom they received advice, Members of the European Parliament (MEPs) have a chance to turn the EP into a role model for parliamentary transparency in a pluralistic democracy.

In the spring of this year, the EP was rocked by a bribery scandal. *Sunday Times* journalists posing as lobbyists had offered money to MEPs in exchange for legislative favours, such as the introduction of amendments. Three of them showed receptiveness to the offers. When the trap and the true identities were uncovered, two of the three MEPs resigned and one was pressured into leaving his party group, while clinging on to his seat.¹ While no parliament is immune to such

individual unethical behaviour, the EP vowed to review its procedures, and to become more transparent in its dealings with lobbyists.²

In plenary, President Buzek declared,

As President elected by you, ladies and gentlemen, I am determined to uphold the integrity of this House and all its Members. I would like to remind you of the great public responsibility resting on us as representatives elected by the people. The citizens have entrusted us with the right to exercise

¹ Euractiv, "Journalistic spoof traps MEPs in bribery affair", 29 March 2011 (tinyurl.com/EPspooft); C. Bryant and J. Chaffin (2011), "MEP resigns over claims of lobbyist payments", *Financial Times*, 20 March 2011, (tinyurl.com/EPresignation); *The Economist*, "Corruption allegations in the European Parliament: He won't back down", 24 March 2011, (tinyurl.com/EPSeverin).

² European Parliament, "EP leaders agree to develop new rules for lobbyists and stronger code for MEPs", press release (tinyurl.com/EPleaders); A. Willis (2011), "Buzek defends parliament's efforts to tighten internal rules", *EUObserver*, 23 May 2011 (euobserver.com/9/32379)

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authority on their behalf. We must not disappoint that trust.³

Admittedly, MEPs have a lot on their plate at the moment in dealing with urgent legislative activity on the economic and financial crisis. These activities, however, are distracting them from more long-term issues that are crucial to the development of a more democratic and transparent European Union. The EP, as directly elected co-legislator of the member states in the Council, has traditionally waved the flag for open deliberation and legitimacy in EU decision-making. While the EP's powers were boosted by the Lisbon Treaty, the legitimacy of its decision-making, with many agreements concluded in trilogues behind closed doors, has come under scrutiny and criticism.

These developments placed the ball in the EP's court. So far, we can distinguish two concrete initiatives on the part of the Parliament to enhance transparency and, hence, legitimacy. But they only go half way.⁴

Transparency register and code of conduct not enough

First, the incident gave momentum to the Transparency register, which was adopted by a large majority of MEPs in May 2011, after more than two years of discussions, and which is now up and running.⁵ Lobbyists need to make comprehensive information available on their affiliation, the turnover and clients of the organisation, and are only allowed to enter the EP unaccompanied if they are registered. In essence, the transparency register reveals who is seeking to influence European legislation. However, to use an obvious example, knowing that a company with a representation in Brussels seeks to influence legislation does not exactly come as a surprise. In addition, every MEP can sign in a non-registered lobbyist as an individual visitor. Real transparency means knowing which pieces of legislation the listed and non-listed organisations/individuals sought to influence,

and through which channels. The transparency register does not therefore suffice.

Second, the first-ever code of conduct for MEPs was prepared by a working group and approved by the Conference of Presidents on the recommendation of the Bureau on 7 July 2011.⁶ The code of conduct was forwarded to the AFCCO committee and debated in three sessions.⁷ By and large, there was broad agreement on a swift adoption and members saw no need for sweeping changes. Leaving aside sanctions of gross misconduct, the code as it stands at the moment regulates what gifts or benefits MEPs may accept and how they need to declare remunerated activities. That MEPs receive certain gifts is a matter of course, and to what extent it is appropriate for them to pursue remunerated activities in addition to their mandate may be controversial,⁸ but its admissibility is not questioned here. However, it is not easy to determine if a specific remunerated activity represents a conflict of interest or not. For this, we would need to know whether remunerated activity, access, and legislative activity are closely linked, which the provisions of the current draft do not allow. The transparency component of the draft code of conduct is thus not satisfactory.

Therefore, if the code of conduct is not substantially amended, the two initiatives will prove toothless with regard to achieving transparency and will convey the image that promises to learn from past scandals were mere window-dressing.

³ European Parliament, *Debates*, 23 March 2011 (tinyurl.com/EPBuzek).

⁴ See M. Kluger Rasmussen (2011), "Lobbying in the European Parliament: A necessary evil", CEPS Policy Brief No. 242, CEPS, Brussels, May.

⁵ See europa.eu/transparency-register/index_en.htm

⁶ Chair: Jerzy Buzek (EPP, PL); Vice-Chairs: Diana Wallis (ALDE, UK), Stavros Lambrinidis (S&D, UK); Other members: Jan Zahradil (ECR, CZ), Claude Turmes (Greens/EFA, LU), Alejo Vidal-Quadras (EPP, ES), Francesco Speroni (EFD, IT), Cornelis (Dennis) de Jong (GUE/NGL, NL), Manfred Weber (EPP, DE), Maria Badia i Cutchet (S&D, ES).

⁷ On 28 September, 5 October and 11 October 2011. Videos of the latter two sessions are available at tinyurl.com/AFCCOvideo. The legislative footprint was not mentioned once.

⁸ A. Willis (2011), "Anti-corruption campaigner calls time on MEP 'parallel' jobs", *EUObserver*, 24 March 2011 (euobserver.com/9/32047).

The missing link: The legislative footprint

In isolation, the effect of the transparency register and the code of conduct will fizzle out – a scenario that the legislative footprint would help prevent. The legislative footprint is a document that would detail the time, person and content of a legislator's contact with a stakeholder. Published as an annex to legislative reports, it would provide insight into who gave input into draft legislation.

The legislative footprint complements the transparency register by allowing insight into *who* sought to influence *what* piece of legislation. The transparency register merely generically addresses the first question and only partially answers it. In contrast, the addition of a legislative footprint would extend the scope of actors covered to non-registered interest representatives, and all contacts could be linked to specific legislation. By knowing who a company's representatives talked to, in what legislative context, and how often, media and citizens can obtain a much clearer picture of what is happening inside the EP. Who actually sought to influence a specific piece of legislation can thus only be known if a legislative footprint is adopted.

The legislative footprint would also address the shortcomings in the code of conduct. Standing alone, the code of conduct only tells us what an MEP earns outside Parliament, for example, but does not allow an assessment of whether this influences their legislative activity. Here the footprint would kick in. If citizens can see that the MEP is being lobbied heavily by a specific company or sector, related remunerated activity may provide an opportunity to question the relationship between an MEP and a stakeholder. Likewise, if an MEP only receives representatives of a company for which they conduct consultancy work, this would provide an opportunity to ask questions. In short, the legislative footprint would have a preventive effect in leading MEPs to take the public impression into account, possibly recalibrating the meetings and commitments they accept. Whether there is actually privileged access to an MEP related to their remunerated activity can again only be assessed if a legislative footprint is adopted.

Hence, the legislative footprint would empower the transparency register and code of conduct by enabling their real purpose. The failure of the EP leadership to introduce a footprint is particularly remarkable against the backdrop of a plenary decision of May 2011, instructing the Bureau to implement it. When the EP adopted the transparency register, it demanded

that its Bureau devise a system whereby all lobbyists who fall within the scope of the register and who have obtained a meeting with a relevant Member about a specific legislative dossier are recorded as having done so in the explanatory memorandum to the report or recommendation relating to the relevant draft legislative act.⁹

The question as to why the EP leadership failed to deliver on this request leads us to consider the more substantive opposition to the footprint.

Counter-arguments do not hold water

The arguments against the legislative footprint are easily dismantled. Two of them are deemed to be particularly relevant. First, a legislative footprint might prevent MEPs from meeting their constituents. Second, it might increase lobbying by providing a reference to public affairs agencies and lobby groups. Both criticisms are unfounded. In contrast, opposition to the legislative footprint can perhaps be explained by the fact that it brings MEPs out of their comfort zone.

First, the legislative footprint does not prevent an MEP from meeting anyone. It merely requires that a record of the meeting be kept. This is not convincing as a genuine reason for rejecting the footprint, and does not qualify as anything but pretextual.

Second, the footprint might increase lobbying attempts, some hypothesise, as it could provide evidence for stakeholders that they have done their work. But an increase in stakeholder contacts is a good thing. The legitimacy of the EP partly rests on its wide consultation with stakeholders, particularly in view of dwindling voter turnout. Interest representatives do have a role in the pluralistic European Union. MEPs

⁹ European Parliament decision of 11 May 2011 on conclusion of an interinstitutional agreement between the European Parliament and the Commission on a common Transparency Register (see tinyurl.com/EPdecision).

should hear different positions in order to form their own opinions.

The arguments advanced against the legislative footprint are thus not valid.

An essential device for transparency and legitimacy

In fact, the legislative footprint is a powerful signalling and screening device for the EP as an institution, for individual MEPs, and the public in general. It would not only improve internal transparency but also the legitimacy of EU legislative output. In addition to strengthening the EP, this would provide tangible benefits to individual MEPs in their work.

The legitimisation and improvement of the quality of EU legislative output are part and parcel of the *raison d'être* of the European Parliament. Most recently, the EP gained new powers under the 2009 Lisbon Treaty. However, the legitimacy of output has come under scrutiny and criticism, as the vast majority of legislative acts under the ordinary legislative procedure are adopted as first-reading agreements (72 % in the 2009-2014 term).¹⁰ Consequently, agreement between Council and the EP is reached in informal trilogues with the European Commission prior to the first reading. This implies a “shift of legislative decision-making from public inclusive to restricted secluded arenas”¹¹ and involves delegation of negotiation mandates to actors deliberating on behalf of the EP. The preparation and passing of legislation can thus be likened to decision-making in a market with imperfect information. First committee members, and then the plenary need to decide on whether to support the deals or not. This applies despite their not being part of the actual negotiation, not necessarily comprehending the technical detail of a dossier, and time constraints which hardly allow making individually informed decisions. Therefore, MEPs delegate certain responsibilities to committees, and in committees to the chair, the rapporteur and

shadow rapporteur, as well as the party group coordinators.

But due to asymmetric information it is hard for any individual MEP to assess whether a specific deal is good, let alone the best possible deal. Signalling and screening have long been identified as mechanisms to overcome, or at least mediate, asymmetric information. One would expect that MEPs might welcome every opportunity to improve their situation.

Firstly, the legislative footprint is a **screening** device allowing an assessment of which stakeholders a key MEP met, received, and heard from while drawing up legislation. This benefits internal EP transparency.

In the EU political system at large, this would help to identify asymmetrical lobbying. Financial industry influence has been highlighted before as a case of this – a cross-party alliance of MEPs on the Economic and Monetary Affairs Committee therefore initiated ‘Finance Watch’ in order to provide alternative analysis on financial regulation.¹² In short, imbalances in input can thus be identified.

For the public, it means that citizens can gain insight into who sought to influence the legislation impacting on their lives. Beyond the identification of conflicts of interest and biases in access, it provides citizens with an opportunity to hold their representatives to account. In the long run, the footprint might have even more beneficial implications: MEPs might be questioned, or might wish to explain themselves, as to why they held some meetings and not others. To the extent that this might happen, the legislative footprint would transform the EP and improve debate in the European public sphere between citizens and their representatives.

For individual MEPs, the legislative footprint would constitute a helpful tool in their task of assessing the legislative behaviour of, and deals struck by, their colleagues. It would mediate concerns about the informal developments towards early agreements in providing MEPs with insight into who their colleagues consulted, and the possibility to more easily question the results and interests involved. Thus, it also

¹⁰ R. Corbett, F. Jacobs and M. Shackleton (2011), *The European Parliament*, Brussels: John Harper Publishing, p. 240.

¹¹ For more information, see the homepage of the research project on Informal Politics of Co-Decision, headed by Dr Christine Reh (ucl.ac.uk/spp/research/esrc-project).

¹² See finance-watch.org.

reinforces transparency among the representatives themselves.

Secondly, the legislative footprint is a device **signalling** the informed nature and strong basis – in other words: the legitimacy – of a position to the other institutions, fellow MEPs, and citizens. Putting data on stakeholder consultations into the public domain will show that MEPs comprehensively consult interests, thus bolstering the legitimacy of the EP and EU legislative output in line with the classic role of the EP.

For individual MEPs, the footprint is an opportunity to signal to their constituency what they care about. They can thus show how they take citizens' concerns seriously, and how they work hard to achieve good legislation.

For the EP as a whole, the information from legislative footprints can signal to the European Commission and the Council the solid foundations of its position. Having consulted stakeholders, the bargaining position of the EP vis-à-vis the other institutions is strengthened. MEPs have long worked to set the EP in a sound position, so it is unclear why they would stop now.

At the same time, the legislative footprint could help the EP establish some transparency for co-decision early agreements by helping mediate the concerns of MEPs and the public, thus boosting confidence in the legislative procedure and its openness. In the long run, moreover, these dynamics might push stakeholder consultations from secluded arenas to fact-finding hearings in committee or online consultations,¹³ instead of every MEP struggling on their own. Thus, the footprint might streamline interest representation and make it more efficient.

How could this be achieved?

Application: Precedent and practice

The legislative footprint would take the shape of an annex to legislative reports that details who key parliamentary actors met, received, and heard from while drafting legislative texts. However, its scope leaves much room for political manoeuvre. This section seeks to flesh out

precedent, current practice and the potential of the footprint.

In order to outline the scope of an effective legislative footprint, three questions are instrumental:

1) What qualifies as a 'meeting' or contact?

Meetings inside and outside the EP, with registered and non-registered lobbyists, need to be included in the scope of the footprint. If deemed substantial, similar contacts by phone or correspondence should be included too. Would it not be a double standard if different rules applied to meetings in the Parliament and the Place du Luxembourg, one of the hubs of lobbying activity in Brussels? Or if different rules applied to a lobbyist being signed in to the Parliament by an MEP for an appointment and those entering independently after registration?

2) **Who qualifies as a 'relevant' MEP?** Ideally every committee member, as they have the opportunity to table amendments. At a minimum, the committee chair, the rapporteur and shadow rapporteurs as those involved in drafting a report, and coordinators as those influencing voting decisions of groups should provide footprints. These members are also usually involved in trilogue negotiations. They would thus need to disclose information on meetings. Would, in any different context, these actors deny that they are 'relevant' in drawing up legislation? Of course, it should be welcomed if MEPs or groups systematically published data going beyond that requirement.

3) **Who qualifies as a 'lobbyist'?** In addition to those registered and non-registered interest representatives in principle covered by register, one group of lobbyists enters and exits the EP without being affected by the transparency register – member state officials, and to a lesser extent, third-country officials. Who would question the fact that meetings of the UK Permanent Representation with MEPs working on financial regulation should be treated similarly to those of other interest representatives? Member state and third-country officials are thus lobbyists vis-à-vis the EP and meetings with MEPs should accordingly be recorded in the framework of the footprint.

These assessments outlining the scope of the footprint are not pulled out of thin air but rest on

¹³ See Kluger Rasmussen, op. cit.

current practice that provides evidence of their feasibility. In a 2008 Resolution, the Parliament

acknowledges that a rapporteur may, as he or she sees fit (on a voluntary basis), use a “legislative footprint”, i.e. an indicative list, attached to a Parliamentary report, of registered interest representatives who were consulted and had significant input during the preparation of the report; considers it particularly advisable that such a list be included in legislative reports.¹⁴

Against this backdrop, MEPs advocating transparency, such as Diana Wallis, have previously provided footprints.¹⁵ Wallis also included Permanent Representations, thus accounting for the fact that these constitute lobbyists vis-à-vis MEPs.

British conservatives have published their meetings with interest representatives in so-called lobbying contact reports, even though the quality of the data differs from member to member and has been published on a six-monthly basis only. This is a good start but does not go far enough.¹⁶

Most important, these cases show that where there’s a will, there’s a way: these MEPs and their staff have accomplished more in terms of administrative effort than would be required today.

Ever since the scandal, even registered lobbyists entering the EP premises need to request a day pass. Most of the administrative burden could be carried by technology, if interest representatives were required to state the purpose of their visit to the EP. A bit of effort is required, though. Since not all contacts take place in the EP, and since also representatives of states and individually signed-in lobbyists should fall under the scope of the footprint, the information electronically gathered would need to be complemented by MEPs and their staff. But would transparency and a strong signal to citizens not be worth this effort on the part of MEPs and their teams? Would keeping a list of government representatives and lobbyists granted meetings

¹⁴ European Parliament resolution of 8 May 2008 on the development of the framework for the activities of interest representatives (lobbyists) in the European institutions; OJ C 271E, 12.11.2009, pp. 48–51 ([link](#)).

¹⁵ For an example, see tinyurl.com/WallisFootprint.

¹⁶ For an example, see tinyurl.com/ToriesReport.

really represent an insurmountable administrative burden?

In sum, the legislative footprint needs a group of enterprising MEPs who will seize this opportunity now. As I argue below, this is not only an idealistic quest for better policy-making at EU level that should be embraced by all pro-European forces, but is also sensible from a party political point of view.

A moment for true leadership: A roadmap to a more transparent EP

Until 27 October 2011, amendments could be tabled in the AFCO committee, with the vote in committee scheduled for mid-November. Several of its members stressed the fundamental symbolic significance of the code of conduct as a signal to citizens that MEPs care about transparency and the urgency of the matter. The legislative footprint would combine symbolic power and substantive impact by enhancing transparency and legitimacy.

By adopting this measure, the EP would position itself as a vanguard of transparency. To lead on this issue, MEPs and EP leadership should speak up for the matter. The obligation towards citizens as nicely encapsulated by Jerzy Buzek’s statement at the outset of the article should suffice as motivation.

But more than that, a vote on the legislative footprint would be a gift to the EP’s political groups. By calling for a roll-call vote, they can force others to show how serious they are about promises to achieve transparency. Given the salience of the issue, candidates for leadership positions at the mid-term re-shuffle should position themselves clearly.

Furthermore, in forcing a roll-call vote on the issue, the 2014 European elections might find a real EU-level issue that MEPs and party groups can campaign with. Given the widely held views about opacity and corruption at the EU level, the issue resonates well with the electorate. MEPs who oppose this step would need to explain to the electorate why they oppose this transparency.

Failure to step up to the opportunity would suggest a cartelisation of actors in the EP, and raise suspicion about whether the EP and its leadership structures are able to regulate themselves. By embracing the idea of a legislative

footprint as spelled out here, the EP could become a leader on transparency in the EU.

Conclusion: A call upon MEPs

This Policy Brief therefore calls upon Jerzy Buzek, and those who wish to succeed him, the leaders of the political groups, the members of the AFCO committee and their colleagues who voted in favour of the footprint on 11 May 2011 to act on the Parliament's promise to embrace real transparency by adopting the legislative footprint. If pro-European parties and their leaderships accept this proposal, they will send a strong message to citizens that they take transparency and their obligations to the electorate seriously.



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