

● FAIB POSITION PAPER

● Brussels , 23 October 2017

- **Executive summary**

- The FAIB is the Federation of European & International Associations established in Belgium that counts some 280 full member associations – representing industry sectors, NGOs , finance cultural, scientific, philanthropic organisations, as well as other not for profit associations with a European and international scope of activities.
- Since the initiation of work on the first European Transparency Initiative, FAIB has always sought to contribute in a constructive and balanced manner to the European institutions’ work in the area of transparency and the Transparency Register and therefore welcomes the opportunity of doing so once more.
- The present policy paper has been developed with organisations from the differing sectors of FAIB’s membership and with legal experts and therefore seeks to cover the different sensitivities of FAIB’s membership.
This position paper - whilst reflecting this - gives some core common messages to regulators:
- In a democratic society, each and every citizen, group of citizens or representative organisation should have the fundamental right to have access to and to be heard by policymakers. Advocacy, therefore, provides a positive contribution to an informed debate and as a consequence, we deplore any negative connotations attached to its practice. Any exchange of information that facilitates the achievement of well-balanced and thought out legislation is good news for politicians, the entrepreneurship community and in the end for all citizens.
- Advocacy should be practised by all involved , in a transparent and fair manner; unfair practices should be severely repressed.
- FAIB recognizes the impressive steps that have been made by the EU institutions in this area in the past decade, notably through the setting up of the Transparency Register.
- FAIB trusts that further progress will be made through the new interinstitutional agreement (IIA) and look forward to the day the European Commission, European Parliament and the Council follow the same rules and processes.
- FAIB is not opposed to the Transparency Register becoming mandatory as long the whole system remains manageable for registrants. It is essential to keep in mind that the vast majority of the registrants are very small entities that should not be burdened by unnecessary administrative requirements, including any going beyond those included in the existing Register.
- We provide hereafter our detailed comments.

Introduction

The FAIB is a mixed entity with a diverse membership: amongst its 280 members, NGOs, business and trade associations, might have diverging views on some specific aspects of the Transparency Register (TR) regulation. Neither our previous positions nor the following conclusions should be seen as reflecting a complete unanimity of views.

To us, each and every European citizen, group of citizens either informal or incorporated has the fundamental right to have his/her voice heard: to address Members of the Parliament as well as EU officials, to freely express questions or opinions.

We deeply deplore the negative connotation that is frequently associated with advocacy activities whereas they are in fact a positive contribution to an enlightened decision making. Meanwhile, we condemn all unfair practices and we agree that they must be severely repressed.

FAIB recognizes the impressive steps that have been made in the past decade. The new interinstitutional agreement (IIA) envisages additional initiatives.

- In particular, FAIB welcomes the inclusion of the Council so far all the three institutions follow the same rules. For example, we do not understand why, for a recent request for accreditation to the Parliament, a TR registered association was requested to add the financial accounts. Information provided in the Register should suffice.
- The ambitions of the new proposals must remain balanced: the risk is that the whole system becomes cumbersome, that its administration becomes plethoric for a benefit that would not be in proportion to its complexity.

FAIB is not at all opposed to a mandatory Register provided the incentives existing in the current system remain in place and even are extended as the Commission recently did with the linkage of the TR and the REFIT platform for a better regulation.

These principles completed by the notes below form the broad framework on which, in our opinion, the IIA negotiations should be conducted, in an open and transparent way.

The Code of Conduct

FAIB considers the Code of Conduct as the backbone of the whole system. Backed by the EU Code of Good Administrative Behaviour, it is the rule of law for any registrant who wants to maintain a credibility that is so hard to build and so easy to destroy.

The proposed Code is more elaborate, in particular as it includes a new point j): this should pose no difficulty. However, it is not clearly said what « documents and supporting materials » consist of in the context of readiness to « cooperate sincerely and constructively with the Secretariat ». The more the information requested to register is straightforward, public and official, the easier the objective of achieving effective monitoring will be reached.

Disclosure requirements for registration

In general, the relevance of each piece of data to be disclosed in the Register should be appreciated in the light of its actual contribution to achieving a transparent system. Otherwise, the risks are that the registration process will be time-consuming and cumbersome: many small-scale organisations (many of them with 2- 3 employees or even less) will face big difficulties and the largest ones with a membership that is itself subject to registration will have even bigger difficulties to select information to be mentioned in their file or in that of their members.

Double reporting on facts related to advocacy which today are the responsibility of EU officials themselves will not provide any additional benefit and may even be misleading

The increase in the number of EU institutions subject to a reporting can conflict with the principle of confidentiality and secrecy. For example, an FAIB member from the financial sector mentions Central Banks as a clear example of a harmful case.

At the level of some specific financial disclosure requirements for registrants, FAIB would like to comment as follows:

- Trade associations are puzzled by the Commission's proposal to extend an existing reporting requirement affecting NGOs to all not-for-profit organisations.
- FAIB often accepts as members international not-for-profit associations (INPA) which have recently been created or in a process of incorporation: these have a very vague view of their financial future and budget.
- The total « budget » (rather should be formulated as “financial accounts approved by the association's assembly”, as a budget is usually related to projected figures) can be the source of misinterpretations. In FAIB's membership, many associations spend much money for research, training, publications while having very limited advocacy activities. Declaring large amounts will just be putting some associations in the spotlight without accurate information on the sums allocated to advocacy.
- FAIB agrees that public funding needs to be disclosed.
- The 10,000 euro / 10% of the budget linked with the name of the contributor declaration rule is an issue. The problem is related to various facets: confidentiality is the first one. One should know that membership fees can, in many trade associations, be based on production or turnover data. Members would be reluctant to make this disclosure for fear of infringing competition law requirements. The question can easily be solved if a registrant discloses without providing more detail, the list of his members exceeding the two thresholds: 10,000 euro and 10% of the budget. It is also worth considering, that unlike the situation in companies where shareholdership determines voting rights, in associations decisions are nearly always made by consensus, which means that a member below a 10,000 euro / 10% budget can have as much weight as a bigger contributor. We therefore question the usefulness of this rule.
- The concept of indirect lobbying is another serious issue. Our concern does not arise from the fact that associations might seek to not disclose certain activities, but simply because it is obviously so difficult to draw a clear line between what action has the purpose of influencing a decision and what is a mere dissemination of information. For example, when reading the proposal that a research, a media campaign or a seminar should fall under the scope of

« indirect lobbying », some FAIB members have questions about their moral responsibility for a study that has been run by an unregistered researcher or for a seminar in which a US / Japanese expert is the keynote speaker on a sensible matter. Others members believe that research, media campaigns or seminars held with the purpose of informing on and influencing policy should be counted as interest representation.

- FAIB therefore believes that, if the definition of what is considered as « lobbying » becomes broader, the decision should be based on justified arguments; it should be made very clear and result in a clear, written definition: the worst situation would be a more stringent system built on vague rules. At the same time, the challenge is to keep the TR rules simple, fair and affordable particularly for smaller entities, but also for the others to guarantee legal certainty to those who conscientiously apply a Code of Conduct and to avoid an inflation in the Secretariat team: for example, in Canada, the civil service includes a staff of 28 to administer 2,600 registrations. Given that we would expect economies of scale, the question remains how large a European team is needed for a system that is currently counts just over 11,000 registrants.

Infringements and enforcement

It is clear that any regulation must be applied: a process of investigation and an impact assessment is indispensable. A system of alerts and complaints creates a pressure for a fair and honest registration. The procedure that is laid down in the new version therefore has FAIB's support.

At a practical level, so far, FAIB is unaware of any member complaining about unfair questioning or investigating practices. This is appreciated and should continue to be the case.

Provided that means of defence / redress are in place, we also agree that infringements, and in particular bribery, must be severely sanctioned. Therefore, black sheep must receive a punishment proportionate to the importance of their infringement

At a practical level, FAIB members have raised a number of questions to which would appreciate receiving some clarification:

- What would be the consequences for a European association, if, in a meeting with any EU official, a national member of the association were to delegate an expert who, unknown to the European association, is not a registered as « interest representative ».
- It happens that national members of an association or the association itself has to consult a lawyer or a technical expert before producing a document (sometimes requested by EU authorities themselves): in our opinion, the conclusions of such consultation fall under the responsibility of the entity using / or not their elements, whatever the status of these stakeholders.