

## *Transparency rules in the EU*

Valentijn De Boe, Samuel Brown and Maeve Hanna, Allen & Overy LLP

3 May 2016

# Today's speakers



**Samuel C. Brown**  
Associate – Washington DC

Tel: +1 202 683 3857  
samuel.c.brown@allenoverly.com



**Valentijn De Boe**  
Senior Associate – Brussels

Tel: +32 2 780 2335  
valentijn.deboe@allenoverly.com



**Maeve Hanna**  
Associate – London

Tel: +44 20 3088 1844  
maeve.hanna@allenoverly.com

# Overview

1	Importance of lobbying – and lobbying laws – for businesses
2	State of play of the EU Transparency Register
3	Comparison of select EU lobbying regimes – EU Transparency Register – Irish lobbying register – UK lobbying register
4	What the future holds for lobbyists
5	Successful compliance strategies

# Importance of public sector engagement

1

Anticipating and managing political and regulatory risks

- Relevant to profitability and long-term viability (contracts, regulatory approvals, licenses, mergers, etc)

2

Competitive disadvantage if don't engage

- What are your competitors doing?

3

Business Value affected by govt/regulatory intervention:

- **30% of earnings** in most industries
- **50% of earnings** in highly regulated industries e.g. finance or telecoms

Source: McKinsey & Co.

# Lobbying as a tool for public sector engagement

## Lobbying...

- Opportunity to “make your case” to political decision makers
- Both direct engagement with public officials and indirect/“grassroots” campaigns

## However...

- Lobbying is highly regulated (by EU and Member States)
- Approaches to regulation vary widely
- Carries significant legal and reputational risks if get it wrong
- Consider impact of engagement on procurement competitions and national hospitality/corporate bribery rules

**Don't forget lobbying restrictions on public officials**

# Drive for transparency – lobbying in the spotlight

The Guardian logo in white text on a blue background.

## **30,000 lobbyists and counting: is Brussels under corporate sway?**

From mobile phone charges to nations' interests, these shadowy agitators are estimated to influence 75% of European legislation

*8 May 2014*

The Politico logo in red text on a white background.

## **How Ryanair flew around Ireland's lobbying laws**

The airline found a way to navigate confusing new disclosure rules.

*2 March 2015*

The AFP logo in white text on a blue background.

## **Volkswagen scandal puts EU lobbying under spotlight**

Scandal-hit Volkswagen has for years hired a cadre of lobbyists in the EU capital of Brussels who work intensely behind-the-scenes to influence policy and secure European regulation with a lighter touch.

*1 October 2015*

The Telegraph logo in white text on a black background.

## **Ex-MPs banned from lobbying after 'cash for access' scandal**

Following the 'cash for access' scandal, ex-MPs will be banned from working as paid lobbyists for six months after stepping down

*30 September 2015*

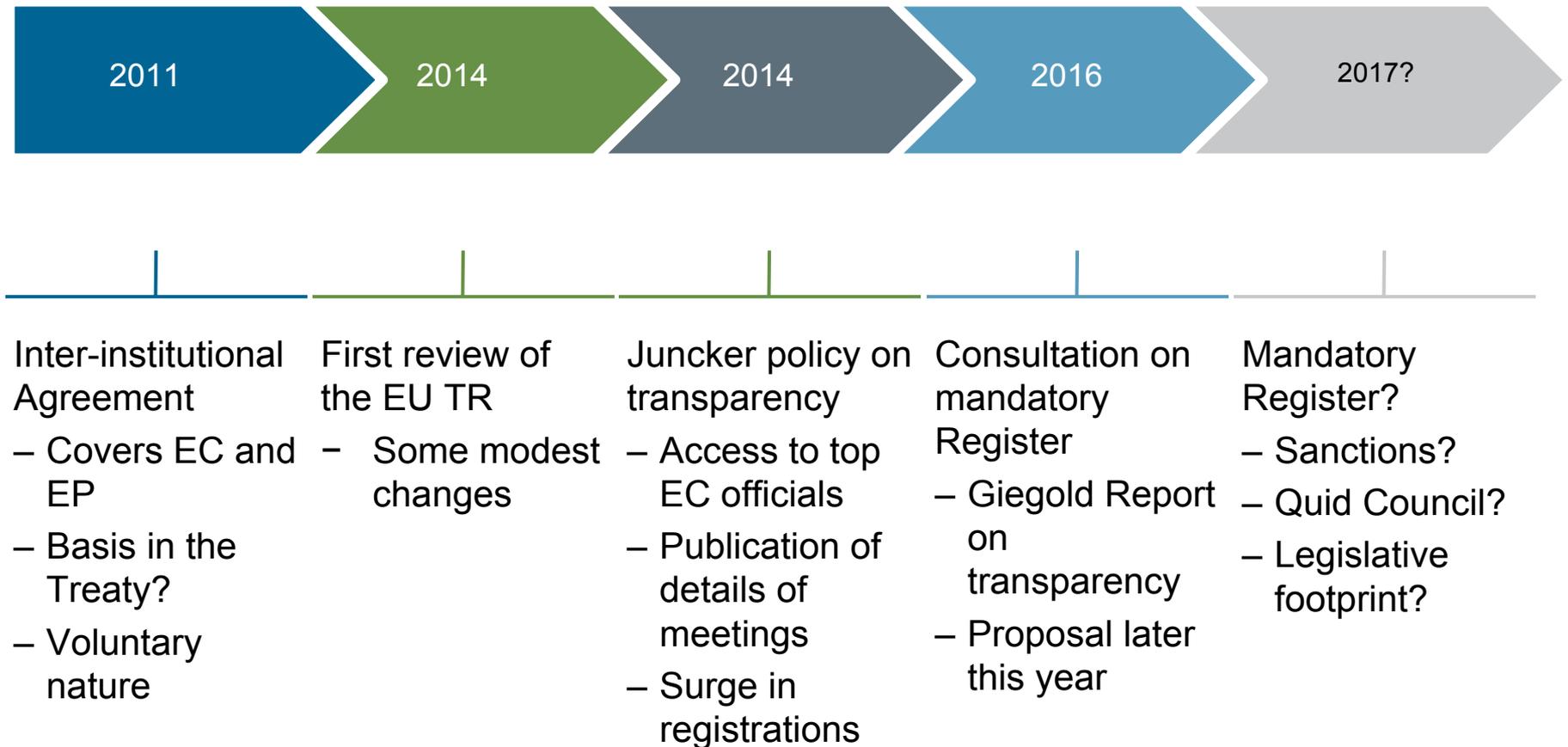
“

*These incidents, which in the past would have remained hidden from the public, reveal how the combination of national and EU transparency rules are exposing to greater scrutiny both local and multinational companies, along with the governments that regulate them*

Politico Europe, 2 March 2016

”

# State of play EU Transparency Register (EU TR)



# State of play of EU TR (Cont'd)



**Frans Timmermans** ✓

@TimmermansEU



Following

I believe in a mandatory [#EUTransparency](#) register. And there need to be sanctions for organisations that don't abide by the rules.

RETWEETS

18

LIKES

15



5:10 PM - 2 May 2016



# EU regime – “voluntary” with extremely wide scope

EU regime has an “activities-based” scope with very wide definition of covered activities

All activities with the objective of directly or indirectly influencing the formulation of policy or decision making

– Nature of communication: any *direct* contact or communications with EU institutions and *indirect* influencing

– Recipient: officials within the European Commission and the European Parliament  
– Council has so far been excluded

– Subject matter: the formulation or implementation of policy and the decision-making processes of the EU institutions

# EU regime (Cont'd) – exceptions, reporting & sanctions

## Exceptions:

- Exclusion for certain legal and professional advice, typical lawyer's activities
- Responses to specific requests
- No *de minimis* exception

## Disclosure requirements

- For all registrants: number of personnel, lobby costs and subjects lobbied, amount of EU funding
- For third party lobbyists: turnover and client names

## Sanctions

- “naming and shaming”
- Removal from the EU TR, *de facto* barred from meeting with certain EC officials

# EU Regime (Cont'd)

## Wide scope, shallow reach

- No criminal sanctions, no administrative sanctions other than removal
- Result of lack of a clear legal basis
- Inaccurate records, little policing and enforcement

BUT:

- *De facto* mandatory since Juncker's transparency policy
- Increased scrutiny by NGOs and the press

## Statistics

- 9,180 registrants to date (of which 1,058 third party lobbyists)
- About 1,000 new registrants each year.

# Irish lobbying law

## One of the broadest lobbying laws in Europe

- Applies to a very broad range of public policy measures, from legislative matters to public procurement
- Making of a single lobbying contact is sufficient to trigger registration

## Businesses that lobby on their own behalf are required to register (except very small firms)

## Both registration and the first lobbying report were due by January 21, 2016

- 1,193 entities registered as lobbyists
- They recorded 2,742 lobbying communications

# Irish lobbying law (cont'd)

## Who May Be Covered

- Any person or body carrying out “lobbying activities.”
  - Including a business with 10 or more employees acting on its own behalf
  - Third party lobbyists, advocacy groups, trade associations, and other representative bodies

## Which Communications Are Covered

- Any communication relating to public policy matters, public procurement, legislation, or any other “relevant matter”
  - Includes communications on zoning or development of land, which are subject to special rules
  - Key exception: communications made in the context of the **implementation** of a public policy, public program, enactment or award
  - Other limited exceptions available

# Irish lobbying law (cont'd)

## Which Public Officials Are Covered

- The Irish Lobbying Act applies to communications with “designated public officials” or “DPOs”:
  - Ministers and Ministers of State, members of Oireachtas, MEPs for constituencies in Ireland, members of local authorities, special advisors
  - Regulations adopted by Minister for Public Expenditure and Reform include a list of DPOs

## Registration and reporting requirements

- Required to disclose, among other information:
  - details about the registrant
  - information about clients
  - identity of public officials contacted
  - subject matter of such contacts (updated three times a year)

# UK regime – consultant lobbyists must register

Offence to engage in “consultant lobbying” without registering as a consultant lobbyist

## Consultant lobbying:

- |   |   |  |
|---|---|--|
| <p>– <u>Nature of communication</u>: Communication made in the course of a business, in return for payment and on behalf of another</p> | <p>– <u>Recipient</u>: Minister of the Crown, Permanent Secretary or equivalent</p> | <p>– <u>Subject matter</u>: Legislation, government policy, the award of contracts, other agreements, grants, financial assistance, licences or other authorisations by the government, or the exercise of any other government function</p> |
|---|---|--|

# UK regime – exceptions, sanctions & reporting

## Exceptions:

- In-house lobbyists
- Incidental to (a) business or (b) representation
- Sovereign power and international organisations
- Employees (employer liable)

## Offence of consultant lobbying without registering

- Publishable by a criminal fine or civil fine
- Registration encourages but Registrar has investigatory and enforcement powers e.g. Information Notices
- First Civil Penalty Notice issued in December 2015

## Reporting requirements

- Register public, overseen by Registrar of Consultant Lobbyists, quarterly updates must include names of clients

# Overview

	EU	Ireland	UK
Restriction	Voluntary, but no access to top EC officials	Entities who lobby must register	Consultant lobbyists must register
Lobbyist	Carrying out covered activities (objective of directly or indirectly influencing decisions)	Carrying out lobbying activities (communication w/out exception)	Acting in course of business, for payment, on behalf of another
Recipient	EC and EP officials	Designated officials	Senior individuals
Subject matter	Wide – policy or decision-making	Wide – policy, procurement, etc.	Wide – any govt function
Exemptions	Lawyers' activities	Implementation of existing policy	Key – in-house lobbyists excluded
Disclosure	Client names, turnover and costs	Each contact	Clients' names
Sanctions	Removal from EU TR	Criminal/civil fine	Criminal/civil fine

# What the future holds for lobbyists

## Global lobbying regimes

Importance of addressing these issues at a global level



## Reputational risks

Moving beyond mere compliance with the law

## Scandal-driven area of the law

Clear direction towards more regulation

# Successful compliance strategies

## Review

- Examine existing compliance program and current business and political activity to identify risks and gaps

## Revise

- Amend policies and procedures as necessary

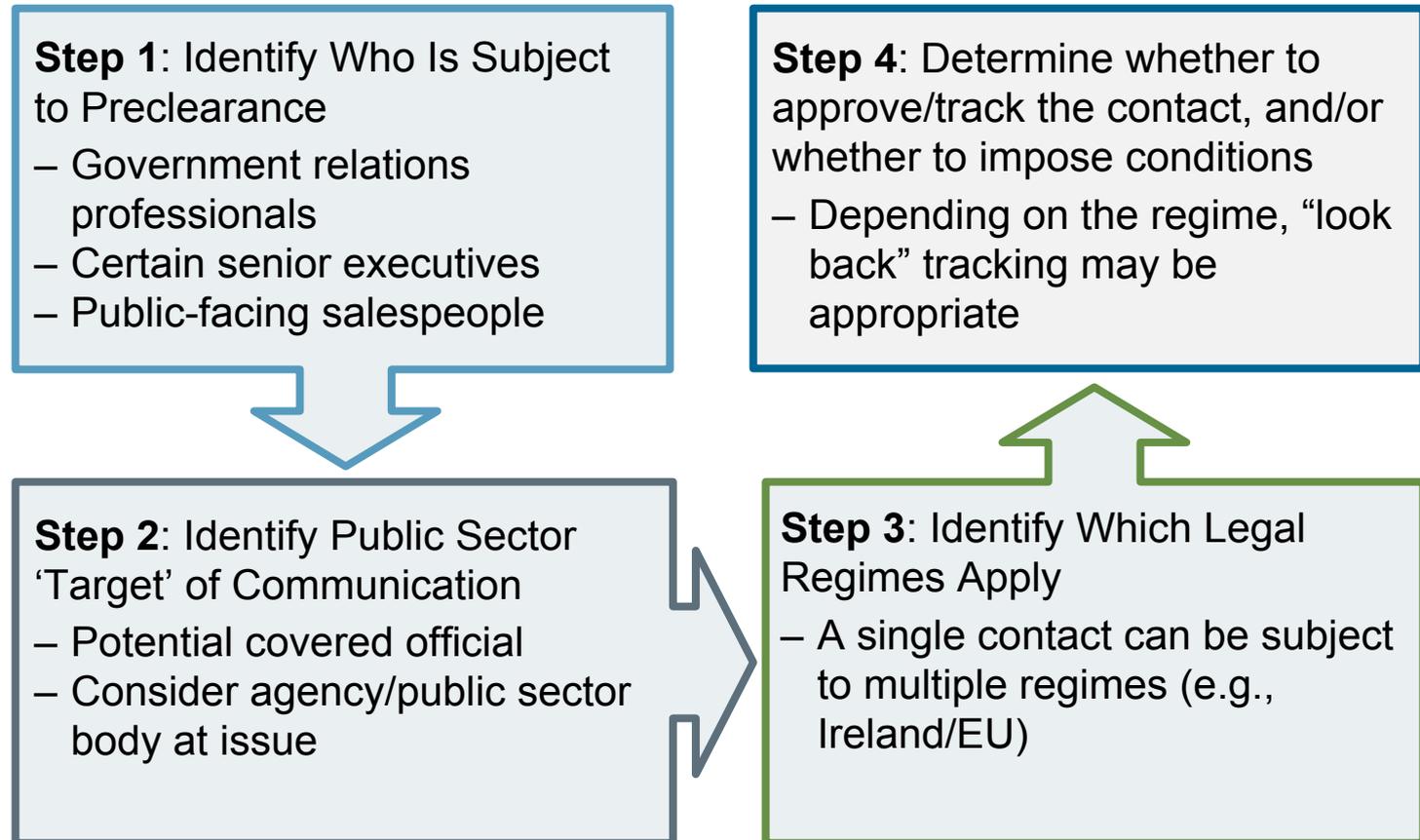
## Recognition

- Ensure policies, procedures, legal obligations are understood through policies, training, notifications, etc

## Reassess

- Conduct regular monitoring and testing to ensure compliance; identify and gaps and make necessary amendments

# Compliance Approach: Preclearance/Tracking System



# Questions?

**These are presentation slides only. The information within these slides does not constitute definitive advice and should not be used as the basis for giving definitive advice without checking the primary sources.**

**Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. The term partner is used to refer to a member of Allen & Overy LLP or an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP's affiliated undertakings.**