



Germany tightens Federal Lobbying Act – Overview and evaluation of upcoming changes based on two years' experience

15 December 2023

On 24 November 2023, the upper chamber of the German parliament – the *Bundesrat* – approved relatively extensive changes to the German Federal Lobbying Act (*Lobbyregistergesetz*, **LobbyRG**) that had been passed by the lower chamber, the *Bundestag*, on 19 October 2023. The amendments, which primarily aim to increase the “value” of the information disclosed in the register entries, accompany an expansion of the personal scope of the LobbyRG. These amendments will enter into force on 1 March 2024. Following a short transition period, all entries must have been adjusted to reflect the revised disclosure requirements by 30 June 2024 at the latest.

The LobbyRG, status quo since 2022 – catch-up

Under the LobbyRG, in the version in force since 1 January 2022,¹ lobbyists who are in contact with

members of the German federal government and/or the *Bundestag* are generally required to register in the German Lobbying Register before activating such contacts. The register is managed and maintained by the Administration of the *Bundestag*.

¹ <https://www.bundestag.de/resource/blob/870452/2f01f6de526b29ea06fb81d9980c8a88/Gesetz-EN-neu.pdf>.

It is publicly available on the parliament's website.²

More specifically, a registration requirement generally applies to everyone who has, or intends to have, regular contact with relevant officials. Relevant officials include Members of the Bundestag and their staff as well as representatives of the German federal government. Contact means actual interaction with relevant officials, including, but not limited to, emails, calls, and meetings; however, back-office work in preparation of such contact should not qualify as contact in terms of the law. Finally, the law specifies thresholds that, if reached or exceeded, represent evidence of regular contact (e.g. 50 communications with covered officials in the last three months).

A practical, relevant extension of the registration obligation is that the law applies not only to lobbyists themselves but also to those who instruct others to do lobbying on their behalf (e.g. companies that instruct public affairs agencies must register as "principals" of such agencies).

The LobbyRG provides an exhaustive list of exemptions according to which certain stakeholders, depending on their activities, are exempted from the registration obligation. The list includes employers' associations to the extent they aim to influence working and economic conditions. Likewise, lawyers providing legal advice may benefit from exemptions.

The information to be disclosed in the register's entries includes details on the company whose interests are being represented vis-à-vis relevant officials, the names of its legal representatives and the individuals actually communicating with relevant officials, a description of the policy areas on which the representation of interests will focus, and certain financial data, e.g. on expenditures for the representation of interests and subsidies received. Moreover, information on the identity of clients commissioning the lobbying activities must be disclosed. The information is to be updated at certain intervals, depending on the details concerned, but at least once a year. Lobbyists currently have the option not to disclose financial particulars, but may then be excluded from parliamentary hearings or

governmental consultations. Further, any non-disclosure by the lobbyist will be noted both in the lobbying register itself and in an additional register which is also publicly available on the *Bundestag* website.³

Facts and figures

According to the official statistics published by the Administration of the *Bundestag*⁴, 6,096 lobbyists have been listed in the lobbying register so far, nearly 90% of whom are legal entities. Based on their entries, more than 33,000 individuals are entitled to communicate with relevant officials under the LobbyRG. Almost 1,000 lobbyists have made use of the option not to disclose all financial information, and 113 lobbyists have not updated their entries on time. No infringements of the Code of Conduct, which provides for the principles of openness, transparency, honesty and integrity and which all lobbyists must accept as part of the registration process, have as yet been identified. In terms of policy areas, representation of interests primarily focuses on the "Economy" (ca. 45%), followed by the "Environment" (ca. 40%) and "Science, Research and Technology" (ca. 34%).

Revised scope of application

The scope of the LobbyRG has now been broadened, both in terms of the officials covered by the LobbyRG and the activities triggering a registration requirement:

As regards the federal government, in addition to the federal chancellor and the federal ministers, contact to parliamentary state secretaries, state secretaries, heads of directorates general (*Abteilungsleiter*) and heads of directorates (*Unterabteilungsleiter*) are deemed relevant officials under the LobbyRG 2022. According to the amended LobbyRG, contact with heads of divisions (*Referatsleiter*) will also be covered as of 1 March 2024. This extension of the scope in terms of relevant persons is mainly driven by the legislator's observation that lobbyists regularly contact individuals at "working level".

² <https://www.lobbyregister.bundestag.de/startseite>

³ <https://www.lobbyregister.bundestag.de/suche-im-lobbyregister?lang=de>

⁴ <https://www.lobbyregister.bundestag.de/startseite> (visited on 15 December 2023).

It should in particular be noted that, according to the explanatory memorandum, even emails sent to a general inbox at the level of divisions should be included. In light of this, it is highly likely that the number of relevant contacts and thus the need for registration will significantly increase.

The current LobbyRG provides for certain registration thresholds which state that registration is required if the lobbyist (i) lobbies on a regular basis; (ii) expects to lobby on a regular basis; (iii) represents the interests of third parties in a commercial manner; or (iv) has had more than 50 communications with relevant officials in the past three months. This last threshold has now been lowered to 30 contacts. However, we anticipate that the practical implications of this reduced threshold will be relatively limited, given that lobbying is typically conducted on a regular basis or is intended to be permanent. The new threshold may therefore only be relevant in the comparatively rare cases where a lobbyist reaches out to a group of officials on an *ad-hoc* basis due to a specific and non-recurring event.

The revised LobbyRG now clarifies that all clients of lobbyists are obliged to register themselves as soon as any form of consideration is paid in return for representing their interests.

Moreover, the legislator has clarified the exemption applicable to lawyers. Under the existing rules lawyers are generally not obliged to register if they are representing or advising their clients in specific administrative, subsidy-related or public procurement procedures. On the other hand, the exemption does not apply where lawyers help their clients to lobby for setting up new subsidy programmes or for making decisions on the goods and services that are to be put out to tender in future. Further, both lawyers and their clients should be aware of the need to disclose memoranda prepared by lawyers in support of their clients' lobbying activities. Interestingly, the role of lawyers' clients has not been clarified explicitly but in our view, clients are not required to register if they are involved in specific administrative procedures such as FDI clearance procedures, when applying for subsidies or where they participate as a bidder in a tender process.

Additional disclosure requirements

Lobbyists face a few additional disclosure requirements. In particular, lobbyists must provide detailed information on the activities performed for the purpose of lobbying. This includes the obligation to specify all current, planned and envisaged regulatory initiatives, both at federal and EU level, in respect of which lobbying activities vis-à-vis covered officials are performed. To this end, lobbyists must also upload redacted and searchable versions of all fundamental opinions and reports (*grundlegende Stellungnahmen und Gutachten*) that they have submitted to a relevant official, unless the statements and reports have already been published in the context of official and formalised participation processes. The documents must be supplemented by information on the initiative they refer to, the date of submission and an abstract description of the addressee.

It is not entirely clear whether these disclosure requirements are fully in compliance with the guarantees of occupational freedom and freedom of mandate enshrined in the German Basic Law (*Grundgesetz*). Introducing a so-called "legislative footprint" recording all stages of the development of a law and outlining who might have influenced the content of the law, as agreed in the current coalition agreement, would certainly have been a much more effective and appropriate way to track the lobbyists' actual influence on pieces of legislation.

Moreover, the register entry must also include information on individuals engaged in the representation of interests who held certain offices or functions in the *Bundestag* or the federal government, including the federal administration, in the past five years ("revolving door policy").

Lobbyists that are representing interests on behalf of a client face specific and far-reaching additional disclosure obligations. They must provide their client's identity and a specific description of the policy areas, the specific lobbying activities, and all regulatory initiatives to which the representation of interests relates. In addition, all individuals and even sub-contractors performing lobbying activities must

be specified separately for each contract/client. Further, all payments received from each individual client must be disclosed in stages of EUR 50,000. The requirement to disclose information on the financial sources available for the contractual relationship with each individual client considerably impacts company and business secrets. It would also appear to be redundant, since all clients commissioning the representation of interests and paying consideration are required to register themselves and, hence, to disclose their lobbying-related expenditure anyhow.

No non-disclosure option for financial information

Lobbyists are no longer entitled to opt to refrain from disclosing financial information. All lobbyists are now required to disclose their lobbying-related expenditure as well as all subsidies, donations and contributions that they received in the past financial year. The amounts are to be provided in stages of EUR 10,000 (formerly EUR 20,000). In cases where the amount of subsidies received from a single granting entity exceeds EUR 10,000, the name and seat of the granting entity must be disclosed, together with a brief description of the subsidy. Likewise, these details must be provided for each individual donor who contributed at least EUR 10,000 in the financial year, unless the donation does not represent more than 10% of the total donations received in that financial year. In addition to donations, contributions that are subject to a consideration or result in an advertising effect or any publicity, such as sponsoring, now fall within the financial disclosure requirements. Moreover, lobbyists must provide an overview of their main financial sources by listing in descending order the proceeds from (i) economic activities, (ii) public grants, (iii) donations and contributions, (iv) membership fees and (v) other sources.

Further amendments

The revised LobbyRG also includes a number of additional minor amendments. These include:

- The number of employees involved in lobbying is to be specified as the full-time equivalent rather

than the headcount. Employees must not be taken into account if their lobbying activities count for less than 10% of their working hours;

- All entities subject to disclosure obligations must upload their annual report to the register and may no longer refer to its publication in another register;
- In addition to the address of the headquarters, lobbyists must also provide the address and contact details of their branch in Berlin (if any);
- All individuals entrusted with the representation of interests must be specified irrespective of whether they are employees. Consequently, volunteers who perform lobbying as well as members of an extended executive board or a supervisory board must be listed in the register entry;
- Legal representatives of a lobbyist no longer automatically qualify as individuals actually performing the representation of interests vis-à-vis relevant officials;
- The accuracy of the information provided in the register may be confirmed by one representative of the lobbyist even if there are numerous legal representatives.

Updates

Whereas the current version of the LobbyRG provides for several different deadlines for updates depending on the information concerned, the revised LobbyRG has simplified and shortened the relevant deadlines by which the register content must be updated. As a rule, any changes to details must be updated without undue delay. This concerns details on:

- the representatives of the lobbyist;
- the individuals directly involved in lobbying;
- the policy areas to which lobbying relates;
- the lobbying activities performed for the purpose of lobbying, including the relevant regulatory initiatives;

- clients commissioning the representation of interests.

An exemption applies to opinions and reports, which must be uploaded by no later than the end of the quarter in which they were submitted to relevant officials.

Information referring to the fiscal year must be updated by no later than 6 months following the end of the fiscal year. This relates, inter alia, to:

- memberships in the context of lobbying;
- the number of employees active in the field of lobbying;
- financial information on lobbying-related expenditures, grants and donations.

In the course of this update, the accuracy of the register entry as a whole must be checked and confirmed to the Administration of the *Bundestag*.

Enforcement

The enforcement powers of the Administration of the *Bundestag* have been strengthened. In case of manifestly inaccurate or contradictory information or where there are specific signs that details provided in the register may be inaccurate, the Administration of the *Bundestag* is entitled to request evidence for such information. Further, the Administration of the *Bundestag* has the power to remove entries from the publicly available register in cases of obvious misuse. Such entries will be deleted after a period of 36 months following their removal. If the Administration of the *Bundestag* identifies a material breach of the Code of Conduct, it will publish details of the breach in the register for a period of 24 months. Further, the Administration of the *Bundestag* shall inform the Federal Ministry of the Interior if it identifies signs of breaches. Non-compliance with the requirements of the LobbyRG may still trigger fines of up to EUR 50,000.

Additional guidance

The Administration of the *Bundestag* has already published a to-do list offering additional guidance on how to ensure compliance with the new disclosure requirements.⁵ Additional webinar sessions will also be held to explain the new regulatory framework in more detail. Moreover, the manual for lobbyists published by the Administration of the *Bundestag* (*Handbuch für Interessenvertreterinnen und Interessenvertreter*) zur Eintragung in das Lobbyregister) and last amended in November 2022⁶ is supposed to be updated by 1 March 2024.

Conclusion

Driven by the legitimate goal of achieving a high level of transparency in the field of lobbying and thereby further strengthening the public's trust in politics and parliamentary and governmental decisions, the legislator overshot the mark on a couple of points: Under the revised LobbyRG, lobbyists are subject to extensive disclosure requirements, not all of which would appear necessary and appropriate to the objectives pursued. In particular, given that most information must be updated without undue delay, lobbyists are facing increased compliance challenges. They are required to permanently and carefully double-check that their representation of interests is covered by the detailed description of their lobbying activities, including the regulatory initiatives on which they focus. This is very time-consuming and may trigger the need to implement internal compliance and monitoring systems. Otherwise, there is an increased risk of accidental infringements of the disclosure obligations, resulting in administrative fines and reputational damage. The legislator missed the opportunity to implement a so-called "legislative footprint" but instead introduced additional burdens for lobbyists who are now required to describe their lobbying activities and related regulatory initiatives in detail, and to upload corresponding material reports and statements. This approach is time-intensive and may result in the lobbying register suffering an "information overload".

⁵ <https://www.bundestag.de/resource/blob/978768/bb39e8b1080860cb5fd9731cdb74b420/To-do-Liste-Organisationen.pdf>.

⁶ <https://www.lobbyregister.bundestag.de/informationen-und-hilfe/information-in-english-876238>.

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