



# Germany enacts new federal lobbying law and mandatory register

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On 25 and 26 March 2021, the two chambers of the German parliament – the Bundestag and the Bundesrat – approved the Federal Act on the Introduction of a Register on Lobbying at the German Bundestag and the Federal Government (**German Federal Lobbying Act**). It seeks to increase transparency with regards to those individuals and organisations influencing the government decision making process in Berlin.

A mandatory register for lobbyists overseen by the President of the German Bundestag is at the core of the new rules. The German Federal Lobbying Act will enter into force on 1 January 2022 and registration must be completed by 28 February 2022. This new legislation follows other efforts to increase transparency following various recent political scandals. Companies and investors should take note of the new rules, including from an Environmental Social Governance (**ESG**) perspective.

## Registration for lobbyists to increase transparency

The key objective of the German Federal Lobbying Act is to increase transparency in relation to communications between the legislature and government and civil society, including companies. While the law-makers acknowledge that such dialogue is an essential characteristic of a democratic political system and that the insight

offered by interest groups lends critical expertise to legislative and governmental decision making, with this new law they seek to ensure that it is conducted within public supervision and control.

As a result, there will be a new publicly available register for lobbyists established and maintained by the administration of the German Bundestag. Although there is already a voluntary register, registration in the newly designed register shall be mandatory for those who qualify as lobbyists

(“*Interessenvertreterinnen* oder *Interessensvertreter*”) wishing to deal with specifically defined members of the German Bundestag and the German federal government.

Lobbying (“*Interessensvertretung*”) has been defined in a broad manner.

- **Relevant communications with parliament:** Lobbying includes every communication made – irrespective of whether it is of a formal or informal nature or whether it is in writing, by e-mail, via telephone or in person – to directly or indirectly influence the decision-making of the organs, members, parliamentary groups (“*Fraktionen*”) or groups of the German Bundestag and/or every communication made to directly or indirectly influence the decision-making of the German federal government. It does not make a difference who initiated the communication (although there are some exemptions for individuals or entities who are invited by parliament to attend hearings, expert panels etc.) or whether the communication has been made from within or outside Germany.
- **Federal government staff lobbied:** Likewise, communication with the German federal government will be covered under the new rules. This includes communications with the chancellor, the ministers and the state secretaries, and communications with senior officials in the ministries.
- **Lobbyists to register:** An individual or entity required to register is one that: (i) is lobbying 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 stakeholders during the last three months. As lobbying for third parties is explicitly mentioned as an example of relevant lobbying activity, lobbying for the benefit of one’s own interests, including the interests of an

association or company that an individual is representing, is included in the new German lobbying regime.

- **Exempted organisations:** There is an extensive list of organisations exempt from the registration requirement including, for example, trade and labour unions, employers’ associations, religious communities and lawyers.

One of the most notable exemptions from the registration obligation is that lobbying will be permitted without prior registration where individuals “exclusively pursue their own interests”, irrespective of whether their personal interest is of an entrepreneurial or any other nature (Sec. 2 (2) No 1 of the German Federal Lobbying Act). The legislator has not elaborated on the concept of individual interest in this context, in particular the concept of individual entrepreneurial interests.

The information disclosed on the register is to include the policy areas in which lobbying shall take place, an indication on the overall yearly amount spent on lobbying, a statement on subsidies and public grants received by the registrant and a reference to the annual reports of companies. Some of this detail remains unclear e.g. whether the amounts to be disclosed are to be calculated on a backward or forward looking basis. Individual registrants are to disclose their names or, if an organisation, the names of those who will act for them.

A registrant may refrain from disclosing some of these pieces of information but this will be noted explicitly in the public register and may lead to certain sanctions, as discussed below. Information is to be updated on a yearly basis and there is an ongoing obligation to update information that is no longer accurate.

## Code of Conduct to specify details

Guidance on how lobbying is to be conducted will be set out in a Code of Conduct. This Code of Conduct will be drafted and enacted by the German

Bundestag and the German federal government within the next few months. It shall ensure that future lobbying activities comply with the principles of openness, transparency, honesty and integrity. As the German Federal Lobbying Act provides that the Code of Conduct will be discussed with representatives of “civil society”, interested parties should have the opportunity to contribute to the discussions that are due to commence within the next weeks and months.

By registering, lobbyists agreed to comply with the Code of Conduct.

## Penalties and enforcement

Non-compliance with the registration obligation may trigger administrative fines of up to EUR 50k in cases of intentional infringement and of up to EUR 25k in cases of negligent infringement. Moreover, the President of the German Bundestag may prohibit access to the premises of the German Bundestag for non-compliant individuals or organisations. Further, lobbyists who have not disclosed all required information (e.g. information on the yearly amount spent on lobbying) may be precluded from parliamentary hearings or governmental consultations.

The German Federal Lobbying Act does not impose any penalties or fines on those members of the parliament or government dealing with lobbyists who are in breach of the law. However, such interaction may have adverse consequences pursuant to applicable codes of conduct for office-holders

## No legislative “lobbying footprint” (yet)

The German Federal Lobbying Act does not contain any obligation to list and disclose all lobbyists who have been involved into the governmental or parliamentary decision-making process. Such a disclosure obligation was requested by various parties including the green party (“*Bündnis 90/Die Grünen*”). The green party has enacted such an obligation at the state level in Baden-Wuerttemberg where they are the ruling party. If the green party

was to become a part of the German government after the German federal elections in September 2021, it is possible they may seek to amend the German Federal Lobbying Act accordingly.

## The broader context – increase of transparency obligations & ESG

Increasing transparency in political decision-making processes is currently at the top of the agenda in Germany. Recent scandals where politicians have been on the payroll of companies and investors, headlines about politicians taking personal advantages from Covid-19 related deals, as well as the up-coming federal elections in September 2021, have all increased the pressure on the German political parties to demonstrate their willingness to act more transparently in the future. As a consequence, the German Federal Lobbying Act in the form approved by the German parliament represents a significant reshaping and tightening of the draft bill originally proposed by the ruling parties in September 2020. In a similar vein, the parties asked their parliamentary members to sign “declarations of honour” to confirm that they were not involved in any Covid-19 related deals (trading with masks and similar personal protection equipment). Members of the German Bundestag shall also be obliged to disclose more details on any supplementary income received from any other professional or non-professional activity.

In addition to the new federal legislation, there is further action at the state level. Baden-Wuerttemberg enacted lobbying legislation very recently, in February 2021. Amendments to the rules governing the behaviour of members of parliament are also under discussion, both on the federal and state level, as well as tightened requirements on transparency in the fields of the financing of political parties and electoral campaigns.

From the private sector perspective, the new laws give guidance on how to behave lawfully and, thus, on what needs to be done to comply with Environmental Social Governance (ESG) principles. Political activity, political donations and lobbying

activities are a critical part of an entity's ESG's governance pillar. The German Federal Lobbying Act is another step towards defining a legal environment that is driven by the public interest –

and therefore in keeping with other legislative developments in Germany such as the draft bill on a German Supply Chain Act aiming to foster the relevance of human rights in global supply chains.

### Key points/15 seconds read/Summary

With effect as of 1 January 2022, lobbying at the German Bundestag and at the German federal government will be subject to a mandatory registration and transparency regime. Non-compliance may trigger fines and exclusion from political decision-making processes. Like the latest efforts to enact a German Supply Chain Act, the German Lobbying Act underlines the trend towards strengthening legislation focused on the public interest.

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