

# Germany Reformed Its Lobbying Laws. Are the EU and UK Next?

Skadden

July 2, 2024

If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the last page or call your regular Skadden contact.

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

One Manhattan West  
New York, NY 10001  
212.735.3000

Historically, multinational companies and those lobbying on their behalf mostly concerned themselves with the U.S. and Canadian legal frameworks for lobbying. But more and more jurisdictions are establishing increasingly demanding rules on lobbying.

Germany is the latest to do so. Its newly overhauled Lobby Register Act (the German Lobbying Act or the Act)<sup>1</sup> is intended to create greater transparency in lobbying activities and enable stricter enforcement for noncompliance.

The changes, introduced on March 1, 2024, illustrate the intensifying legislative focus on lobbying activities across the European Union, U.K. and beyond in recent years.

In the run-up to the U.K.'s general election on July 4, 2024, voters and organizations have been seeking assurances from political parties that the scope of the U.K.'s lobbying rules will be widened in line with commitments made by politicians across the party spectrum, and that new oversight bodies will be created to hold to account those who do not adhere to the rules.

The U.K. recently introduced a new scheme targeted at those who carry out political influence activities in the U.K. at the direction of a foreign power. In the EU, various initiatives are underway to address concerns surrounding lobbying efforts.

These moves reflect a global endeavor by nations and jurisdictions to protect themselves from the undue influence of foreign powers.

This article provides an overview of:

- The new legal framework for lobbying in Germany.
- The current lobbying regimes in the EU and U.K.
- Potential changes to lobbying rules in the EU and U.K.
- Considerations for multinational corporates when planning and coordinating lobbying activities in the future.

## The New German Lobbying Framework

Just two years after the introduction of a mandatory lobby register, Germany significantly tightened the rules around lobbying activities and widened the scope of activities captured by the framework.

### Registration

The amended German Lobbying Act came into force on March 1, 2024. Registered lobbyists had until June 30, 2024, to update their existing register entries.

The law applies to employees who perform lobbying activities on behalf their employer and third-party lobbyists working toward influencing the decision-making process of the German Parliament (including its bodies, members, parliamentary groups or other groups) or the federal government, directly or indirectly.

<sup>1</sup> See Gesetz zur Einführung eines Lobbyregisters für die Interessenvertretung gegenüber dem Deutschen Bundestag und gegenüber der Bundesregierung.

# Germany Reformed Its Lobbying Laws. Are the EU and UK Next?

Depending on the intentions of the person reaching out to the decision-maker, the mere establishing of contact (regardless of the means of communication) can be in scope of the law. This can include grassroots campaigns where a government relations department or a lobbying organization uses the public as an intermediary to deliver a message to the decision-makers at the Parliament or government.

Registration is obligatory for lobbyists acting on a regular, continuous or commercial basis. Engaging in as few as three lobbying contacts can cause a registration obligation under the **regular interest representation** if performed with the intention to continue contacting covered officials.

**Continuous interest representation** is carried out systematically over a long period of time. Sending one email to one member of Parliament can trigger the registration obligation **if done on a commercial basis**.

**Additionally, there is a catch-all clause:** Engaging in more than 30 lobbying contacts with covered officials within three months always triggers the obligation to register, regardless of whether the contact constituted a regular, continuous or commercial activity. That means sending the same mass email to 30 members of Parliament would typically trigger the registration obligation under this clause.

Lobbyists who want to have physical access to the Parliament also must register.

The administrative body of the Parliament can impose fines for noncompliance with the obligation to:

- register (including fines for past-due registrations),
- disclose all required information (including for disclosing insufficient information), or
- provide an annual update to the disclosed information.

Intentional violations can result in fines of up to €50,000, while negligent violations can lead to fines of up to €20,000. There are currently around 100 known cases of registrants who failed to update their entries in time.

## Key Updates

The recent changes to the German Lobbying Act tighten the rules in four material ways.

1. **More individuals are considered “lobbying targets.”** The recent amendment broadens the scope of lobbying targets. Before March 2024, discussing legislative projects with government employees without decision-making powers and

with division heads (“Referatsleiter”) (government officials with some decision-making powers) did not constitute lobbying and did not trigger a registration obligation. Only ministers, department heads and subdepartment heads were considered valid targets of lobbying within the meaning of the law. The parameters have been broadened to include division heads (around 600 individuals). However, government employees without decision-making powers are still out of scope.

2. **Companies that engage third-party lobbyists are required to register.** Those who hire lobbyists to lobby on their behalf also qualify as lobbyists and therefore must register. This had been the intent in the old rules, but it was never enforced due to a lack of clarity in the wording. The new rules have removed that uncertainty. The obligation for the client to register is now triggered by any contractual relationship between the client and a third-party lobbyist for the representation of special interests, whether or not that relationship has been officially commissioned and includes financial compensation.
3. **Financial information must be disclosed.** Registered lobbyists must disclose additional information, and the option to not disclose has been removed. Under the old rules, this included information on their consulting areas, activities, clients, number of employees engaging in lobbying, funding and expenses. More than 1,000 registrants chose not to disclose financial information — a decision that was made public. Under the revised law, lobbyists must disclose all subsidies, donations and contributions they make in the course of their lobbying activities.
4. **Lobbyists are required to leave a “legislative footprint.”** The Act also introduces a “legislative footprint” rule, under which lobbyists must disclose which piece of legislation they targeted in their lobbying activities.

## Stricter Enforcement

The Register Administration — the agency that oversees the lobby register — now has greater authority to investigate potential breaches of the German Lobbying Act and request evidence from the registrants for the disclosed information. The agency can also remove registrants permanently from the lobby register.

Under the new law, registrants must electronically confirm their entries and updates with the Register Administration. Noncompliance with this electronic confirmation obligation is a new offense and may lead to a fine of up to €50,000, or €20,000 if committed negligently.

**In sum**, the new German Lobby Act has a broader scope of application, additional disclosure requirements and stricter enforcement.

# Germany Reformed Its Lobbying Laws. Are the EU and UK Next?

## Lobbying in the EU and UK

### The EU's Transparency Register

The EU has not enacted comparable legislation, but its legislative bodies — the Council, the Commission and the Parliament — have an [Interinstitutional Agreement](#) under which they will accept lobbying only if the lobbyists register in the EU's Transparency Register and follow the agreement's Code of Conduct.

With the EU focusing on conditionality rather than enforcement, this and other measures are meant to act as incentives to register. In addition to the signatory institutions, other EU institutions may join the Interinstitutional Agreement; the European Economic and Social Committee is the first nonsignatory institution to have done so.

Like the German Lobbying Act, the EU considers in-house and external lobbyists to be in scope if they engage in activities aimed at influencing:

- the decision-making process, or
- the formulation or implementation of EU policy or legislation.

Unlike the German Lobbying Act, the Interinstitutional Agreement does not use any qualifications (regular, continuous, commercial) or catch-all thresholds. Any form of contact with a member of the three institutions can be in scope.

Even though the EU and Germany both have broad definitions of what constitutes lobbying, the EU's Transparency Register lists approximately 12,500 registrants while the German lobby register has about 6,000 registrants. These numbers are lower than reported by the European Parliament, which estimated in 2020 that around 25,000 lobbyists were active in Brussels.<sup>2</sup>

Lobbyists who register must disclose their clients, sources of funding and generated revenue. Those who retain lobbyists must disclose whom they retained and their budget.

Failure to register does not constitute an offense and does not result in any fine. It merely means that the lobbyist will be denied their lobbying opportunities and will lose access to the legislative institutions of the EU.

The register secretariat can temporarily or permanently remove lobbyists from the register if they are in breach of the Code of Conduct or the Interinstitutional Agreement. The secretariat can also ban these lobbyists from re-registering.

<sup>2</sup> See [Briefing by the European Parliament on the EU Transparency Register 2021 Interinstitutional Agreement](#).

**In sum**, the Interinstitutional Agreement focuses less on enforcement than its German counterpart. Due to its lack of thresholds, covered officials might decline to meet or interact with nonregistered interest representatives from the very first contact. Those who register voluntarily and fulfill the disclosure requirements are rewarded with physical access to the legislative bodies.

### UK Lobbying Rules

The current lobbying regime in the U.K. is significantly narrower in scope than those in the EU and Germany. This is perhaps best illustrated by the fact that only 258 so-called “consultant lobbyists” are presently registered with the Office of the Registrar of Consultant Lobbyists (OCLR), an independent office set up under the U.K. legislation.

**The primary piece of legislation governing lobbying in the U.K.** is the [Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014](#) (better known as simply the U.K. Lobbying Act), which introduced a statutory regime for the regulation of lobbying activities in the U.K. for the first time.

The U.K. Lobbying Act only applies to “**consultant lobbyists**,” which are defined as external lobbyists who are registered under the Value Added Tax Act 1994 (or in other words, who have an annual turnover in excess of £85,000) and are paid for their work.

This means that, unlike in the EU and Germany where the lobbying regimes can apply to both consultant and in-house lobbyists, in the U.K., individuals lobbying on their own behalf — or on behalf of their own employer — are not captured by the U.K. Lobbying Act.

The scope of government officials captured by the legislation is also more restrictive compared to the EU and Germany. To trigger registration requirements, lobbying activity carried out by a consultant lobbyist must be directed to the most senior government officials, which is defined as a minister of the crown (or permanent secretary, or equivalent).

In terms of obligations placed on those caught by the Act, consultant lobbyists are required to register with the OCLR and submit a quarterly information return regarding their lobbying activities. It is the responsibility of the lobbyist to register and submit these returns, not the companies that they lobby on behalf of.

# Germany Reformed Its Lobbying Laws. Are the EU and UK Next?

**There are four offenses** created under the U.K. Lobbying Act:

1. Consultant lobbying when unregistered.
2. Consultant lobbying when the information required to be on the register is inaccurate or incomplete, and the registrant has not updated it in their quarterly information return.
3. Submitting a late, incomplete or inaccurate quarterly information return.
4. Not responding to an information notice by the specified deadline, or providing information that is inaccurate or incomplete.

When it comes to enforcement, the U.K. regime again diverges from the EU and Germany by introducing potential criminality. If a person or organization commits an offense under the Act, the Office of the Registrar can impose a civil penalty of up to £7,500 or refer the matter to the director of public prosecutions for potential criminal prosecution.

However, to date, no offender has faced criminal proceedings for a breach of the U.K. Lobbying Act, and civil penalties have tended to be low.

As of June 2024, there had been just over 100 civil penalties issued, most of which related to late filings or failure to file quarterly information returns. There is no fixed tariff for the level of penalty for particular offenses, and the Office of the Registrar considers the facts of each case, but fines have tended to be de minimis amounts of around £150.

**Mitigating factors** in determining the level of penalty include:

- Proactive admission.
- Rapid correction of errors and omissions.
- Cooperation with the Office of the Registrar.

Conversely, **aggravating factors** include:

- Repeated or persistent breaches.
- Lack of cooperation or engagement with the Office of the Registrar.
- Willful or negligent behavior.

## Looking Ahead: Change on the Horizon in Europe?

### What To Expect From the European Parliament

In the wake of recent corruption allegations, the European Parliament and European Commission are discussing significant changes and amendments to existing regulations.

The key points from the European Parliament's [September 2023 reform plan](#) include:

- Mandatory registration in the Transparency Register for interest representatives to participate at any European Parliament event.
- All members and staff would need to disclose meetings with representatives from non-EU countries and with third parties unless an exemption under the Interinstitutional Agreement applied, *e.g.*, meetings with representatives of political parties, churches or religious associations.

[An earlier proposal](#) that the Transparency Register be made mandatory and cover former members of Parliament is no longer included in the reform plan.

The key point from the European Commission is to **establish a new EU Ethics Body** that would be tasked with setting common minimum standards to be followed by all EU institutions and promoting a common ethics culture within the EU institutions. The current proposed framework is unlikely to have enforcement authority.

All EU institutions and advisory bodies are invited to endorse the proposal. The European Parliament endorsed the EU Ethics Body on April 25, 2024, and the European Commission will soon start the interinstitutional dialogue and negotiations to establish it.

### The European Commission's New Focus on 'Foreign Influence'

The European Commission has set its focus on so-called "**foreign influence**," meaning influence exerted by non-EU countries. To minimize this influence, the EU Commission has proposed legislative and nonlegislative measures to strengthen democratic procedures (the so-called "Defense of Democracy Package").

The centerpiece is a proposal for [a new directive to harmonize the national rules on interest representation](#) on behalf of non-EU country governments in EU member states.

This proposed directive targets nongovernmental organizations, public and private entities, and subcontractors retained by non-EU countries to exert influence. The definition of interest representation in this proposal is the same as in the Interinstitutional Agreement.

Therefore, all lobbyists that currently can register voluntarily in the Transparency Register would have to register once the new directive has been implemented and transposed — provided they are receiving funding from non-EU countries or acting as intermediaries for them.

# Germany Reformed Its Lobbying Laws. Are the EU and UK Next?

Unlike the Interinstitutional Agreement, **this directive would be a legal act** obliging EU member states to transpose it into national law. Registration would be obligatory.

Lobbyists within the scope of this proposal would have to register in national registers set up and operated by each member state individually. The proposal suggests member states create additional registers if necessary, or use existing registers provided they meet the directive's requirements.

The EU Transparency Register and all existing national registers would remain in place.

Under the proposed directive, noncompliance would result in **fines of up to 1% of the annual worldwide turnover**. Enforcement would be carried out by the national competent authorities responsible for the register supervision.

This proposal is still at a very early stage of development. Once the legislative bodies of the EU agree upon and pass the directive, there is typically a period of at least two years for the EU member states to transpose it into national law, at which point the obligations begin to take effect.

## What To Expect From the UK

**Changes to the existing lobbying regime.** There continues to be scrutiny of the lobbying regime in the U.K., which has been brought into particular focus with the general election.

In 2023, the U.K. government committed to extending transparency obligations to cover a broader range of government officials, including directors general, finance and commercial directors and senior responsible owners in the government's Major Projects Portfolio. However, given the upcoming general election, whether those changes will be implemented in the next Parliament is yet to be confirmed.

**New legislation with a focus on foreign influence.** To date, legal scrutiny of lobbying in the U.K. has been squarely driven by the U.K. Lobbying Act. However, new legislation on the horizon has the potential to expand the current lobbying regime.

The U.K. government recently introduced a new scheme, the Foreign Influence Registration Scheme (FIRS), that will require the registration of arrangements to carry out political influence activities in the U.K. at the direction of a foreign power. Foreign powers themselves will not have to register, but, subject to certain exemptions, those in arrangements with foreign powers will need to do so.

The scheme was initially expected to come into force this year, though the general election could impact that timing.

The FIRS is a two-tier scheme designed to enable greater transparency of foreign influence in U.K. politics and provide assurance around the activities of certain foreign powers or entities that may pose a risk to the U.K.'s safety and interests. It is contained within Part 4 of the National Security Act 2023, but while the legislation has been enacted, the provisions regarding FIRS have not yet come into force.

The FIRS requires that individuals or entities who have formed certain types of arrangements with foreign powers, or who carry out particular types of activities for or under the direction of certain specified entities, register certain information on an online portal.

The two tiers of FIRS impose two distinct requirements:

1. **The political influence tier** requires individuals or entities to register where they are directed by a foreign power to carry out, or arrange for others to carry out, political influence activities in the U.K.
2. **The enhanced tier** requires registration of a broader range of activity, where a person is acting at the direction of specified foreign powers or entities that have been assessed as posing a potential risk to U.K. safety or interests. It also requires specified entities to register activities that they carry out themselves in the U.K. Although "specified foreign powers" have not yet been named, members of Parliament have already raised the possibility of China being designated.

To come within the scope of the enhanced tier, a foreign power or entity must be specified in regulations. To date, no foreign powers or entities have been specified, though the Conservative Party has indicated that, if elected to form the next U.K. government, it would include Iran, Russia and China in the enhanced tier. The Labour Party has remained silent on this issue.

Some limited exemptions from registration have already been set out (*e.g.*, U.K.-qualified lawyers carrying out legal activities, and some activities relating to news publishers). The secretary of state also has power to create additional exemptions through regulations.

Unlike the consultant lobbying regime, which has focused on civil penalties, **failure to register under the FIRS when required to do so will be a criminal offense**, and there will also be criminal offenses associated with carrying out activities that are pursuant to arrangements that have not been registered.

# Germany Reformed Its Lobbying Laws. Are the EU and UK Next?

Consultation on the initial guidance closed on December 1, 2023, and additional detailed guidance will be provided ahead of the scheme's requirements coming into force, which is currently expected to be toward the end of this calendar year.

## Conclusion

The evolving legal landscape for lobbying across the EU and U.K. poses many challenges for those engaged in lobbying activities. These challenges become particularly acute for those who

have until recently primarily been concerned with lobbying frameworks in North America but who are now required to consider additional jurisdictions when coordinating global lobbying efforts.

Those individuals and entities whose activities could potentially be in the scope of the various lobbying regimes may want to review their interactions with decision-makers. The consequences of not registering as a lobbyist when mandated to do so could range from loss of access to fines.

---

## Contacts

### Andrew M. Good

Partner / London  
44.20.7519.7247  
andrew.good@skadden.com

### Ki P. Hong

Partner / Washington, D.C.  
202.371.7017  
ki.hong@skadden.com

### Ryan D. Junck

Partner / London  
44.20.7519.7006  
ryan.junck@skadden.com

### Charles M. Ricciardelli

Partner / Washington, D.C.  
202.371.7573  
charles.ricciardelli@skadden.com

### Michael Albrecht vom Kolke

Counsel / Frankfurt  
49.69.74220.0  
michael.albrechtvomkolke@skadden.com

### Vanessa K. McGoldrick

Counsel / London  
44.20.7519.7278  
vanessa.mcgoldrick@skadden.com

### Jason Williamson

European Counsel / London  
44.20.7519.7093  
jason.williamson@skadden.com

### Molly Brien

Associate / London  
44.20.7519.7298  
molly.brien@skadden.com

### Alina Gorstein

Associate / Frankfurt  
49.69.74220.135  
alina.gorstein@skadden.com