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French HATVP Introduces New Lobbying Guidelines

The French High Authority for Transparency in Public Life aims to clarify the system for lobbyists and provide a more accurate view of lobbying activity, in order to enable further structural changes.

On July 3, 2023, the French High Authority for Transparency in Public Life (HATVP) published new guidelines that will come into force on October 1, 2023 (the New Guidelines).

This Client Alert summarizes the key changes and next steps that will impact companies engaging in lobbying activities.

Background

Created in 2013 at a time of growing mistrust among citizens toward their public officials, the HATVP is the culmination of a general commitment to progressively strengthen the transparency requirements imposed on public officials.

Law No. 2016-1691 on the transparency, the fight against corruption and the modernisation of economic life (the Sapin II Law) continues this objective by officially recognizing lobbying activities and the professionals who carry them out. Since July 1, 2017, lobbyists are therefore required to register on a public digital directory, in which they must provide information on their organization, their lobbying actions, and the resources devoted to such activities.

More recently, Law No. 2022-217 of February 21, 2022 on differentiation, decentralisation, deconcentration and various measures to simplify local public action (known as the 3DS Law), took into account the recommendations made by the HATVP and led to the extension of the scope of lobbying activities, especially at local level.

Against this backdrop, and at a time when the number of lobbyists has never been so high and the lobbying activity so sustained,¹ the HATVP stated in its annual report from July 2022 that it aims to draw lessons from the first five years since the directory was set up by updating its previous 2018 guidelines.

Below are the main contributions of these New Guidelines, which, as the HATVP points out, are intended to shed light on the law and its implementing decree. However, similar to the 2018 guidelines, the New Guidelines are not intended to replace the provisions in force.

Changes in the Definition of Lobbyists

Organic criteria

Among the legal entities likely to qualify as lobbyists, the New Guidelines specify the notion of “any other structure with legal personality,” referring, for example, to research organizations such as think tanks.

However, the New Guidelines expressly exclude associations representing elected representatives for purposes specified in their articles of association, cultural associations, and public administrative establishments, among others.

Material criteria

The New Guidelines specify that a lobbying action involves five cumulative conditions, namely that the action:

1. involves a communication between a lobbyist and a public official;
2. concerns one of the public officials mentioned in Article 18-2 of the Ordinary Law No. 2013-907 dated October 11, 2013 on transparency in public life (the Transparency Law);
3. occurs at the initiative of the lobbyist;
4. concerns an existing or future public decision; and
5. has the objective of influencing such public decision.

The HATVP has changed its position regarding the initial contact and, more specifically, grouped mailings, and it now considers that the simultaneous sending of the same letter or message to several individuals should be counted in as many communication entries as there are recipients. As a result, when a grouped email is sent to more than 10 individuals, the threshold of 10 actions triggering the registration and declaration obligations will be reached (provided the other criteria are also met).

The organization of an event to which public officials are invited also constitutes a contact likely to qualify as a lobbying action, taking into account the elements given by the HATVP, such as the presence and intervention of one or more public officials, the existence of moments of exchange with the public official(s), and the evocation of a specific public decision or a broader normative framework.

With regard to the public decisions concerned that may be the target of actions carried out by lobbyists, the New Guidelines have not taken up the illustrations given in the 2018 guidelines of the notion of “other public decisions.” Instead, the HATVP has published a document concomitant with the New Guidelines, containing concrete examples of communications relating to individual decisions or competitive bidding procedures.²

On the latter point, for example, a distinction must be made between actions taken before and after the publication of a call for tenders. For example, a company director who contacts the cabinet of a Ministry to convince the latter of the need to launch a public tender is acting as a lobbyist. On the other hand, as soon as the Ministry launches the competitive bidding procedure, the relations it maintains with the candidates in this context, until the contract is signed, are excluded from the scope of lobbying, as are the relations that will be established, for the performance of the contract, with the successful candidate.

Changes to Declaration Procedures

Registration entails the declaration of all lobbying actions carried out by the legal entity

Until now, only the actions carried out by directors, employees, or members who carry out lobbying actions on a principal or regular basis within the meaning of Article 1 of Decree No. 2017-867 of May 9, 2017, related to the digital directory of lobbyists were concerned by the declaration obligation of lobbyists.

The New Guidelines state that once an entity is registered on the directory and meets the declaration thresholds, all the lobbying actions carried out during the last accounting period by its directors, employees, or members must be declared. All such activities must be declared, including those carried out by persons who do not meet the criterion of principal or regular activity.

However, only the remuneration of natural persons whose main or regular activity is lobbying will be recorded. Any exceptional expenses, such as event organization or consultancy fees, must also be recorded.

Declaration of all the clients of lobbyists

While the 2018 guidelines excluded the declaration of consultancy and law firms for their clients who did not meet the organic criteria pertaining to a lobbyist, the HATVP has taken advantage of the update of its guidelines to remove this exclusion, which was not provided for by law at the time.

The New Guidelines state that “[a]ny legal entity other than the one carrying out the lobbying action and on whose behalf the latter is carried out must be declared as a third party, whether or not this person meets the organic criteria set out in article 18-2 of the law.” Consequently, consultancy or law firms will have to declare activities on behalf of national public administrations or foreign public authorities when the lobbying action is carried out with national public officials covered by the law.

Possibility of making a declaration of non-activity

The New Guidelines offer the possibility of making a declaration of non-activity when a lobbyist temporarily fails to meet the criteria of principal or regular activity, thus avoiding the need to request the HATVP to remove them from the directory. The lobbyist will have to indicate that they have not carried out any action, and will have no resources to declare.

Declaration of joint actions

The New Guidelines clarify the procedures for declaring joint actions, as well as the breakdown of resources to be declared. When a natural person is a member of several legal entities, the attribution of the lobbying actions they carry out depends on the interest defended during these actions. In this case, each legal entity to which the individual carrying out the lobbying actions belongs must record the actions carried out and declare the corresponding resources.

For example, when a professional federation takes part in a lobbying action accompanied by a member, if the member defends only the interests of the federation, only the federation will have to record the lobbying activity. But, if the member takes part in the action in order to defend the interests of their own entity alongside those of the federation, such entity will also have to record the lobbying activity, and both the entity and the federation will have to declare the related resources.

In case of joint actions, for example when a professional federation carries out a lobbying action with one of the companies it represents, or when a consultancy or law firm is accompanied by one of its clients,

each of the legal entities must record a communication and declare a lobbying action if they are registered. However, the New Guidelines specify that only the company assisted by the consultancy firm should declare the related expenses.

Similarly, when employees of a parent company and those of one of its subsidiaries carry out a lobbying action together, each company is likely to be qualified as a lobbyist, and the action will have to be accounted for by both the parent company and its subsidiary. Since the law does not provide for a consolidated declaration, each legal entity will have to declare the expenses corresponding to the action it has taken.

Declaration of the number of persons employed in full-time equivalent

In order to comply with the requirements of article 18-3, 4° of the Transparency Law, lobbyists will be required to report annually the number of natural persons employed to carry out their lobbying activities in full-time equivalent (FTE).

The New Guidelines specify that the number of FTEs will be calculated by taking into account, for each individual, the proportion of time spent on lobbying activities or, for remunerated individuals, the percentage used to calculate remuneration.

Declaration of turnover and expenses relating to lobbying activities

Unlike the 2018 guidelines, which required all lobbyists to declare their annual turnover and expenses pertaining to the lobbying activities, the New Guidelines only impose a declaration obligation on the entities that carry out lobbying activities in a professional capacity on behalf of their clients (notably consultancy and law firms). These entities will be required to declare only the turnover pertaining to their lobbying activities.

As far as their expenses are concerned, only those incurred on their own behalf to defend their own interests or those of their profession and sector of activity (and therefore not those incurred as part of the lobbying activity they carry out on behalf of their clients) are in the scope of the declaration obligation.

Next Steps and Possible Changes

These New Guidelines, which will come into force on October 1, 2023, will result in changes to the teleservice and the HATVP's website. Companies that fall into scope should bear in mind that for the year 2023, declarations will be made on the basis of the two guidelines depending on the reporting months concerned. The HATVP will be able to carry out educational controls to ensure that lobbyists are familiar with the new framework.

Lastly, as part of its activity report for 2022, the HATVP has put forward proposals for adapting the lobbying regulation system to make it more effective. The HATVP proposes to:

- simplify the thresholds triggering the obligation to register, by assessing the minimum threshold of 10 actions at the level of the legal entity, rather than per individual;
- extend the obligation to declare activities to communications initiated by public officials;
- allow consolidated declarations for groups of companies; and
- specify in the law texts the criteria for public decisions falling within the scope of the regulation of lobbying, according to their importance, nature, or effects.

Companies should keep a close eye on future changes to the framework, in light of these proposals as well as the communication from Gilles Le Gendre and Cécile Untermaier, Deputies in the National Assembly of France, dated May 3, 2023, stressing the need to amend the decree of May 9, 2017, or even the law, in order to make the system more effective.³

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Endnotes

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- ¹ In 2022, 2,873 lobbyists were listed in the HATVP public digital directory, 16% more than in 2021. Similarly, 13,579 activity reports were filed, compared with 11,105 the previous year. These significant increases are largely due to the extension of the directory to the local level in 2022.
 - ² [HATVP, *Directory of interest representatives: Illustrations of practical cases from the new guidelines*, July 2023.](#)
 - ³ [G. Le Gendre et C. Untermaier, *Mission "flash" on the drafting of decree No. 2017-867 of 9 May 2017 on the digital directory of interest representatives*, Communication, National Assembly, 3 May 2023.](#)