



High Authority
for transparency
in public life

Register of interest representatives: Guidelines

February 2019



Pursuant to Article 18-1 of Law no.2013-907 of 11 October 2013 on transparency in public life, “A digital register shall ensure that citizens are informed of the relations between interest representatives and public authorities”. The register is managed by the High Authority for Transparency in Public Life, to which, in application of Article 18-3 of the same Law, interest representatives must communicate information on their identity and the interest representation actions they carry out with regard to public officials.

These guidelines are intended to assist interest representatives by explaining the concepts used by the Law and its Implementing Decree no.2017-867 of 9 May 2017. They also set out the interpretations that the High Authority has chosen to apply to a number of concepts that might otherwise seem vague or imprecise.

Methods for drafting and developing these guidelines

The High Authority drafted these guidelines in several stages during the second half of 2017, with a view to reconciling the need to provide interest representatives with initial indications on the implementation of the system provided for in Articles 18-1 ff. of the Law of 11 October 2013 since its coming into force in July 2017, and the wish to refine such information regarding questions raised and observations made by the various stakeholders.

To this end, a first version of the guidelines, which covered only the definition of interest representatives and information to be declared when joining the register, was published on 3 July 2017, following a public consultation conducted between 19 May and 19 June 2017.

A supplement to these guidelines, focusing on information to be included in the annual declarations that interest representatives must submit to the High Authority, was published on 5 December 2017, after a second public consultation held between 12 October and 10 November 2017.

In parallel, work was carried out with several stakeholders in order to specify and refine the concepts developed in these guidelines: working groups bringing together organizations from the four major categories of interest representatives (professional organizations, companies, consultancies and law firms, and associations) met on two occasions, in November and December 2017, in order to review the guidelines’ overall content. Moreover, work was undertaken with the main regulatory authorities so as to identify what might be considered as interest representation in their relations with the operators they regulate.

In July 2018, the High Authority reconvened two working groups in order to take stock of the first activity declarations. This experience feedback helped to identify good practices for defining the «purpose» of an interest representation action, as well as for developing internal reporting tools. Those conclusions were taken into account in the present guidelines and are also detailed in the form of fact sheets available on the High Authority’s website.

Tracked changes

| Date | Subject |
|----------------|---|
| July 2017 | Definition of interest representatives (I) and information to be communicated in order to join the register (II) |
| December 2017 | Supplement on information to be communicated to the High Authority annually (III) |
| January 2018 | Global revision following public consultation |
| September 2018 | Change of date for the application of the scheme to local authorities following the promulgation of Article 65 of Law No. 2018-727 of 10 August 2018 for a state at the service of a society based on trust (see I. 2.1.2.) |
| | Clarification on the identification of third parties (see II.6.) |
| | Further details on the purpose of interest representation activities (see III. 1.1.1.) |

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These guidelines focus on the definition of interest representatives (I), on information that they must communicate to the High Authority at the time they join the register (II), and information they will have to provide annually (III).

I. Definition of interest representatives

Under the terms of Article 18-2 of the abovementioned law of 11 October 2013, for the purposes of application of these provisions, interest representatives are “any legal entities governed by private law, public enterprises or publicly owned groups which perform an industrial or commercial activity, the bodies referred to in Chapter I of Title I of Book VII of the Commercial Code and in Title II of the Craft Trades Code, in which the main or regular activity of the director, employee or member is to influence public decisions, particularly regarding the content of a legal or regulatory act by contacting” a certain number of public officials, a list of whom is contained in the same Article.

The ninth paragraph of the abovementioned Article 18-2 also stipulates that interest representatives may also be “any individuals who are not employed by a legal entity referred to in the first paragraph of this Article and who pursue a professional activity on an individual basis” of interest representation.

Within the meaning of these provisions, an individual qualifies as an interest representative when two cumulative criteria are met, an organic criterion relating to his/her status (1) and a materiel criterion, relating to his/her activities (2).

1. The organic criterion

Two categories of persons may be qualified as interest representatives: legal entities (1.1) and individuals (1.2).

1.1. Interest representatives, legal entities

Pursuant to the abovementioned Article 18-2, only the following legal entities may qualify as interest representatives:

- any legal entities governed by private law, whatever their status or corporate purpose (including those fulfilling a mission of general interest): these may be business corporations, partnerships, public companies, associations, foundations, unions, professional bodies and any other structures with legal personality and not a public person;
- industrial or commercial public institutions and industrial or commercial public interest groups, when they have been qualified as such by a law, regulation or legal precedent;
- Chambers of Commerce and Chambers of Crafts.

Hence, structures and organizations not included in any of the three abovementioned categories cannot be interest representatives. These include:

- chambers of agriculture;
- administrative public establishments and bodies with special status such as the Bank of France;
- informal groups without legal personality. However, actions carried out by such groups may be attributed to the various legal entities they are composed of, in order to determine whether or not they meet the criteria qualifying them as interest representatives

It should be borne in mind that the provisions of the abovementioned Article 18-2 do not only apply to “French legal entities”: when a legal entity, even if it is not located in France, fulfils the conditions, it may be regarded as an interest representative.

Hence, a company which does not have its head office in France is an interest representative if its employees – whether or not based in France – carry out interest representation actions within the meaning of these guideline.

1.2. Interest representatives, individuals

Individuals qualifying as interest representatives are those who pursue, individually and on a professional basis – in other words, in exchange for remuneration – an interest representation activity without, however, being employed by one of the legal entities mentioned in 1.1 of these guidelines.

Such activity may be pursued under a variety of statuses, including liberal profession, auto-entrepreneur, sole trader with limited liability (EIRL), and microbusiness. The category also includes individuals who are grouped together in a resource structure or professional practice without, however, creating a legal entity.

Hence, lawyers grouped together in an Association d’Avocats à Responsabilité Professionnelle Individuelle (AARPI – Association of Lawyers with Individual Professional Liability) are interest representatives as individuals if they meet the conditions set by law.

However, if lawyers are grouped together in a Société d’Exercice Libéral à Responsabilité Limitée (SELARL – Professional Limited Liability Company) or Société Civile Professionnelle (SCP – Professional Partnership) of lawyers, they are not interest representatives as individuals. It is the legal entity itself that may be regarded as an interest representative if it meets the conditions concerned.

In contrast, the following may not be regarded as interest representatives, individuals:

- who pursue interest representation activities on their own behalf and not on a professional basis;

Hence, an individual who writes to his/her Member of Parliament to request modification of a law or suggest submission of an amendment is not an interest representative.

- who have created a separate legal entity to pursue their activity;

Hence, the individual who sets up an Entreprise Unipersonnelle à Responsabilité Limitée (EURL – One-Person Limited Liability Company) or a Société par Actions Simplifiée Unipersonnelle (SASU – One-person Simplified Joint-Stock Company) to pursue his/her activity is not an interest representative. In such cases, it is the legal entity which may be regarded as an interest representative.

- who pursue an interest representation activity on behalf of a legal entity not included in the provisions of Article 18 2.

Hence, the Public Affairs Manager of an administrative public establishment is not an interest representative, as administrative public establishments are not interest representatives within the meaning of the Law.

2. The material criterion

Within the meaning of the abovementioned Article 18-2, legal entities or individuals must meet three cumulative conditions in order to be considered interest representatives:

- they must carry out interest representation actions (2.1);
- as regards legal entities, such actions must be carried out by one or more of its directors, employees or members (2.2);
- interest representation activities must be the main activity or a regular activity of the legal entities/individuals tasked with them (2.3).

2.1. Definition of an interest representation activity

Under the terms of Article 18-2 of the Law, carrying out an interest representation action means trying to “influence public decisions, particularly regarding the content of a legal or regulatory act by contacting” one of the public officials mentioned in the same Article. Article 1 of the Decree of 9 May 2017 specifies that such communication must be at the interest representative’s own initiative and lists the types of communications that are not regarded as interest representation actions.

Taking the content of the two provisions together, this means that, in order to be considered as such, an interest representation action must meet five cumulative conditions:

- it must consist of a communication between an interest representative and a third party (2.1.1);
- the third party must be one of the public officials mentioned in the abovementioned Article 18-2 (2.1.2);

- the communication must be at the interest representative's initiative (2.1.3);
- the communication concerns a public decision (2.1.4); its aim must be to influence the public decision concerned (2.1.5).

2.1.1. *What is a communication?*

In the absence of any definition of the concept of communication, and with a view to objectifying it, three types of actions are considered as being communications likely to constitute interest representation actions within the meaning of these guidelines:

- a physical meeting, in whatever context it takes place (dedicated appointment, business lunch, visit to a trade fair, club meeting, etc.);
- a conversation by telephone or videoconference, or via an electronic communication service;
- the sending of a letter, email or private message via an electronic communication service. The same goes for direct questioning of a public official by name on a social network.

When such actions are carried out repeatedly over a short period of time, for the same purpose and targeting a single category of public officials (as defined in the list appended to the Decree of 9 May 2017), they constitute a single communication.

Hence, an interest representative has only carried out a single communication within the meaning of Article 18-2:

- when the same letter or message is sent to several people at the same time;
- when he/she calls a Government member's secretariat to request a meeting, confirms such meeting by email, takes part in the meeting with the Government member and his/her Chief of Staff, and sends the minutes of the meeting to the Chief of Staff a few days later.

However, if, following the meeting with the Minister, the interest representative sends drafting suggestions to one of the Directors General of the Ministry concerned, who did not attend the meeting, such email constitutes a new communication, insofar as the Director is not in the same category of public officials as the Minister.

Such objectification of the concept of communication, which is essential to the register's proper operation, leads to certain types of actions being excluded from the scope.

The following, therefore, are not "communications" within the meaning of Article 18-2:

- public awareness-raising campaigns and demonstrations on the public highway;
- monitoring of legislative and regulatory developments;
- preparation of notes, files or wording prior to a communication.
- newsletters, when they do not concern public decisions and are not specifically addressed to public officials.

An association organizes a demonstration aimed at collecting signatures to request the modification of a law. This action is not a communication within the meaning of Article 18-2, because the association has not entered into communication with a public official.

If, however, following the demonstration, the association requests an appointment with one of the Minister's advisors in order to deliver the petition, this is a communication within the meaning of Article 18-2.

2.1.2. Who are the public officials targeted by Article 18-2?

The abovementioned Article 18-2 sets out an exhaustive list of public officials with regard to whom a communication may constitute an interest representation action. Up until 30 June 2021, only the following individuals are concerned:

- members of Government;
- members of ministerial cabinets and members of the President of the Republic's staff;
- members of the National Assembly, senators, and their staff;
- the President of the National Assembly, the President of the Senate and their staff;
- staff from National Assembly and Senate offices, a list of which is provided on each assembly's website;
- members of the board or of commissions endowed with powers to impose penalties within independent administrative authorities or within independent public authorities referred to in (6) of paragraph I of Article 11 of the abovementioned Law of 11 October 2013, the list of such authorities being appended to the abovementioned Decree of 9 May 2017;
- general directors, secretaries-general, or their deputies, of the same authorities, it being understood that only individuals whose positions have these exact titles are covered by the system;
- individuals holding positions upon decision of the Government, and to which they have been appointed at a meeting of the Council of Ministers. The list of such positions is published on the High Authority's website and regularly updated.

As from 1 July 2021, holders of various local executive positions and other public officials, including certain department heads and deputy directors at central administrations, will also be concerned.

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Hence, an interest representation action is not carried out by:

- an industrial or commercial public institution that communicates with the office within a ministry responsible for its supervision. Insofar as the members of that office are not public officials on the list provided in Article 18-2, such communications are not interest representation actions;

- a company that proposes a regulatory modification directly to a deputy director or office manager.

2.1.3. *In which cases is a communication at the initiative of the interest representative?*

Pursuant to the abovementioned Article 18-2, an action is only an interest representation action if it is the interest representative who enters into communication with a public official. Article 1 of the Decree of 9 May 2017 states that only communications made at the initiative of interest representatives may be regarded as interest representation actions.

Hence:

- communications taking place in the context of a hearing held at the request of a public official, a workgroup set up by an administration, or an advisory body (when its statutes and procedures for appointing its members are provided for by a law or regulation) are not carried out at an interest representative's initiative, and cannot therefore be regarded as interest representation actions;
- when an interest representative has tried to contact a public official without success and the latter calls back a few days later, the resulting telephone conversation constitutes a communication at the interest representative's initiative;
- however, when an interest representative is invited to a hearing by a public official and, during the hearing, the latter asks him/her to submit drafting suggestions to him/her, the submission of such items does not constitute a communication at the interest representative's initiative.
- similarly, when a body takes part in the exchanges referred to in Article 4 of Decree no.2016-360 of 25 March 2016 concerning procurement contracts (also known as "sourcing operations"), submission of opinions or proposals does not constitute a communication at its initiative.
- finally, when an interest representative is put in contact with a public official at the recommendation of another public official, such communication does not constitute a communication at the interest representative's initiative.

2.1.4. *What public decisions are concerned?*

An annex to the Decree of 9 May 2017 sets out the list of types of public decisions that must be declared by interest representatives in the reports they will have to submit annually. For the sake of coherence and simplicity, they are the same public decisions that may characterize an interest representation action when they are mentioned in the context of a communication between a public official and an interest representative.

The list of such public decisions is as follows:

- laws, including constitutional laws;
- ordinances issued on the basis of Article 38 of the Constitution ;
- regulatory acts;

- decisions made on a case-by-case basis, referred to in Article L.221-7 of the Code of Relations between the Public and the Administration, including declarations of public utility in the framework of expropriation proceedings (or the decision to classify facilities for environmental protection purposes);
- procurement contracts, where the estimated pre-tax value is equal to or greater than EU thresholds;
- concession contracts, where the estimated pre-tax value is equal to or greater than EU thresholds;
- agreements authorizing the temporary occupation of public space;
- administrative long-term leases;
- contracts for the sale of private property belonging to the State or its public institutions;
- local authority decisions approving creation of sociétés d'économie mixte à opération unique (SEMOPs – single-purpose semi-public companies);

“Other public decisions” which are less clearly defined include:

- individual decisions bearing on issue, modification, withdrawal or renewal of an approval, authorization, certification, derogation, waiver, accreditation, probate, inclusion on a list, license, permit, title or financial benefit of whatever nature;
- individual appointment decisions;
- acts adopted by independent administrative and public authorities, when they have a certain normative scope, i.e. when they assume the character of general and mandatory provisions or when they lay down prescriptions, the ignorance of which could be sanctioned.

Public decisions concerned include:

- public decisions in force, in order, for example, to obtain their modification or annulment;
- draft public decisions, i.e. those that have not yet been adopted;
- public decisions whose adoption is requested.

Hence:

- the fact of contacting the Minister of Agriculture in order to call his attention to the urgent need to make new provisions to prohibit a certain type of pesticide, in a context where no agricultural bill has yet been publically contemplated, constitutes a communication concerning a public decision;
- a communication that concerns a public decision under development – e.g. a bill under discussion in Parliament or a draft decree that a ministry is in the process of drawing up – is considered as concerning a public decision;

Similarly, when an association writes to a parliamentarian asking him/her to submit a proposal for a law on a specific subject, such initiative constitutes a communication concerning a public decision.

The system only concerns French public decisions. Public decisions taken at European or international level cannot be the subject of interest representation actions within the meaning of the abovementioned legal and regulatory provisions. Similarly, positions taken by France's permanent representations at the European Union and other international organizations are not public decisions within the meaning of Article 18-2 of the abovementioned Law of 11 October 2013.

Finally, decisions taken by Boards of Directors of Sociétés à Participation Publique (SPPs – public joint-stock companies) are not public decisions on which interest representation actions can be brought to bear. However, within the meaning of the abovementioned Article 18 2, public decisions may include decrees and orders by means of which transactions are carried out involving SSP capital, pursuant to Articles 22 and 23 of Ordinance no.2014-948 bearing on the governance of SPPs and transactions involving their capital.

2.1.5. In which cases do communications not aim to influence public decision-making?

Generally speaking, in order to make the new system easier to understand, it should be borne in mind that when an interest representative enters into communication with a public official to discuss a public decision, such communication should be considered as having the aim of influencing the decision in question and so constitutes an interest representation action.

A number of exceptions must be highlighted, however.

• Certain communications concerning individual decisions

Article 1 of the Decree of 9 May 2017 nonetheless provides an exception to this principle by specifying that “the fact of requesting, pursuant to legal or regulatory provisions, the granting of an authorization or entitlement to a benefit, the attribution of which constitutes a right for individuals meeting the legal conditions for its obtaining, does not constitute an communication within the meaning of the previous paragraph, nor does the fact of making an administrative appeal or taking the steps required, by virtue of applicable law, for granting of an authorization, exercise of a right or conferral of a benefit”.

By extension and more generally, the High Authority considers that any information exchanges that take place between a legal entity and a public official in following up a request for an individual decision of whatever kind, do not constitute communications. Such exchanges do not aim to influence the individual decision in question and therefore cannot be regarded as interest representation actions.

Such exclusion specifically covers the following situations:

- prior to submission of a request, communications with the competent authority that are limited to announcing such submission, specifying the nature and characteristics of the operation in question, or setting up a schedule;
- during examination of the request, all communications between the applicant and the administration competent to deal with it. This exclusion only covers communications concerning the decision in question, during the period of examination, between the applicant and the competent administration;
- in the event of the request being refused, communications that take place in the context of an application for reconsideration, appeal to a higher administrative authority, or judicial review;

- in the event of the request being accepted, all communications limited to monitoring of the implementation of the individual decision.

Hence, most exchanges between a company and an independent authority in the economic field, even when they are at the company's initiative, are not interest representation actions. Such is the case for those occurring as part of the monitoring of procedures underway (requests for authorization, dispute resolution procedures, sanction procedures, etc.) or which concern information necessary to the implementation of the authority's regulatory competences (sending figures required for the implementation of the company's legal obligations, questions on the interpretation of the authority's decisions, etc.).

The only communications that constitute interest representation actions are those taking place with a member or director of the authority by which the company seeks to influence one of its decisions, e.g. prior to the adoption of a decision with regulatory effect, in the context of the drafting of guidelines or in view of an opinion delivered by the authority on a bill or draft regulation.

• **Certain communications concerning competitive tendering procedures**

Nor does information sent to a public official by a candidate for a competitive tendering procedure, on the basis of Article 42 of Ordinance no.2015-899 of 23 July 2015 bearing on procurement contracts and Article 36 of Ordinance no.2016-65 of 29 January 2016 bearing on concession contracts, have the aim of influencing a public decision.

The same applies, for a body holding a public procurement contract, to communications necessary to the fulfilment of the contract.

Hence, the director of a company specializing in IT security who approaches the Minister of Defense's cabinet with a view to convincing it of the need to launch a public tender for the acquisition of data encryption technology to improve the Ministry's information security systems, is carrying out an interest representation action. However, if the Ministry launches a competitive tendering procedure, the relations it then has with this company and other candidates, up until the contract is signed, are excluded from the field of interest representation, as are ensuing relations with the selected candidate with regard to the contract's fulfilment.

• **Communications limited to factual exchanges**

Apart from the above exception, **communications limited to factual exchanges**, essential to the proper functioning of administrative life, would not seem likely to have the aim of influencing public decision-making. It is a matter here of situations in which communications are limited to one of the following objectives:

- when a body requests factual information, accessible to everybody, from a public official;
- when a body asks a public official what interpretation to put on a public decision in force;

- when a body provides a public official with information on its operations or activities, in direct connection with a public decision, e.g. in the context of sending an annual activity report or of a factory visit.

Hence, most relations between public institutions, public interest groups, public joint-stock companies and their line ministries do not constitute interest representation actions. As well as the abovementioned exclusions (exchanges not concerning public decisions, not taking place in the presence of one of the public officials referred to in Article 18-2, or not at a legal entity's initiative), communications limited to factual exchanges are also excluded. Thus, among all communications between such bodies and their supervisory directorates, only those by which a body tries to influence a legal or regulatory text – as any other company in its economic sector might do – are likely in practice to be considered as interest representation.

There are many possible situations, in particular when an interest representative is in regular communication with one or more of the public officials referred to in Article 18-2, in which such communications may have several purposes simultaneously and consequently only partly fulfil the criteria for the exclusions provided for above. In such cases, for example when a communication did not initially seek to influence a public decision but then led the interest representative and public official concerned to have a reasoned discussion on a public decision, it is up to the interest representative to assess whether such communication ultimately aimed to influence the public decision concerned.

Hence, when a visit to a company is followed by its director's sending the Minister's cabinet arguments in favor of the inclusion in the finance bill of a provision lowering VAT on products manufactured by the company, such communication certainly aims at influencing public decision-making.

2.2. Determination of individuals tasked with interest representation

Article 18-2 provides an exhaustive list of individuals within legal entities whose communications with public officials may be regarded as interest representation actions within the meaning of the Law. Only communications initiated by "a director, employee or member" of a legal entity are concerned (2.2.1). In addition, when representatives of several different legal entities carry out a single interest representation action together, it must be determined which legal entity such action should be attributed to (2.2.2).

2.2.1. Determination of the concepts of director, employee and member of a legal entity

• The concept of employee

There is no real difficulty in identifying individuals included in the "employee" category: overall, it includes all wage-earners employed by a legal entity along with all individuals answerable to it, such as trainees and apprentices.

As regards consultancies and law firms, the term "employee" is also regarded as covering non-salaried consultants that the firm remunerates for carrying out interest representation actions on behalf of its clients. Similarly, within the meaning of these provisions, associates must be regarded as employees of the law firms they work for.

In these two cases, as the clients on whose behalf interest representation actions are carried out are certainly clients of the consultancy or law firm, it is therefore the latter which must be registered if they fulfil the conditions set by the law. Independent consultants and associates may nonetheless also be required to enter their names in the register as individuals, by reason of the interest representation actions they may carry out on behalf of their own clientele.

¹ Pursuant to Articles L. 1254-1 ff. of the Labor Code

However, in the special case of umbrella companies¹, the workers they mobilize are not regarded as such companies' or their host companies' "employees". If they meet the conditions set by Article 18-2 of the Law, they must enter their names in the register as individual interest representatives.

• The concept of director

The "director" category only includes a body's legal representatives, i.e. the individual(s) whom the body's statutes authorize to enter into legally binding commitments on its behalf and represent it in its relations with third parties.

Hence, in a commercial company, the director is any individual occupying the post of CEO, director general, member of the executive board, manager, or equivalent post, as well as, if applicable, the post of deputy CEO. In an association, in most cases it is the President who falls into the category.

• The concept of member

As regards members, this category only covers individuals with a legal or financial connection with the legal entity (adherents, subscribers, volunteers under a Convention de Bénévolat [voluntary work commitment], etc.) who have been appointed to participate in its statutory bodies (office, board of directors, strategic committee, etc.) or explicitly mandated by its directors to carry out interest representation actions on its behalf.

Hence, the following may be concerned:

- an administrator of a limited liability company;
- a vice-president of a professional federation;
- a volunteer member of an association tasked by its president to carry out interest representation actions on the association's behalf.

When the members of a legal entity are themselves legal entities; which is often the case in professional organizations, these criteria must be applied to the individuals representing them. In this case, it must be established whether or not the individual(s) representing their company within a professional federation meet one of the criteria of the Decree of 9 May 2017 in their activities on behalf of the federation.

If the director of a company represents the company on a professional federation's board of directors, it should be established whether the criteria referred to in 2.3 are met for the actions he carries out on behalf of the federation.

Finally, when an individual is a member of several legal entities, attribution of interest representation actions that he/she carries out depends on the interests promoted during such actions.

Hence, when the executive officer of a sectoral federation who is also a member of an inter-professional organization's executive committee carries out interest representation actions, such actions must be attributed to the federation if the interests promoted are sectoral. However, they must be attributed to the inter-professional organization if the interests defended are not those of its activity sector.

2.2.2. Attributing interest representation actions to representatives of several different legal entities

In principle, each legal entity likely to be regarded as an interest representative should find out whether it meets the criteria set in Article 18-2 and, if it does, enter join the register and then declare its interest representation activities.

It can happen that representatives of several legal entities carry out interest representation actions together; for example, the Directors of Public Affairs of two companies with interests in common may meet a Government member together in order to raise questions about a bill, or the representatives of a company and one of its subsidiaries may carry out an interest representation action together with regard to a regulatory authority.

In most cases, this does not pose any special problems: it should be considered that each of the legal entities concerned has carried out an interest representation action on its own behalf, even though such action was done together with another legal entity. Hence, when the CEOs of five companies meet the Minister of Economy to discuss problems encountered in their sector in the context of the drafting of a bill, five different interest representation actions have actually been carried out by five different legal entities.

Similarly, when a consultancy or law firm carries out an interest representation action in the company of one of its clients, such action should be attributed to both legal entities.

Two special cases should be highlighted, however.

• The case of representative organizations

First of all, there is the case in which a representative of a representative organization, a professional federation or NGO coordination network for example, carries out an interest representation action together with a representative of one of the legal entities belonging to the organization. In such a case, the legal entity to which the interest representation action is attributed depends on its purpose: if it represents the organization's overall interests, those of all its members, the interest representation action must be attributed to the organization itself. The member's representative, if he/she meets the conditions (see below II.1.3), may be regarded as an individual tasked with interest representation actions on behalf of the association. If the action in question is designed to promote the member legal entity's interests, however, it must be attributed to the latter.

• The case of groups of companies

Interest representation actions carried out by different companies belonging to the same group must each be attributed to the company responsible, as any legal entity may qualify as an interest representative. Hence, parent companies and their subsidiaries must record their interest representation actions in order to ascertain whether or not they should join the register individually.

It may happen, however, that representatives of a company and one of its subsidiaries carry out a single interest representation action together. In such a case, if the interest representation action's main objective is to promote the group of companies' common interests, it must be attributed to the parent company. If it only represents the subsidiary's interests, however, it is the latter to which the interest representation action must be attributed.

In practice, groups of companies may delegate a single individual, the parent company's Public Affairs Manager for example, to provide the High Authority with information on each of the group's companies. Each subsidiary director may mandate a third party (most probably one of the parent company's employees) to register on the teleservice and communicate the information required by the Law. In such case, the individual tasked with fulfilling these obligations must enter as many interest representatives in the register as there are subsidiaries meeting the conditions laid down in Article 18-2, and, for each subsidiary, communicate all information relating to actions it has undertaken. It is therefore not possible to simply enter the parent company in the register and consolidate all actions undertaken by the group under its name, as each individual legal entity has the same legal obligation. Furthermore, the individuals delegated act on behalf of the director of each subsidiary, who, in the event of any breach, is alone responsible.

2.3. Determination of the main or regular character of interest representation activities

In order for a legal entity/individual to be regarded as an interest representative, it is not enough, in the case of an individual, that he/she or, in the case of a legal entity, one of its representatives, has carried out an interest representation action. Pursuant to the abovementioned Article 18-2, interest representation must constitute the interested party's main (2.3.1) or regular (2.3.2) activity, such criteria being alternatives.

2.3.1. The main character of interest representation activities

Pursuant to Article I of the abovementioned Decree of 9 May 2017, a legal entity/individual carries out interest representation actions as a main activity when he/she/it devotes "more than half his/her/its time" to such activity.

This criterion must be reassessed every six months. Hence, if an individual devotes more than half his/her time to interest representation actions over a period of at least six months, he/she or the legal entity he/she represents is an interest representative, and must join the register and, the following year, inform the High Authority of interest representation actions carried out.

Secondly, in order to assess the amount of time the individuals concerned spend on carrying out interest actions, not only should the duration of communications themselves be taken into account, but also the time devoted to their preparation, organization and follow-up. Time devoted to activities with no connection to interest representation actions, monitoring activities for example, is, however, not included in this count. If an individual's worktime is precisely counted, in the context of a billing by the hour for example, such count will necessarily constitute the main factor in assessment of time spent carrying out interest representation actions. In other cases, it is not necessary to make a precise count, by the hour, of the various activities carried out by the individual/entity concerned in order to check whether or not this criterion has been met. It is possible instead to base assessment on the "bundle

of indicators” method. In this regard, the following indicators may be used, without all of them necessarily having to be applicable:

- the title of the position the interested party holds, which may sometimes provide a clue as to his/her main responsibilities;
- the description of his/her missions, in a job description for example;
- the number of interest representation actions carried out during the six-month period under consideration;
- participation in the work carried out by bodies to which his/her organization is affiliated and which are connected with the interests represented (see II.5);
- the overall proportion, over the six-month period under consideration, of activities unconnected with interest representation.

Hence, for example, if a company’s Director of Public Affairs has contacted public officials five over the course of the past six months, the accumulated duration of such contacts and their preparation does not as such represent half his/her activity. However, it is evident from his/her job title and missions that his/her main activity consists in representing the company’s interests.

2.3.2. The regular character of interest representation activities

Pursuant to Article 1 of the abovementioned Decree of 9 May 2017, an individual carries out an interest representation activity on a regular basis when he/she has carried out more than ten interest representation actions over a twelve-month period. Such twelve-month period must be assessed continuously and does not necessarily cover a calendar year.

If an independent consultant carries out nine interest representation actions between July and December of year N and a tenth action on 15 February of year N+1, he/she is regarded as being an interest representative as from that date. He/she must therefore join the register before 15 April of year N+1.

As regards legal entities, this criterion must be assessed on a case-by-case basis: a legal entity is only an interest representative if at least one individual within it has carried out, alone, more than ten interest representation actions over the course of the year.

If four individuals working at an SME have each carried out three interest representation actions, the legal entity is not regarded as an interest representative within the meaning of the Law (unless interest representation is the main activity of one of its employees or directors).

II. Information to be communicated to the High Authority in order to register

Taken together, the provisions of Articles 18-3 of the Law of 11 October 2013 and 2 of the Decree of 9 May 2017 require that interest representatives provide the High Authority with the following information when join the register: their identity (1), the identity of their director (2) and of individuals among their employees tasked with interest representation activities (3); where legal entities are concerned, the scope of their interest representation activities (4), their affiliations (5) and, when they carry out interest representation activities on behalf of third parties, the identity of such third parties (6).

When interest representatives meet the conditions referred to above, they have two months in which to join the register. Furthermore, if any of the information to be declared requires modification, such modification must be recorded in the register within one month.

Such information is communicated via a teleservice, the conditions of whose operation were set by the High Authority's decision no.2017-36 of 20 December 2017.

Agora, the interest representatives' teleservice

Pursuant to Article 5 of Decree no.2017-867 of 9 May 2017 bearing on the digital register of interest representatives, "interest representatives shall provide the High Authority with the information referred to in Articles 2 and 3 via a teleservice". Designed as a work tool put at interest representatives' disposal, the teleservice aims to minimize the administrative burden, of the annual declaration of interest representation activity in particular, by enabling continuous recording of information rather than just by or at the publication deadline provided for by law.

The same Article also stipulates that "when the interest representative is an individual, he/she shall register on the teleservice him/herself. When it is a legal entity, its registration is carried out by an individual designated as operational contact by its legal representative". Such designation is in the form of a mandate, the model for which is available via a link on the teleservice, duly completed and sent to the High Authority by uploading it on the teleservice.

Each interest representative, whether a legal entity or an individual, is provided with a dedicated space, known as a "collaborative space", for all his/her/its declarations, whether they are related to their registration or to information on their interest representation activities.

Once registered, the user is asked to create a collaborative space for the interest representative he/she represents, designed as a common work platform for all its users. In the event that another user has already created such space, he/she will be asked to make a request to join the existing collaborative space, a request that must be validated by the collaborative space's operational contact. If an interest representative is a legal entity, the operational contact authorizes users to provide information to the High Authority via the teleservice in view of its publication. To this effect, he/she may distinguish between users authorized to record information in the teleservice and those authorized to send such information to the High Authority.

1. The interest representative's identity

Pursuant to Article 5 of the abovementioned Decision of 20 December 2017, interest representatives communicate their identity to the High Authority by entering their SIREN number or National Register of Associations identification number (as appropriate) into the teleservice.

In the event of their possessing neither of these two numbers, interest representatives may contact the High Authority's staff via the teleservice in order to communicate their identity and be provided with an identification number for joining the register.

2. The identity of interest representatives' directors

Directors whose identity and function must be communicated to the High Authority are those who meet the conditions set in 2.2.1, i.e. legal representatives who possess the prerogatives required to act in the body's name and represent it with regard to third parties, whether or not they carry out interest representation actions.

A table enabling determination of an entity's legal representative is available on the High Authority's website.

3. The identity of individuals tasked with interest representation activities

Individuals to be regarded as "tasked with interest representation activities" within a legal entity, and whose identity and position must be included in the register, fall into one of the two following categories:

- individuals who pursue an interest representation activity as their main job, with regard to the criteria set in 2.3.1 ;
- individuals who carry out interest representation actions regularly (see 2.3.2).

4. The scope of interest representation activities

With regard to the scope of the interest representation activities they carry out, interest representatives must declare a list of activity sectors involved, along with the levels at which they carry out interest representation actions.

To facilitate this, a list of major activity sectors is provided in the teleservice. Interest representatives must select all sectors listed in which they carry out interest representation actions.

In this regard, interest representatives must also indicate the level(s) at which they carry out interest representation activities: local, national, European or global.

Hence, for example, a passenger transport company might select the following activity sectors: (1) Transport, logistics; (2) Energy; (3) Environment; (4) Sports, leisure activities, tourism, and (5) Competition, consumption.

5. Bodies of which the interest representative is a member

Pursuant to Paragraph 5 of the abovementioned Article 18-3, interest representatives must include information on “the professional organizations, unions or associations in connection with interests represented to which they belong” in the register. Three points may be highlighted in this regard.

Firstly, a body must be mentioned no matter how the interest representative is affiliated to it (member, subscriber, donator, benefactor, etc.), including if he/she/it does nothing more, for example, than pay membership fees to the body in question on behalf of one of his/her/its employees, or take part in its work.

In groups of companies, when the company financing membership to a body is not the same as the one that actually participates in its work, both companies must make mention of the body concerned. Likewise, when one of a group’s companies belongs to an organization connected with the group’s common interests, the parent company must also make mention of the organization concerned.

Any such affiliation must be direct, however: for example, when an interest representative is a member of a professional federation and that federation is itself a member of a confederation, without the interest representative him/her/itself being a member directly, only the federation concerned should be mentioned in the register.

Secondly, only bodies having a connection with interest representation activities within the meaning of Article 18-2 should be listed, which, among others, excludes bodies whose interest representation activities only involve European institutions.

Hence, if a professional federation is a member of a European federation that does not carry out interest representation actions involving any of the public officials referred to in Article 18-2, the European federation concerned should not be listed.

Finally, only bodies related to the interest representative’s main activity or the interests it promotes are concerned. Therefore, other bodies of which it is a member or for which it pays membership fees on behalf of one of its directors, employees or members are excluded.

Hence, a lawyer who carries out an interest representation activity individually need not declare the cultural, sports or similar associations he/she is a member of.

Similarly, an interest representative need not declare the alumni association that one of its employees belongs to and whose membership fees it pays.

6. The identity of third parties on whose behalf interest representation actions are carried out

This category of information only concerns interest representatives that carry out this activity wholly or partly on behalf of third parties: mostly consultancies and lawyers, and possibly professional organizations and federations, and associations.

• Consultancies and lawyers

As regards consultancies and law firms, they should list clients for whom at least one interest representation action was carried out over the last six months, even if they were carried out free of charge – in the context of skills sponsorship or a pro bono action, for example. When an interest representation action is carried out on behalf of a new client, the latter's identity must be indicated in the register within one month. However, when no service has been rendered on behalf of a client for more than six months, the latter's identity should be removed from the register. It nonetheless remains in previous years' activity reports for a period of five years.

When a consultancy or law firm carries out an interest representation action on behalf of a legal entity but bills its services to another entity; it must list both entities as third parties for which it carries out interest representation actions.

Hence, when a company's subcontractor concludes a contract with a consultancy so that it carries out interest representation actions on behalf of the contracting company, both the latter and its subcontractor must be listed as third parties.

On the other hand, entities for which a consultancy or law firm carries out interest representation activities, but which are not themselves interest representatives within the meaning of Article 18-2 owing to their status, should not be declared as third parties.

Hence, a consultancy need not list as a third party an administrative public establishment for which it carries out interest representation actions.

Finally, as regards groups of consultancies, when a client has a contractual link with one of the group's companies but interest representation activities are actually carried out by another company in the same group, both companies must declare the client if they are both registered.

• Unions, professional federations, and associations

Associations, unions and professional federations are presumed to carry out interest representation actions on behalf of their members or subscribers. These latter are therefore not regarded as third parties within the meaning of Article 18-3 of the abovementioned Law of 11 October 2013 and there is no need to include their identities in the register. Where appropriate, however, it is recommended that the organizations concerned provide the AGORA tele-service with the link to their website page containing the list of their members.

Nonetheless, when an association, union or professional federation carries out interest representation actions on behalf of only some of its members, these latter must be listed as third parties on behalf of whom such actions are carried out.

• Groups of companies

Finally, in a group of companies, when the parent company carries out interest representation actions on behalf of one or more subsidiaries in particular, these latter must be listed under this heading.

III. Information to be communicated to the High Authority annually

Pursuant to Article 18-3 of Law no.2013-907 of 11 October 2013 on transparency in public life, interest representatives must communicate the following information to the High Authority:

“3) Any actions falling under the scope of interest representation carried out with regard to the persons referred to from 1) to 7) of Article 18-2, by specifying the amount of expenses related to these actions during the preceding year;

4) The number of persons that he/she employs for the fulfilment of its interest representation mission and, where applicable, its turnover for the preceding year.”

In this regard, Article 3 of Decree no. 2017-867 of 9 May 2017 stipulates that this information must be communicated by each interest representative “within three months as from the closure of its accounting year” .

Taking the content of the two provisions together, interest representatives must provide the High Authority with four types of information every year: interest representation actions they carried out during the preceding year (1), expenses incurred (2), the number of individuals they employed in order to fulfil such missions (3) and, where applicable, their turnover for the preceding year (4). All this information is communicated and made public directly via the AGORA teleservice.

1. Interest representation actions carried out during the preceding year

With a view to describing interest representation actions carried out during the preceding year, Article 3 of the Decree of 9 May 2017, provides for annual declaration of the following information:

“1) the type of public decision concerned by the interest representation activities, with regard to the list appended to this Decree;

2) the type of interest representation activities performed, with regard to the list appended to this Decree;

3) the issues targeted by these activities, identified by their purpose and focus area;

4) the categories of public officials, referred to in Paragraphs 1 to 7 of Article 18-2 of the same Law, that the interest representative entered into contact with, the declarations relating to the categories referred to in Paragraphs 1, 4 and 6 of the same Article 18-2 completed with the help of the lists appended to this Decree;

5) When the interest representative carried out actions for a third party, the identity of such third party”.

Only interest representation actions meeting the criteria set by these guidelines (see I. 2.1) need be communicated to the High Authority. Other activities that interest representatives might carry out (e.g. regulatory or legislative monitoring, or public awareness-raising actions) do not need to be declared

as such, even though a number of them are listed in the Annex to the Decree of 9 May 2017 “bearing on types of interest representation actions”. Activities that do not meet the criteria set by these guidelines cannot be regarded as interest representation actions within the meaning of the provisions of Article 18-2 of the Law of 11 October 2013, which only cover the fact “of influencing public decisions [...] by contacting” a public official.

Hence, in the case of a consultancy that had two types of activities over the preceding year:

- for one of its clients, it organized meetings with a member of the Government and carried out legislative monitoring activities;
- for another client, it only drew up a petition on the internet with a view to raising awareness among the general public.

The meetings organized for the first client will have to be entered into the register as provided for below.

The services provided for the second client, however, do not meet the conditions laid down by law and do not therefore constitute interest representation actions that have to be included in the register.

Furthermore, as regards legal entities, only actions carried out by individuals appearing in the register should be referred to in annual declarations of activity. Therefore, only actions carried out by individuals “tasked with interest representation activities” are concerned. This implies that interest representation actions carried out by an individual whose main or regular activity is not interest representation need not be included in the register. It is therefore of key importance that interest representatives accurately identify the individuals working for them who meet the conditions set by law. When an individual meets the criteria during the year, and must therefore be listed in the register within one month following such date, all the actions he/she has carried out over the course of the year must be included in his/her annual declaration of interest representation activities. In the same way, when an individual has met the conditions provided for by law and been listed in the register as an individual tasked with interest representation activities, his/her actions must be taken into account in the annual declaration even if he/she has left the legal entity in the meantime.

Hence, when a company’s CEO has only carried out two interest representation actions over the course of the year, such actions need not be included in the company’s declaration of activity.

However, if the CEO carries out eleven actions during the year, he/she must be listed as an individual tasked with interest representation activities within one month as from the date of the eleventh action, and all eleven actions must be included in the declaration.

This information is communicated via the AGORA teleservice in the form of an annual declaration of interest representation activities: such declarations are organized according to the “purpose” of these activities, understood as the “objective pursued”. Thus, each declared objective should, as far as possible, answer the question: “What was the purpose of the interest representation activities undertaken?” (1.1). For each objective, interest representatives must

specify the types of public decisions concerned (1.2), types of actions carried out (1.3) and categories of public officials met with (1.4). If such actions were carried out on behalf of a third party, the identity of such third party must also be specified (1.5).

There are also available fields enabling interest representatives, if they so wish, to communicate general information and explanations, such as the public decisions on which their actions focused or the positions held by the public officials they targeted.

In order to illustrate these various concepts, these guidelines will now focus on examples of three (fictional) interest representatives. For each of these three bodies, examples of possible situations will be presented. A table summarizing each example is appended to these guidelines.

* The first interest representative is an Internet access provider whose interest representation actions consisted of:

- numerous contacts (meetings, telephone conversations and email exchanges) with the Minister of State for the Digital Sector and his cabinet in order to convince him of the need to enact a law guaranteeing net neutrality;
- sending an analytical report to the President of the Authority for Regulation of the Electronic Communications and Postal Sectors (ARCEP) with a view to convincing him of the need to launch a call for candidates for mobile telephony services on a band of available frequencies;
- several meetings at the Ministry of Justice and the office of the President of the Republic (Élysée Palace) in the context of preparation of a decree on judicial authorities' access to internet communication data, with a view to the State taking responsibility for the cost incurred by such access.

* The second interest representative is a professional federation gathering small companies in the construction sector. It also carried out three major series of interest representation actions over the course of the preceding year:

- several series of meetings at the Economic and Finance Ministries' Directorate of Judicial Affairs, in the context of a reform of the ordinance bearing on procurement contracts;
- on the occasion of the upcoming bill on social security funding, sending mail to Members of Parliament who are also members of the Committee on Social Affairs in order to alert them to the need to reduce companies' contributions with regard to compensation for occupational accidents and diseases;
- organization of a colloquium, attended by the Minister of Economy, to raise awareness on the lack of consideration given to SMEs in the awarding of State procurement contracts.

* The final interest representative is a women's rights association which focused its actions on two subjects:

- sending amendments to the Minister of Social Affairs' cabinet and Director General of Labor in the hope of obtaining a modification to the Labor Code's provisions on parental leave;
- meeting at the High Council for Audiovisual Media (CSA) and communication of an analysis note on women's place in audiovisual media, in the hope of seeing the adoption of a Council decision making recommendations on the subject.

The High Authority finally draws interest representatives' attention to the fact that, as annual declarations of activities are to be made public, no information possessing "the quality of national defense secrets" within the meaning of the provisions of Article 413-9 of the Criminal Code may appear in such declarations.

1.1. Objectives pursued by interest representation actions

In their annual declaration to the High Authority, interest representatives must complete a declaration of activities for each "object" on which they carried out interest representation actions during the preceding year. This concept should be understood as a "pursued objective" rather than a "subject matter".

By virtue of the provisions of Article 3 of the abovementioned Decree of 9 May 2017, such questions must be identified by their purpose (1.1.1) and focus area (1.1.2).

1.1.1. Purpose

An interest representation action's purpose is the main piece of information upon which any declaration should be based. This concept corresponds to the description of the objective sought by the communication with the public official. In order to help interest representatives with their annual declarations, the High Authority makes available on its website practical fact sheets, including one dedicated to the question «how to declare the purpose of an activity sheet?».

Hence, for example, the Internet access provider would provide summaries of the following purposes of interest representation actions that it carried out over the course of a year:

- Need to introduce a Bill bearing on net neutrality;
- Speeding up assignment of frequencies to mobile phone operators;
- Reimbursement by the State of costs incurred by the public authorities' access to connection data

While the professional federation would mention the following purposes:

- Simplifying regulations on procurement contracts;
- Reducing contributions paid by SMEs with regard to compensation for occupational accidents and diseases
- Obtaining greater consideration of SMEs in the awarding of procurement contracts;

And finally, the women's rights association would identify two purposes for which it carried out interest representation actions:

- Increasing compensation for parental leave;
- Obtaining measures ensuring that women are fully represented during prime-time viewing hours.

1.1.2. Focus areas

For each purpose identified, interest representatives must choose one or more focus areas from a list of 117 fields provided by the High Authority. In practice, these fields correspond to subcategories of fields of interest representation activities, which must be chosen when registering on the teleservice (see II.4. of these guidelines).

Interest representatives finding no focus area corresponding to the actions that he/she/it carries out will always be able to suggest a new field to the High Authority.

Hence, for the three interest representatives taken as examples, selection of focus areas may lead to the following choices:

The Internet access provider would list:

- "Digital market";
- "Telecommunication Infrastructures";
- "Data protection".

The professional federation would list:

- "Public/private partnerships";
- "Healthcare system";
- "SMEs/VSEs";

And finally, with regard to the association, public decisions would concern:

- "Family";
- "Gender equality"

When preparing their annual activity declarations, interest representatives may choose focus areas that do not correspond to one of the activity sectors they selected when first joining the register. However, if interest representatives repeatedly select focus areas not corresponding to one of the activity sectors they initially selected, this should encourage them to rethink their original choices.

Hence, when joining the register, the Internet access provider did not select "Defense, security" as one of the main activity sectors in which it carries out interest representation actions. However, due to the major impact that a long series of legal and regulatory texts regarding counterterrorism has had on its activity, it selected "Counterterrorism" as a focus area several times in the declarations of activity that it sent over the last three years. This may justify the modification of the list of main activity sectors chosen when first registering.

1.2. Types of public decisions

For each issue identified, interest representatives' declarations of activity must specify "the type of public decisions on which interest representation actions undertaken focused", it being understood that several types of public decisions might be concerned regarding a single issue.

The list of types of public decisions that must be included in the register is the same as the one in the Annex to the Decree bearing on "types of public decisions":

- laws, including constitutional laws;
- ordinances issued on the basis of Article 38 of the Constitution ;
- regulatory acts;

- decisions made on a case-by-case basis, referred to in Article L.221-7 of the Code of Relations between the Public and the Administration, including declarations of public utility in the framework of expropriation proceedings (or the decision to classify facilities for environmental protection purposes);
- procurement contracts, where the estimated pre-tax value is greater or equal to EU thresholds;
- concession contracts, where the estimated pre-tax value is greater or equal to EU thresholds;
- agreements authorizing the temporary occupation of public space;
- administrative long-term leases;
- contracts for the sale of private property belonging to the State or its public institutions;
- local authority decisions approving creation of sociétés d'économie mixte à opération unique (SEMOPs – single-purpose semi-public companies);
- other public decisions

The list of “other public decisions” concerned as well as the content of public decisions on which interest representation actions might be brought to bear are specified in Point I. 2.1.4 of these guidelines.

Hence, in the case of the three bodies taken as examples, public decisions concerned would at minimum be referred to as follows:

The Internet access provider would list the following types of public decisions:

- “Laws, including constitutional laws”;
- “Regulatory acts”;
- “Other public decisions”.

The professional federation would list:

- “ordinances issued on the basis of Article 38 of the Constitution”;
- “Laws, including constitutional laws”;
- “procurement contracts” and “concession contracts”;

And finally, with regard to the association, public decisions would be:

- “Other public decisions”;
- “Laws, including constitutional laws” and “Regulatory acts”

1.3. Types of interest representation actions

As with types of public decisions, types of interest representation actions that must be listed in the register are detailed in a list appended to the Decree of 9 May 2017.

The following actions are concerned:

- Organizing informal discussions and one-to-one meetings;

- Arranging a third party's interview with the holder of a public office;
- Sending invitations to or organizing events, meetings or promotional activities;
- Setting up regular correspondence (by email, mail, etc.);
- Sending petitions, open letters or tracts;
- Organizing public debates, marches, or strategies of influence on the Internet;
- Organizing hearings or formal consultations on legislative acts, or other open consultations;
- Communicating suggestions with a view to influencing the drafting of a public decision;
- Providing public decision-makers with information or expert assessments with a view to winning them over;
- Others (in which case, the type of action carried out should be specified).

Hence, for the bodies taken as examples, the following types of interest representation actions would be listed:

For the Internet access provider:

- "Organizing informal discussions and one-to-one meetings";
- "Setting up regular correspondence (by email, mail, etc.)";
- "Providing public decision-makers with information and expert assessments with a view to winning them over".

For the professional federation:

- "Organizing informal discussions and one-to-one meetings";
- "Arranging a third party's interview with the holder of a public office";
- "Setting up regular correspondence (by email, mail, etc.)";
- "Sending invitations to or organizing events, meetings or promotional activities";
- "Providing public decision-makers with information and expert assessments with a view to winning them over".

For the association:

- "Organizing informal discussions and one-to-one meetings";
- "Communicating suggestions with a view to influencing the drafting of a public decision";
- "Providing public decision-makers with information and expert assessments with a view to winning them over".

1.4. Categories of public officials contacted by the interest representative

Interest representatives are not obliged to reveal the identities or exact positions occupied by the public officials with whom they have entered into contact. They must, however, list the categories into which the functions of the public officials concerned fall, from among the following categories:

- Members of the Government or of a Ministerial cabinet, specifying the Ministry concerned with regard to the list appended to the Decree of 9 May 2017;
- Members of the National Assembly, Senators, members of the President of the National Assembly's or the President of the Senate's staff, members of the staff of Members of the National Assembly, of Senators, or of Parliamentary groups, as well as Parliamentary assemblies' staff members;
- Members of the President of the Republic's staff;
- General directors, secretaries-general, or their deputies, or members of boards or of commissions endowed with powers to impose penalties within independent administrative authorities or within independent public authorities, specifying the name of the authority with regard to the list appended to the Decree of 9 May 2017 ;
- Individuals holding positions or fulfilling functions by Government decision.

Hence, for the bodies taken as examples, the following categories would be listed:

For the Internet access provider:

- "members of the Government or of a Ministerial cabinet [Others: Digital Technology]";
- "members of the President of the Republic's staff";
- "general directors, secretaries-general, or their deputies, or members of boards or of commissions endowed with powers to impose penalties within independent administrative authorities or within independent public authorities [ARCEP]";
- "individuals holding positions or fulfilling functions by Government decision".

For the professional federation:

- "members of the Government or of a Ministerial cabinet [Economy and Finance]";
- "Members of the National Assembly, Senators, members of the President of the National Assembly's or the President of the Senate's staff, members of the staff of Members of the National Assembly, of Senators, or of Parliamentary groups, as well as Parliamentary assemblies' staff members";
- "individuals holding positions or fulfilling functions by Government decision".

For the association:

- "members of the Government or of a Ministerial cabinet [Social Affairs]";
- "general directors, secretaries-general, or their deputies, or members of boards or of commissions endowed with powers to impose penalties within independent administrative authorities or within independent public authorities [CSA]";
- "individuals holding positions or fulfilling functions by Government decision".

1.5. Third parties on whose behalf interest representation actions were carried out

If an interest representative has carried out activities on behalf of a third party, as may be the case with a consultancy or parent company in a group of companies, it must distinguish between actions carried out on its own behalf and those carried out on behalf of a third party. The various hypothetical cases of distribution of interest representation actions between several legal entities have been detailed in Point I. 2.2.2 of these guidelines.

Hence, for each issue identified, the interest representative must provide all the information requested (types of decisions, types of actions and categories of public officials) regarding actions carried out on its own behalf, as well as for actions carried out on behalf of a third party, whenever such information varies.

Hence, a consultancy that has carried out different interest representation actions on behalf of several clients in order to obtain a reduction in VAT on food products must, for example, declare such actions in the following manner:

| Issue | | Beneficiary | Types of public decisions | Types of interest representation actions | Category of public officials | General explanatory notes (optional) |
|-------------------------------------|-------------------|-------------|-------------------------------------|--|--|--|
| Purpose | Aera | | | | | |
| Need to reduce VAT on food products | Indirect taxation | Client A | Laws, including constitutional laws | Organizing informal discussions... Setting up regular correspondence... | Government member or member of a Ministerial cabinet [Economy] | Numerous contacts with the Minister of Economy and his cabinet |
| | | Client B | | Communicating suggestions... | Member of Parliament, Senator... | Sending amendments to members of the Finance Committee |

2. Expenditure on interest representation

Article 18-3 of the Law of 11 October 2013 stipulates that interest representatives must communicate to the High Authority the “amount of expenses” related to interest representation actions during the preceding year.

In this regard, the Decree of 9 May 2017 specifies that “expenses devoted to interest representation actions [...] are composed of all human, material and financial resources mobilized by the interest representative” in order to carry out his/her/its interest representation activities. It also lays down the method for communicating such expenses, which must be listed “in the context of

a list of brackets established by an order issued by the Minister of Economy upon recommendation by the High Authority for Transparency in Public Life". The order was published on 4 July 2017 and defines 51 ranges divided up as follows:

- from €0 to €10,000;
- from €10,000 to €25,000;
- by tranches of €25,000 between €25,000 and €100,000;
- by tranches of €100,000 between €100,000 and €1,000,000;
- by tranches of €250,000 between €1,000,000 and €10,000,000;
- over €10,000,000.

When an interest representative incurs an expense on behalf of another entity, which reimburses it later, it is for the latter entity, if it is itself registered, to incorporate such expense in the calculation of its interest representation expenditure.

Hence, when a consultancy organizes an event on behalf of a client company and the expenses it incurs thereby are later reimbursed by the client, it is the latter, if it is also registered, which must incorporate them into the calculation of its annual expenditure.

Similarly, when, strictly for accounting purposes, an interest representative's expenses are paid by a third party, and the latter does not meet the criteria for being considered an interest representative, he/she/it must incorporate such expenses in calculation of his/her/its expenditure on interest representation.

Hence, when remuneration of a professional association's Public Affairs Manager is actually paid by a company whose sole purpose is to manage the financial side of the association's activities, the professional association must take such remuneration into account when calculating its expenditure.

In this context, these guidelines must specify methods for calculating interest representation expenses for each expenditure item under consideration, i.e. remuneration of individuals tasked with interest representation activities (2.1), expenses incurred by the organization of events (2.2), expenditure on expert assessments (2.3), advantages provided to public officials (2.4), purchases of services from consultancies and law firms (2.5) and membership fees to professional federations (2.6).

For each of these expenditure items, interest representatives must, in the event of an inspection, be able to justify the sums used to calculate their total expenditure on interest representation.

2.1. Expenses incurred by the remuneration of individuals tasked with interest representation activities

The first expenditure item that must be taken into account in calculation of interest representation expenditure corresponds to the expenses the body incurs by employing individuals tasked with interest representation activities.

In this regard, only expenses incurred by employment of individuals referred to in the register as "individuals tasked with interest representation activities" (see II. 3) should be recorded. Such expenses correspond to the total remuneration paid to such individuals annually, including bonuses and employer and employee contributions. Reimbursements of professional expenses of the individuals concerned (expenditure on transport, accommodation and meals) are also included in this expenditure item

When individuals tasked with interest representation activities also carry out other activities within the legal entity, their remuneration must be recorded on a pro rata basis, according to the percentage of their total activity accounted for by interest representation activities.

Interest representatives must calculate such percentage for each individual concerned, taking full account of the criterion by which such individuals are referred to in the register. For individuals whose main activity is interest representation (with regard to the indicators provided in I.2.3 of these guidelines), such percentage cannot be less than 50%. For other individuals, it must be between 0 and 50%.

Hence, in the case of a company in which two individuals are tasked with interest representation activities, its CEO, who carried out a dozen interest representation actions over the course of the year, and an “Institutional Relations” officer, whose exclusive activity is interest representation, along with legislative and regulatory monitoring, this expenditure item should be estimated as follows:

- 5% of the CEO’s remuneration (€300,000 inclusive of charges): €15,000;
- 80% of the officer’s remuneration (€90,000 inclusive of charges): €72,000;

Total expenditure on remuneration of individuals tasked with interest representation therefore comes to €87,000.

2.2 Expenses incurred by the organization of events

When an event organized by an interest representative constitutes an interest representation action within the meaning of the provisions of Article 18-2 of the Law of 11 October 2013, expenses incurred, inclusive of tax, must be taken into account in calculation of interest representation expenditure. Such expenses must be taken into account whatever context the event takes place in, including in the context of an informal club bringing together public officials and interest representatives.

When an event has a broader purpose than the carrying out of interest representation actions, and it is possible to accurately distinguish what expenses were connected with such actions among all expenses incurred in organizing the event, such expenses are the only ones to be taken into account in the calculation of expenditure.

Hence, a consultancy that, on behalf of a client company, organizes a conference attended by several public officials, in order to raise their awareness on the company’s situation in the context of a Bill currently under discussion, must take all costs incurred by the conference into account in calculating its interest representation expenditure.

However, when the consultancy organizes a trade fair open to the public for the same client, during which a dinner/debate is held with a Government member, only the cost of the dinner should be taken into account.

2.3 Expenditure on expert assessments

When an event organized by an interest representative constitutes an interest representation action within the meaning of the provisions of Article 18-2 of the Law of 11 October 2013, expenses incurred, inclusive of tax, must be taken into account in calculation of interest representation expenditure. Such expenses must be taken into account whatever context the event takes place in, including in the context of an informal club bringing together public officials and interest representatives.

When an event has a broader purpose than the carrying out of interest representation actions, and it is possible to accurately distinguish what expenses were connected with such actions among all expenses incurred in organizing the event, such expenses are the only ones to be taken into account in the calculation of expenditure.

Hence, a consultancy that, on behalf of a client company, organizes a conference attended by several public officials, in order to raise their awareness on the company's situation in the context of a Bill currently under discussion, must take all costs incurred by the conference into account in calculating its interest representation expenditure.

However, when the consultancy organizes a trade fair open to the public for the same client, during which a dinner/debate is held with a Government member, only the cost of the dinner should be taken into account.

2.4 Gifts and advantages provided to public officials

All advantages (gifts and invitations) that interest representatives provide to any of the public officials referred to in Article 18-2 of the Law of 11 October 2013 in the context of their professional activity must be taken into account if the value of such gifts and invitations exceeds €50 inclusive of tax.

As regards gifts, amounts to be taken into account are those of the sales prices offered to the public rather than prices paid by interest representatives, particularly in the case of goods they produce. As regards invitations, the expenditure to be taken into account is the cost per guest.

Hence, when an interest representative invites three parliamentarians to lunch for a total of €120 (four set menus at €30 each), the invitation need not be taken into account in calculation of interest representation expenditure.

However, if the bill comes to €240 (€60 per guest), the interest representative must incorporate the sum of €180 as an advantage provided to a public official (the price of his/her own meal not being taken into account as an advantage to a public official) and €60 as professional expenses incurred in an interest representation action, which he/she will incorporate in calculation of his/her interest representation expenditure.

The High Authority stresses that this threshold is the one as from which gifts and invitations must be taken into account for calculating expenditure, not the threshold beyond which such advantages are considered as being "significant" within the meaning of the provisions of Article 18-5 of the Law of 11 October 2013, under the terms of which interest representatives must "refrain from offering or providing any gifts, donations or advantages of significant value to these persons". This threshold needs to be set by decree after an opinion from the High Authority.

2.5 Purchases of services from consultancies and law firms

In this regard, all fees, inclusive of tax, paid for interest representation services must be taken into account. When a service provider carries out different missions for the same client, a distinction should be made between interest representation actions and other actions.

Such separate invoicing is actually obligatory for law firms, pursuant to Article 6.3.4 of the legal profession's national rules of procedure.

Hence, when a company remunerates a consultancy on a flat-rate basis (by the year, for example), it must be determined which of the various services rendered are interest representation activities.

2.6 Contributions to professional organizations

Interest representatives that belong to professional organizations or associations connected with the interests they represent (see II. 5) must in consequence include a percentage of the annual total of their contributions to such organizations in the calculation of their interest representation expenditure.

However membership fees paid to organizations recognized as representatives at the inter-professional level, pursuant to the provisions of Articles L.2151-1 ff. of the Labor Code, need not be taken into account, given the wide scope of their activities.

In order to assess the percentage of contributions to a professional organization that corresponds to interest representation expenditure, organizations may refer to their social purpose. For those whose only aim is to promote the interests of a profession in the eyes of public authorities, the full amount of the contribution must be taken into account. If the organization has other missions, however, such as branch negotiation or delivery of training to its members, the percentage covering interest representation in its missions must be assessed.

To this effect, the High Authority recommends that the organizations concerned communicate to their members the percentage of contributions paid to them that corresponds to their interest representation activities.

Hence, a company that belongs to a professional federation representing an entire branch and an organization whose sole purpose is to promote the interests of its activity sector in the eyes of public officials may, for example, include 30% of its contribution to the first organization in its interest representation expenditure and 100% of its contribution to the second.

3. The number of individuals employed for interest representation activities

Pursuant to Paragraph 4 of Article 18-3 of the Law of 11 October 2013, interest representatives must communicate annually the number of individuals they employ for their interest representation activities.

This provision only covers individuals listed as individuals tasked with interest representation activities, i.e. those who meet the criteria set by law (see II. 3), at the time of registration, and then at each modification.

Hence, an interest representative that has two employees who meet the conditions set by law, and three others who participate in interest representation activities but do not reach the thresholds set by the Decree, need only list two individuals in its annual declaration.

The number communicated must also correspond to functions, without taking into account the number of different individuals who have held such positions over the course of the year. In practice, it will correspond to the largest number of functions mentioned simultaneously over the course of the year for each interest representative.

Hence, even if a company's Director of Public Affairs has changed three times over the course of the year, the position only corresponds to 1 individual in the annual declaration.

4. The preceding year's turnover

Pursuant to Paragraph 4 of Article 18-3 of the Law of 11 October 2013, interest representatives must also communicate their turnover for the preceding year.

The turnover to be communicated is that which the body made in France during the preceding year, not the turnover connected with interest representation activities, which is often impossible to determine accurately except in the case of consultancies and law firms. When a group of companies is concerned, the parent company must communicate the group's consolidated turnover, and its subsidiaries must each communicate their own turnover.

Pursuant to Article 2 of the Order of 4 July 2017, turnover is declared in accordance with the following ranges:

- from €0 to under €100,000;
- from €100,000 to under €500,000;
- from €500,000 to under €1,000,000;
- €1,000,000 and above

Annex:

Summary table of examples of annual activity declarations (see III.1)

These tables are only illustrative and do not correspond to the format in which information must be provided on AGORA

The case of the Internet access provider

| Issue | | Beneficiary | Types of public décisions | Types of interest representation actions | Category of public officials | General explanatory notes (optional) |
|---|-----------------------------------|-------------------|-------------------------------------|--|--|--|
| Purpose | Area | | | | | |
| Need to introduce a Bill bearing on net neutrality | Digital market | On its own behalf | Laws, including constitutional laws | Organizing informal discussions... Setting up regular correspondence... | Government member of a Ministerial cabinet [Others: Digital Technology] | Numerous contacts (meetings, interviews and email exchanges) with the Minister of State for the Digital Sector and his cabinet |
| Speeding up assignment of mobile frequencies to mobile phone operators | Telecommunication infrastructures | | Other public decisions | Organizing informal discussions... Providing public decision-makers with information, expert assessments... | Member or director of an independent administrative authority [ARCEP] | Sending an analytical report to the President of ARCEP with a view to convincing him of the need to launch a call for candidates for mobile telephony services on the 700-Mhz band |
| Reimbursement by the State of costs incurred by the public authorities' access to connection data | Data protection | | Regulatory acts | Organizing informal discussions... | President of the Republic's staff member Individuals holding positions by Government decision | Several meetings at the Ministry of Justice and the Élysée Palace in the context of preparation of a decree on judicial authorities' access to internet communication data |

| Issue | | Beneficiary | Types of public decisions | Types of interest representation actions | Category of public officials | General explanatory notes (optional) |
|---|-----------------------------|-------------------|--|---|--|--|
| Purpose | Focus area | | | | | |
| Simplifying regulations on procurement contracts | Public/private partnerships | On its own behalf | Ordinances issued on the basis of Article 38 of the Constitution | Organizing informal discussions... | Individual holding a position by Government decision | Several series of meetings at the Economic Ministry's Legal Affairs Department, in the context of a reform of the ordinance bearing on procurement contracts |
| Reducing contributions paid by SMEs with regard to compensation for occupational accidents and diseases | Healthcare system | | Laws, including constitutional laws | Setting up regular correspondence... | Member of the National Assembly, Senator, etc. | Sending mail to the attention of Members of Parliament who are also members of the Committee on Social Affairs |
| Obtaining greater consideration of SMEs in the awarding of procurement contracts | SMEs/VSEs | | Procurement contracts Concession contracts | Invitations to or organization of events, meetings... | Government member or member of a Ministerial cabinet [Economy and Finance] | Organization of a colloquium attended by the Minister of Economy |

The case of the association

| Issue | | Beneficiary | Types of public decisions | Types of interest representation actions | Category of public officials | General explanatory notes (optional) |
|--|-----------------|-------------------|--|--|---|--|
| Purpose | Focus area | | | | | |
| Increasing compensation for parental leave | Family | On its own behalf | Laws, including constitutional laws Regulatory acts | Communicating suggestions in order to influence the drafting of a public decision | Government member or member of a Ministerial cabinet [Social Affairs] Individual holding a position by government decision | Sending amendments to the Minister of Social Affairs' cabinet and Director General of Labor in the hope of obtaining a modification to the Labor Code's provisions on parental leave |
| Obtaining measures ensuring that women are fully represented during prime-time viewing hours | Gender equality | | Other public decisions | Providing public decision-makers with information, expert assessments... Organizing informal discussions... | Member or director of an independent administrative authority [CSA] | Meeting at the CSA and communication of an analysis note on women's place in audiovisual media, in the hope of seeing the adoption of a Council decision making recommendations on the subject |

Annex :

Table of focus areas (see III. 1)

| Activity sector | Focus areas |
|--|---------------------------------|
| Aeronautics, aerospace | Aeronautics industry |
| | Aerospace industry |
| Agriculture, food | Agriculture |
| | Territorial development |
| | Food industry |
| | Appellations |
| | Food security and standards |
| Arts, culture | Music |
| | Cinema |
| | Books |
| | Video games |
| | Heritage |
| | Performing arts |
| | Access to culture |
| Banks, insurance companies, financial sector | Banks |
| | Insurance companies |
| | Finance |
| External trade | International agreements |
| | Taxation |
| International cooperation | Development aid |
| | Humanitarian aid |
| Defense, security | National security |
| | Defense |
| | Accidents and natural disasters |
| | Espionage and surveillance |
| Economy | Industrial policy |
| | Regulated markets |
| Education, teaching, training | Vocational training |
| | Education |
| Energy | Nuclear energy |
| | Fossil energies |
| | Renewable energies |

| | |
|---|---|
| Higher education, research, innovation | Higher education |
| | Research and innovation |
| Environment | Impact of industrial activity |
| | Impact of commercial and collective transport |
| | Impact of individual transport |
| | Water quality |
| | Waste |
| | Depollution |
| | Chemical products |
| | Precautionary principle |
| | Production standards |
| | |
| Public finance | Levies |
| | Taxes |
| | Budget |
| | Statistics |
| Justice | Judicial institutions |
| | Penal institutions |
| | Criminal justice |
| | Civil justice |
| | Administrative order |
| Construction, housing, spatial planning | Construction |
| | Housing |
| | Construction and public works |
| | Land use |
| Media | Audiovisual |
| | Written press |
| | Freedom of expression and information |
| | Advertising |
| Digital technology | Access to the Internet |
| | E-commerce |
| | Digital market |
| | Data protection |
| Overseas France | Overseas institutions |
| | Overseas economy |
| | Overseas economic development |

| | |
|--------------------------------------|---|
| Publics authorities and institutions | Civil service |
| | Local authorities |
| | Moralization/Transparency |
| | European institutions |
| | Public/private partnerships |
| Intellectual property | Patents |
| | Copyright |
| | Brand protection |
| | Business secrecy / Professional secrecy |
| Migratory questions | Asylum |
| | Immigration |
| | French citizens abroad |
| Natural resources | Fishing |
| | Hunting |
| | Forests |
| | Mineral resources |
| | Water |
| Healthcare | Healthcare and medico-social system |
| | Treatments and diseases |
| | Medicaments |
| | Prevention |
| | Reimbursements |
| Companies and liberal professions | Business support |
| | SMEs/VSEs |
| | Regulated professions |
| | Competition law |
| Society | Secularism |
| | Gender equality |
| | Equality of opportunity |
| | Family |
| | Discrimination |
| | Disability |
| | Fundamental rights and freedoms |
| | Victims' rights |
| | Animal welfare |

| | |
|-------------------------------------|-----------------------------------|
| Telecommunications | Telecommunication infrastructures |
| | Access to telecommunications |
| Transports, logistics | Passenger transport |
| | Freight transport |
| | Infrastructures |
| | Road safety |
| | Mail services |
| | Alternative transport |
| Sports, leisure activities, tourism | Sports |
| | Gambling |
| | Tourism/hotel industry |
| Employment, solidarity | Labor law |
| | Social dialogue |
| | Unemployment insurance |
| | Retirement pensions |

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