

A view of a lobbyist

1. Without Lobby there would be no democracy.

By „lobby“ we understand activities aiming at influencing decisions of those who command legislative or executive power. These decisions have impact on people living in the region ruled by the decision-makers in question. Therefore these people “from below” who feel or will feel consequences of the decisions on their skins have right to say their opinions to the decision-makers. And this is *the Lobby*. It may have very diverse forms – from letters to MPs, personal encounters with MP in lobbies of parliament buildings, interviews in the media to street demonstrations.

Thanks to the Lobby decision-makers learn two informations:

- a) That the planned decision will affect this or that interest and in what way
- b) How the afflicted party feels about it

Both informations – if we do not assume that the decision-makers are not omniscient – may not be known to them – often they are not. But awareness of these facts is crucial for democracy’s long-term legitimacy. Without knowing what their decisions really amount to on the ground the decision-makers would not be able to play a role of an arbiter among various interests who tries to balance them.

Despite of this fundamental importance of lobby for the democracy the term lobby evokes negative images and connotations – as something inappropriate at best. The Lobby simply lacks legitimacy.

But how is it possible that street demonstrations or voices in the media that in all respects should also be regarded as lobby **are not – as a method – viewed with the same suspicion as personal contacts.**

What is it that bestows legitimacy – in eyes of man in the street - to some kinds of lobby in contrast with other forms?

I am convinced that the reason is as follows: articles in the press, speeches in the media and demonstrations – all these events he can hear and see, whereas he is not present at the encounters of lobbyists with lawmakers in the lobbies. This inaccessibility creates suspicions. **And this is the reason why there are so loud calls for transparency.**

And the EU is answering these calls. It has presented to the public a new regime – called transparency initiative - for entities that try to influence decisions of the EU institutions. All these groups or bodies will be invited to register publicly whom they represent and what their objectives are. They will be invited to declare funding sources and major clients. The commissioner Callas who presented this register last month said he believed that the register would ensure the Commission as well as the public would be able identify and assess the driving forces behind positions taken and interests presented.

While the system will be voluntary, the commissioner explained that only those lobbyists who were registered would be recognized as speaking for clients or a sector of industry when they contribute to comments on EU policy that are taken into account when new legislation is drafted.

Lobbyists who did not register would only be seen as speaking in their own name, undermining the weight of their comments. Those who gave inaccurate information would face sanctions.

I am afraid this rules will only handicap those who will follow them in comparison to those who will ignore them:

- a) They will lose those clients who do not like to be seen to be connected with some issues and have honest reasons not to – like fear of their governments, competitors, or negative media coverage. Some of them will resort to using proxies who will in turn hire lobbyists. In this way the effect of the transparency initiative will be negated.
- b) Revealing fees and their structure would force lobbyist to reveal their commercial secrets in front of their competitors. It is naive to assume that they will do that really honestly.
- c) The new regime does not touch contacts with decision makers made outside the EU institutions or by non-Brussels based lobbyists.
- d) The regime will not apply to opinions addressed to the EU within the framework of so-called public hearings/discussions organized by the Commission.
- e) It is not clear to what extent will the NGOs – which are often lobbyists par excellence - be forced to reveal which part of their funding is related to their activities in particular case.
- f) And what about the media? Journalists often serve as effective lobbyists without being even aware of that and without any specific remuneration.

But last but no least: Lobbyists are often presenting technical and economic data and arguments. Why should these be regarded as less (or more) valid only because they are presented by an unregistered (or registered) lobbyist?

Example: Recent attempt to cap roaming charges in the EU

Is it not that in this case somebody wants to score cheap political points? Should or should not the politicians who support the capping be regarded as lobbyists? In whose interest? Is it “innocent, idealist” lobbying? Should the arguments **against** the capping be regarded as more weighty if presented by lobbyists working openly on behalf of telecommunication companies than in case they were presented by “unregistered” lobbyists?

Summary: As to the transparency my conclusion is that the planned measure would not help much with respect to making decisions more legitimate in the eyes of general public (after initial optimism). More about it later on.

Important question: Why do companies hire lobbyists instead of lobbying directly – sending their CEOs or other employees to present their case?

- a) Companies with clever management are aware of the intrinsic paradox: the more their people are immersed in their main business the less capable they are of presenting their case to outsiders
- b) They abhor publicity: the media with their negativist approach to everything but the media themselves.

2. Lobbying in the EU

General description

Let me declare openly that legislative process in the EU is vastly superior in its openness and inclusiveness than the one in my country (and I am sure in any country of the EU). Anyone is invited to contribute to the earliest stages of the drafting of legislative acts and it usually takes years of discussions and – yes – lobbying before the directive or regulation is adopted (18 years for Community Patent).

For a successful lobby on behalf of one's client, first thing to do is **information gathering – monitoring** of what is going on in the EU, what is threatening and what - on the contrary –are new opportunities

A) Monitoring

- Monitoring various studies, discussions and conferences the Commission is procuring in order to find out what is or is not regarded as problem. (Energy security).
- Reading various green and white papers, draft proposals, judgments of the Courts (interpreting the legislation in force)
- Interviewing the Commission's officers and committees members (pesticides, merger) for so-called soft information

B) Defining what you want to achieve.

This must be done - in the final analysis - by the client. But thanks to lobbyists the client is well informed.

C) Reconnaissance: who is (potentially) friendly who is (potentially) unfriendly. Working out the arguments to be used (different for each target group) *example: the steel fund opening*

D) Fanning out to approach the selected targets

Who are the targets of information gathering and lobbying?

A) Decision-makers

- The Council (working groups)
- The European Parliament
- The Commission (committees, officers)
- The Individual Member States (who really counts in the hierarchy)

B) Those who influence the decision-makers

- National political parties
- National and European Interests Groups
- Afflicted subjects (complaints to the Commission)
- The Media

Example: Jute anti-dumping measures, Steel fund opening (greens and feel-gooders), Telecommunications Act,

3. Partial versus general interests – a gloomy view.

I think that all misgivings among general public about „sinister“ power of lobbyists is caused by something completely different than „nontransparency“. Let me give an example: Common agricultural policy in the EU.

- It makes food more expensive. So it is in general interest – the affluent and opulent people excepting – to have it scrapped
- Any attempt by any politician to dismantle it and make food less expensive would end in disaster – for the politician’s career, that is!
- The millions that would profit from the scrapping of the CAP just would not raise their voice. They will just be watching and - in majority – sympathizing with “poor” farmers.
- **The reason is no mystery – a “below-sensitivity-threshold” interest felt by innumerable numbers does not add to anything comparable to a very strong interest felt by few.**
- There are thousands other examples in the area of international trade. Liberalisation of international trade that brought about numberless benefits to people – and especially to non affluent and non opulent ones – is being attacked by stringent and well organized alliances of afflicted capitalists, well-meaning fools and ever present ill-meaning opportunists while all who benefited from it stand by and sometimes even sympathise with protesters.

The conclusion: The distrust felt by the public about the lobbying is just a reflection of its own passivity vis-à-vis well organized special interests. But the passivity of the public is not the fault of special interests – the blame should be put squarely at the feet of the public itself and the media

The solution is to raise awareness and sensitivity. No transparency initiative will help in this regard if the general public itself will remain oblivious to fighting for its interests.

Without population becoming far more active in recognizing and promoting general interests, special interests are bound to keep winning.

In this regard the best situation is in the USA with thousands of the PACs.

4. There is a myth in need of debunking: that media are neutral bystanders.

In fact the media are a lobby with deadly capability to bend the will of decision-makers, responsible to nobody but themselves and completely free from relentless baleful scrutiny by the media to which everyone else in public domain is subjected.

A) Banalization + vulgarization

Czech Radio 1 news recently: (1. Persian Gulf incident, 2. the Brno Zoo chimpanzee's health improving 3. weather forecast

- **“Terrible simplification”** lack of journalists expertise, lack of interest from the public, lack of time and lack of space all contribute to issues being simplified or obscured.— or even completely falsified

The most common disinformation: The term “Brussels or the EU” used thoughtlessly covering vastly different events – in some case the Commission acting in other case Member States acting in the Council or the ECJ delivering its judgment. And sometimes bodies which are not of the EU at all (Council of Europe). Thanks to this sloppy reporting vast majority of the EU citizens (and with perhaps CIA excepting whole USA government) really believe that directives and regulations are decreed by the European Commission (“faceless unelected bureaucrats”)

B) Negativism + (over)dramatization

- **(only bad news sell or keep sales steady)** – vast segments of reality just left out of the picture

The net result is that unique achievements of the EU are rarely if ever mentioned whereas every “negative” side of the EU is highlighted with gusto, exaggeration and without any context. Example: Bier tax, diesel tax, banana shape. The EU is a favourite whipping boy for politicians eager to score cheap points with ignorant public.

And ignorant it is. The media are useless when it comes to portray realistically diverse issues the EU is dealing with daily and in which thousands “bureaucrats, MEP, lobbyists” are taking part trying to hammer out a useful compromise. Too boring, too technical, too complex with no

good guy-bad guy scheme, too positive? Thus the essence of what the EU really is obscured or hidden from public eyes.

The net result of this boycott is that the EU-level political life is seen as unimportant by national political parties and therefore they do not communicate with their colleagues in the European Parliament.

This is not bad only for us lobbyists who cannot rely on national political parties to guarantee that their MEP would behave the way they had promised during the elections to the EP. It is also very bad for their own countries:

The lack of political capital the national parties see in any Brussels activities means that the decision power devolves into the hands of bureaucrats. This process is beautifully described in the famous book “Yes, Mr.Minister”. So when an important new directive is debated at a committee or working group the position of the Czech Republic is determined – with few exceptions (bier tax) – by an obscure bureaucrat from formally relevant ministry or scientific institute (*example cadmium*).

Example: Attempt to ban batteries with cadmium, pesticides

Annex: Official Announcement on the Transparency Initiative

EU lobbyists invited to register from Spring 2008

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<http://www.euractiv.com/en/pa/eu-lobbyists-invited-register-spring-2008/article-162675>

A long-awaited voluntary register for lobbyists was inaugurated by the European Commission on 21 March 2007, which as of next year will require public affairs professionals to state who they work for and how much clients pay them to put their views to EU officials.

Many thousands of people work in Brussels to influence EU legislation. Prior to 21 March 2007, they did not face any binding rules, and there is at present little information to indicate precisely how many of there are and how much money is spent.

Introducing the register, which will be available from Spring 2008, Administration, Audit and Fight against Fraud Commissioner Siim Kallas said: "I hope the lobbying profession will see as an opportunity, rather than a threat - a chance to prove that their business was clean and legitimate."

"All these groups or bodies are invited to register publicly whom they represent and what their objectives are," Kallas added. "They are invited to declare funding sources and major clients. This ensures the Commission as well as the public can identify and assess the driving forces behind positions taken and interests presented."

While the system will be voluntary, the commissioner explained that only those lobbyists who were registered would be recognised as speaking for clients or a sector of industry when they contribute to comments on EU policy that are taken into account when new legislation is drafted.

Lobbyists who did not register would only be seen as speaking in their own name, undermining the weight of their comments. Those who gave inaccurate information would face sanctions.

The around 22,000 lobbyists working in Brussels will have to disclose information on clients and fees under new European Commission rules. The Commission's blueprint foresees a website run by two EU officials that will list all PR consultancies, in-house corporate staff and public interest NGOs as well as their clients or donors and the fees or budgets they receive to influence EU policy.

Kallas first launched plans for the new lobbyists' register in 2005 as part of a wider transparency initiative also embracing disclosure of recipients from the EU's Common Agricultural Policy.

But the project was reportedly watered down by Commission President José Manuel Barroso, Single Market Commissioner Charlie McCreevy and Trade Commissioner Peter Mandelson when it started looking "too radical," some veteran campaigners say.

But Kallas told reporters on 21 March: "No watering down has taken place. Of course, we have had discussions, but the concept has remained the same."

Issues:

On the issue of perks and gifts for lobbyists, the EU has not yet suffered a scandal like that associated with ☐ - a Washington lobbyist exposed in 2005 for cheating clients and bribing US officials to the tune of \$66 million.

The Commission has said its existing rules for EU officials were "crystal clear," forcing them to seek permission before accepting favors or gifts, and requiring them to declare any potential conflicts of interest. Former staff need to inform the Commission about their new jobs for two years after they leave, it said.

Former telecoms commissioner Martin Bangemann left EU politics in 1999 to join the board of Spain's Telefonica SA for a reported \$1 million yearly salary. EU governments launched an ethics lawsuit against him.

The Commission has only recently published a list of special advisers to commissioners, after a transparency group complained that one was on the board of two power companies at the same time as he advised Energy Commissioner Andris Piebalgs.

Positions:

Administration, Audit and Fight against Fraud Commissioner Siim Kallas told journalists: "We'll come with observations and proposals in the second half of the year and see where we need to improve the situation and where it can be left alone," concerning the professional ethics of Brussels' civil servants.

"This is more workable...I find it prudent to act sooner rather than later," the administration commissioner said, adding that reports his original transparency plans had been weakened by Commission President José Manuel Barroso and the trade and industry wing of the Commission were not true.

On the issue of gifts: "The discussion about gifts sometimes becomes absurd. You cannot create an automatic system that can automatically regulate all things that can be treated as gifts."

Lobbying organisations have not yet issued a formal reaction to the register's inauguration - previously, the **European Public Affairs Consultancies' Association** ☐ (EPACA), the representative trade body for public affairs consultancies working with EU institutions, has indicated its support for the registration of all lobbyists but opposes mandatory publication of "commercially sensitive or confidential financial information". It proposes a self-regulating

council to draw up a code of conduct and simply the disclosure of lobbyists' clients and their mission.

Paul de Clerck, of Friends of the Earth Europe in Brussels, said: "Our concern remains that a voluntary registration system will not secure similar transparency from those organisations which simply choose not to sign up. To achieve the European Transparency Initiative's (ETI) stated objective of improving public trust in the EU political process, the Commission needs to make some major improvements."

Luxembourg Green MEP Claude Turmes said: "Shedding some light on the murky lobbying process in the EU is long overdue and would go some way to generating confidence in the EU institutions. Unfortunately, the softly, softly approach proposed by Commissioner Kallas fails to address some of the key areas concerning transparency of lobbying in the EU. The Commission has made no attempt to address the problem of privileged access of some private interests vis-à-vis the institutions, for example through setting guidelines for policy advisory bodies and so-called 'high-level groups'."

The Alliance for Lobbying Transparency and Ethics Regulation in the EU (ALTER-EU) welcomed the Commission's announcement as "an important step in the right direction".

"But given the global relevance of the EU and the influence of organised lobby groups on EU policies," the group's statement continues, "the voluntary approach favoured by the Commission is too weak and too limited.

"Regrettably, the Communication ignores wider problems of undue corporate influence on EU policy-making. By first trying out a voluntary lobbying register, the European Commission is wasting precious time – EU citizens will have to wait several more years before they get effective EU lobbying transparency."

EU and US approaches to lobbying

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Although lobbying techniques in Brussels and Washington are often considered similar, public affairs professionals on both sides of the Atlantic are convinced that differences in "style and substance" will remain between the two capitals. Language and national cultures are only part of the explanation. The traditional, consensus-based approach to EU policy-making and lobbying will probably continue to contrast with the highly professionalised and more aggressive US-style for many years to come. Above all, political institutions in Brussels and Washington are different animals which require to be approached in quite distinct ways.

Background:

To be successful, lobbyists need to adjust to the political system in which they operate. Trying to draw comparisons between EU and US lobbying therefore presupposes a look at the institutional and political framework in Brussels and Washington.

Fundamental differences quickly emerge. The US is a nation state with a federal structure while the EU is a collection of nation states with only partial limitations to sovereignty. While the institutional setting in Washington has been stable for decades, the EU is in constant flux over whether to expand or even roll back Brussels's powers.

The long American tradition of lobbying means the practice is largely accepted, drawing a wider variety of interest groups - including NGOs and citizen's groups - to fight for the attention of politicians. Europeans are more sceptical towards lobbying as a legitimate part of the political process and have turned to it in fewer, yet growing proportions.

Current estimations point to a total of 20,000 lobbyists in Washington. About half this number can be identified in Brussels.

Issues:

In Europe, the general presumption is that EU institutions welcome and indeed need input from civil society organisations. This is mainly explained by insufficient staffing in the Commission and to a lesser extent, in Parliament. According to research, the Commission administration is only 2% the size of the US federal government and is even smaller than the local government of the city of Rotterdam. The total EU budget is about the same as that of Belgium.

As a consequence, the Commission naturally welcomes outside input at the drafting stage of EU policy-making, giving consulted interest groups privileged access at a defining moment in the legislative process. This introduces one of the first main differences between lobbying in Brussels and Washington:

- **Public funding:** Only in rare circumstances does the US government fund non-profit organisations. The opposite is true in the EU where the Commission has tried to balance corporate lobbying by supporting and even setting up non-profit organisations.
- **Revolving doors:** The degree of permeability between the executive power and civil society organisations (whether corporations or civic NGOs) is higher in Washington than in Brussels. Officials moving from public functions to business/pressure groups and vice-versa is less frequent in Brussels whereas it is a fact of political life in Washington.
- **Representation system:** The US democratic system makes members of Congress seeking re-election particularly attentive to the voices coming from their constituencies. In the European Parliament, the representation system is defined at national level on often

contrasting criteria. Lack of knowledge about Brussels politics make MEPs generally perceived as more distant from their voters. The absence of true European parties also makes the EU representative system less readable. As a result, constituencies are clearly less influential than in the US. Lobbying tactics in Washington are therefore heavily defined along local issues which can influence re-election. By contrast, Brussels tactics will seek to build a broader consensus to influence a wide variety of politicians on a particular outcome.

- **Money:** In the US, corporations routinely support politicians' (re-)election campaigns through Political Action Committees (PACs). Although the practice is regulated and the sums capped, corporate funding of politics is still a central element in US political life. Such practices are not recognised or regulated in the EU and are generally seen as unethical. In Europe, money has a bigger tendency to flow the other way, from the public sector to civil society in the form of state aids, grants, subsidies and contracts.
- **Transparency:** In the US, lobbying is regarded as being capable of exerting undue influence and is therefore circumscribed by transparency requirements. The Lobbying Disclosure Act obliges public relations firms and lobby groups to list their clients, the issues they deal with and the money they get to perform these tasks. By contrast, the Commission has only developed minimal and less formalised standards on the consultation of interested parties which are set out in a communication published in December 2002. However, the Commission has so far resisted calls to force consultants and lobbyists to list their clients and budgets as is currently required in the US Lobbying Disclosure Act. Instead, it recommends that lobby groups, consulting companies and interest representations sign the voluntary code of conduct developed by Society of European Affairs Professionals (SEAP) and Public Affairs Practitioners (PAP).
- **Media influence:** In few other countries has the media reached the fourth power status that it enjoys in the US. Combined with the adversarial nature of American politics, (positive) media exposure, particularly at state level, is an important element to consider in every professional public affairs campaign.

Of course, the wider cultural context also plays its part in shaping policies with language one crucial differentiating factor between both sides of the Atlantic. Washington does not have to grapple with 20 different languages as Brussels does. Although English is increasingly imposing itself as the *lingua franca* in Brussels, significantly, many MEPs still value being approached in their native language. Internal political cultures are starkly different too. While US style politics tend to be polarised around bi-partisanship and highly adversarial, Brussels politics draw on a wider array of parties and specific national issues which are often deeply rooted in a country's governance culture (e.g: British *laissez-faire* vs. French command and control).

Overall, the US remains the most highly professionalised place in the world for lobbying. But as the single market develops and the EU gains political might, professionals say the gap with Brussels is gradually closing.

Positions:

Alfons Westgeest, Managing Partner of **Kellen Europe** underlines the case for international and global associations or federations, as well as global NGOs. "Issues, such as security, food & health, consumer protection, fighting poverty, disaster relief efforts, etc. are becoming more and more global," says Westgeest. As a consequence, governments are trying to find common

approaches or solutions on these global issues. However, he points out to differences in timing, procedure and decision-making processes between the EU and the US as posing problems for international coordination. "Association management companies such as Kellen's with fully-fledged offices in the US and Europe are helping associations dealing with these changes and finding new management solutions," he claims.

In a 2002 [communication](#), the **Commission** asserts its intention to "encourage more involvement of interested parties through a more transparent consultation process". The paper, however, only provides "general principles and standards" for consultation within the Commission so that "all the diverse interests" are taken into account.

This approach was confirmed in the Commission's 'Better lawmaking' initiative which aims to promote "a culture of dialogue and participation". Here, the Commission's stated aim is "to establish who is really consulted as part of the Community legislative process". It asks for instance: "Are the smallest voices really and always heard? What are the subjects of consultation? To what extent are people's opinions actually taken into account?"

In an [open letter](#) to Commission President José Manuel Barroso, the watchdog NGO **Corporate Europe Observatory** (CEO) denounced EU rules on lobbying as being "absurdly weak" and called on the Commission to follow the the US model of transparency as set out in the Lobbying Disclosure Act. In its letter, the CEO also criticised the voluntary code of conduct developed by the Society of European Affairs Professionals (SEAP) for being "extremely narrow and entirely voluntary".

Those claims were rejected by the **Society of European Affairs Professionals** (SEAP), which represents professional lobbyists in Brussels. In a [statement](#), SEAP said it was "against the compulsory registration of lobbyists in Brussels". Such a model, it said, would not correspond with the position of EU civil society groups who do not want the introduction of the American model in Europe. In SEAP's view, "self-regulation is the best way to promote ethical behaviour with lobbyists, whether they represent business or civil society group interests". SEAP pointed to the ongoing strengthening of its self-regulatory code of conduct to conclude that there was "no need for EU legislation in this respect". The [revised code](#) was published on 10 February 2005.

"Everybody is welcome to provide input, and dialogue and consultation can be adapted according to the needs of different policy fields," the **Commission** responded following the CEO's open letter. It pointed to binding internal staff rules which impose requirement of independence and objectivity when dealing with lobbyists.