

## THE TRANSPARENCY INITIATIVE – BARKING UP THE WRONG TREE?

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Lobbying is often regarded as a non-transparent and therefore threatening profession by politicians and the public alike. The European Transparency Initiative's (ETI) aim is to shed more light on what EU lobbyists do and who they do it for. The ETI does propose a number of measures to tackle these issues. Some are likely to improve the situation, all of them however need more refinement. While this aim is to be welcomed, much has still to be done to arrive at a solution that really helps solve the problems of the relationship between EU policy-makers and lobbyists.

Four aspects need to be addressed in particular: the definition of lobbying, the treatment of the Initiative's target groups, the voluntary character of the Initiative's core element – a register for lobbyists – , and most importantly, the adequacy of the Initiative's purpose. The following comment critically assesses these four aspects and seeks to point out directions into which a useful transparency initiative should develop.

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### *Defining lobbying*

The key to all measures of the ETI is the definition of lobbying, as only activities under the scope of lobbying are to be covered by the initiative's proposed measures. This is especially important with regard to the question of what will fall under the scope of the declaration of financial resources.

Most interest representatives carry out a variety of activities of which some are directly important for lobbying, some indirectly, and some not at all. Most of the daily work of a lobbyist consists of policy monitoring and the gathering of information in order to understand the political context of decision-making processes. Lobbyists predominantly gather information and try to explain their understanding of the policy process to their employers and the situation of their employers to policy-makers. Most interest representatives would consider only about 10% of their work as direct lobbying in the strictest sense (see also Strauch 1993; Spencer 2006). Think tanks would even consider 0% of their work aimed at exerting direct influence, although they are aiming at indirectly shaping the agenda and debate within the EU institutions – and thereby influence EU politics. Consultancies are likely to declare far less of their work as direct lobbying because they generally act as contact and information brokers and give strategic advice to their clients. Only rarely do they carry out the actual lobbying. Of course their work is likely to amount in influence of their clients on policy issues – but strictly speaking, they would not have to declare these tasks as lobbying, especially when applying the definition of the ETI Green Paper. The Green Paper defines lobbying very broadly as “all activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions”. This definition leaves much room for interpretation as to what interest representatives are to declare – and for which they should reveal the financial background. The idea as such may be useful because it helps understand what lobbyists are paid for. However, the ETI definition of lobbying is not sufficiently accurate for a useful application to interest representatives. How much, and what exactly is lobbying? Is it already the analysis of documents, or only the active approach? If so, what has to be declared? Actors will seek to declare as little as possible, so nothing is gained by leaving them room for interpretation. At the same time, it may not be important to know about all financial resources of various lobbying actor types. For reasons of administrative simplicity, the register should certainly not require

more revelations than actually useful. This has to be refined, in order to come to satisfying information about all activities linked to lobbying outcomes while maintaining the commensurability of the measure.

### *The ETI's target groups*

The ETI essentially targets four groups of actors: company representatives, consultancies, NGOs and think tanks. With these groups, the ETI has chosen a fairly encompassing approach and succeeds in including the major actors of lobbying in Brussels. It also seeks to take into account the different tasks of these lobbyists. NGOs often have interest representation as their major purpose, the work of think tanks is also in its entirety geared towards knowledge development which may constitute lobbying. Company representatives generally constitute or take part in a corporate communication or regulatory affairs department and may have complementary tasks. Public Affairs consultancies may carry out a whole variety of tasks of which activities connected to lobbying only constitute a minor part.

Hence, the Commission seeks to treat the groups differently. And this is where the problem begins. Professional consultancies will be required to reveal the turnover linked to lobbying EU institutions and the relative weight of the clients in this turnover. This will only constitute a small amount of the overall tasks of consultancies, albeit these tasks will primarily ENABLE the clients to influence EU policy. In-house lobbyists and trade associations will have to reveal an estimate of the cost associated with direct lobbying. This information will not reveal much information about the actual influence of either companies or associations. Declaring financial interests are usually of no big problem for those whose interests are relatively clear and whose tasks clearly relate to lobbying, i.e. company in-house offices and interest groups. However, what is won when receiving in writing that these offices are financed by their respective members or companies? Notably, this does not give any information about their influence. In-house lobbyists primarily exert indirect influence, via taking up important positions within their associations and driving the positions of these interest groups; time and engagement is the resource, not the money.

The only group to reveal their overall budget is the group of NGOs and think tanks. They will be required to reveal the overall budget and main sources of funding, such as the amounts and sources of public funding, donations and membership fees. This requirement is astonishing, especially as the information about EU funding – the sum the Commission is especially interested in because of the reproach of financial dependency of NGOs – can be easily gathered without a voluntary register since these declarations have to be made by NGOs when applying for funding already. What the Commission rather seeks to know here is which of the NGOs (or think tanks) that it finances for various purposes are also carrying out lobbying activities. That is a legitimate interest – and it could have serious consequences for NGOs. Such consequences would be surprising however, because NGOs, especially the ones created by the Commission, rightly or wrongly, are certainly least reproached of distorting political decision-making in an immoral way.

For think tanks, the situation is a bit different because information about whether or not a think tank is an independent institution or one with a certain political or economic interest is important to know when using the output of this think tank. However, especially the think tanks themselves refuse to be named lobbyists, and indeed, their work differs. The differential treatment is clearly stricter for NGOs and for think tanks than for any other actor under the scope of the initiative.

However, none of this information will help avoid false information or overlobbying. The financial dependency of NGOs can only be decreased if these NGOs receive less funding – which will most likely result in their disappearance, which does not seem to be in the interest of the Commission either, if it explicitly creates such groups in the first place. This is evident when looking at the financial resources made available for civil society organisations in the funding programmes, for instance, of the Directorates General Environment, Research, Employment or Health & Consumer Protection. Information on whether there actually is an imbalance in financing between NGOs and business would be very interesting as there are no statistics existent on that. But then, we need full disclosure. In any case, that is beside the point as well because the knowledge will not change the relationship of policy-makers and lobbyists – no matter who has more funds, the expertise is needed. Already, policy-makers prefer speaking to

business than to NGOs, because this is where they receive the technical information needed to make a legislative act work.

### *Voluntary instead of mandatory register*

A further caveat concerns the character of the planned register for lobbyists. To make compliance with the ETI more attractive, the Commission seeks an incentive-based rather than a regulation-based approach and seeks to establish a voluntary register of lobbyists. Lobbyists are required to declare their financial background and the issues they primarily work on, and they will receive preferential information and invitations to stakeholder meetings in return. This is certainly very attractive – but it will have less impact on those the Commission is really interested in: public affairs consultancies whose interests are not always obvious. Most lobbyists in Brussels will have no problem with registering themselves. The interests of specific companies, trade associations, business- or public interest groups are fairly clear to everybody. Those who do not wish to declare their interests will choose not to join the register – but given the informal information channels Brussels possesses, it is unlikely that this choice will prevent them from gaining the preferential information of their fellow registered lobbyists, or yield them less influence because they may miss important stakeholder meetings. The Commission will certainly continue to include the most relevant stakeholders, irrespectively of their registration in the lobby register.

Instead, the register will lead to even closer relationships between interest representatives and the Commission, because in return for the registration, the Commission seeks to disclose even more information on consultations and pre-information.

There is a group of lobbyists where the financial background and interest declaration would be helpful and even important: public affairs and legal consultancies who are conducting lobbying activities for a large number of diverse clients. However, this is the group that is least likely to register in a voluntary register – not necessarily because they have something to hide, but because they are restrained by their clients. Also, they will have greater problems than the other groups to even define which of their activities are lobbying activities. Only a mandatory register would force these lobbyists to reveal their

information. It would need to be designed carefully however, in order to enable the consultancies to come to an agreement with their clients.

### *The ETI's overall purpose*

Finally, the most fundamental issue of the ETI needs to be addressed – the adequacy of the ETI's overall purpose. All proposals for refinement tackled above presuppose that the ETI as such is an effective and useful initiative. However, policy-makers, the public and lobbyists must be aware of the fact that the ETI only treats the symptoms, it is not a cure for problematic relations between lobbyists and policy-makers. The ETI rests on two basic assumptions. Firstly, lobbying is expected to create a lack of transparency, and this lack of transparency is considered a threat to the legitimacy of political decision-making. Secondly, more transparency in lobbying is, notably through creating more accountability of lobbyists with a code of conduct and the revelation of their financial background, is expected to solve the problem.

These assumptions fail to take the greater context of EU policy-making into account. Lobbying is largely considered a greedy, secret, sometimes illegal activity. The media as well as regular cases of corruption facilitated by lobbyists support this view. At the same time however, policy-makers need the contact to European and national non-governmental organisations such as Greenpeace, Amnesty International, Oxfam or ATTAC, trade associations such the farmers' association COPA/COGECA, business interest groups such as the MEDEF or the various ad-hoc or more formalised citizen initiatives in order to understand the problems of the individual citizen and to decide accordingly. All these mediators of information are lobbyists too. The interest of policy-makers is therefore not to create obstacles for lobbyists, but to stop those who do perform their activities in an illegal way and who may thereby harm the democratic and pluralist debate in political processes. By putting the issue of financial resources in the spotlight instead, and despite a declaration supporting the importance of lobbying in the Green Paper on the ETI itself, the Commission has unfortunately put oil into the fire of lobby-scepticism and has re-triggered a lot of discussion over lobbying as a negative component of political decision-making. That is not helpful to either side and the overall focus is not helping to solve the problems the Commission identified in its relationship to lobbyists.

The crucial problem at the European level is that policy-makers themselves do not possess a strong mandate by the EU citizens. The European Commission as the strongest European institution is a bureaucratic body whose members are European civil servants, selected on the basis of their performance in the so-called 'concours' (the entry exams for a career in the European Commission), hired for a limited amount of time, or they are sent by national public bodies as so-called 'national experts'. The Commissioners and the Commission President are appointed by the national governments and approved by the European Parliament. The Council of the European Union as the body with the final decision-making power consists of national ministers, the European Council consists of the Heads of State. These individuals possess an indirect mandate for European decision-making, as they have been elected on the Member State level, essentially for their work at the national level – but the office also gives them the power to act on behalf of the citizens of their member state at the European and international level. Many citizens do not realise the scope of the vote they cast in national elections and are therefore not aware of the positions they agreed to support by this vote. The European Parliament is the only directly elected European institution. Its powers have substantially increased from a very weak institution to an important element of the European checks and balances. However, it still lacks the right to initiate legislation, which hinders it to develop a political agenda of European policymaking of its own.

These weaknesses lead to a distance between European institutions and EU citizens. Lobbyists are viewed as a group of representatives of these citizens that can help decrease the distance and hence strengthen the legitimacy of the decisions of the weakly legitimated EU institutions, because a large number of public and private stakeholders seek to represent their particular interests at the EU level. This is expressed in initiatives such as the White Paper on European governance, where an increased participation of organised civil society is explicitly desired.

The real problem is that first, nobody knows to what extent policy-makers make decisions based on their own conviction, and to what extent special interests make decisions that are merely signed by policy-makers. Second, that lobbyists are used to substitute the formal mandate EU institutions should receive by the citizens to gain democratic legitimation for their output. If policy-makers indeed consider lobbyists such a

crucial factor in decision-making, we face an additional problem by the fact that no information exists on whether the included lobbyists really represent ALL stakeholders – and if, even if this information is around, they are actually included. Many High-Level Groups of the Commission only seek members who can contribute factual knowledge on the technical issue because the Commission officials in charge believe that the political debate only commences at the Parliamentary level. In these cases, NGOs, for instance, are not even invited. This information would have to exceed the knowledge a broad register can provide. It would be needed on the basis of each and every policy process.

### **What will happen and what should happen?**

Despite the above criticism, the ETI also has a number of good points. Of course lobbyists do not always stick to the rules of respectful interaction, and some stakeholders may seek to pressure in ways that do require stronger regulation. According to the ETI, four issues are especially annoying. These are the dissemination of false or rather, clearly imbalanced information and pressurising via tools such as email spamming. Additionally, the Commission understands that there is a dilemma in their relationship to NGOs. The Commission has created many of them in order to obtain a balanced view on policy issues, and the Commission continues to see the imbalance of financial resources in interest representation between business and public interests as a problem. It lacks however the figures to understand how large this imbalance actually is and therefore the basis for any action. Many of the NGOs in Brussels rely on the financing of the Commission. This dependency is a crucial problem because it creates a conflict of interests for NGOs as well as for the Commission. Finally, each policy-maker should have the right to clearly understand on whose behalf a lobbyist is speaking. Consequently, the ETI stresses that the “the main objective of revealing how interest representatives are funded is to ensure that decision-makers and the general public can identify and assess the strength of the most important driving forces behind a given lobbying activity”. Knowing more about the number of lobbyists, their distribution over the issues lobbied and the budget spent on lobbying activities, even if ill-defined and only suitable as an indicator covering activities directly related to lobbying in a strict sense is interesting and gives an idea on what it costs to be involved at EU level. Perhaps it will also raise the awareness of policy-makers for the need of a balance between the voices

of those who can afford a professional representation and those who cannot, and are therefore not as present as those with lobbyists.

However, the tools of the ETI are largely inadequate to achieve its purpose. The greater transparency, especially with regard to the financial resources of lobbyists, will serve to satisfy public interest and may facilitate to shift the blame for political decisions to a greater or smaller degree to lobbying efforts. Those who lobby over-aggressively will continue to do so however, normally because they do not know any better, because they are forced to by their members or clients, or for other reasons. They may use other means than those forbidden by a code of conduct, but the problem will not go away. False or distorted information will not cease either. Experienced lobbyists know very well that their information needs to be correct, because a politician who was once falsely informed and used that information will never trust this lobbyist again and will ensure that fellow decision-makers are made aware of the situation as well. In economic terms, those who give false information are sorted out by the market, and they are easy to detect. Of course every lobbyist will interpret information from their point of view. From a neutral standpoint, this is already distortion, but it is also a lobbyist's job. For this reason, politicians should certainly know who they are talking to and on whose behalf the lobbyists speak – but this is essentially transparent already, the planned register will not change that situation and certainly not prevent false information. Financial dependencies will also continue – because particularly the European Commission has a clear interest in creating NGOs, and hence in the cooperation with them. Apart from the fact that Commission-financed NGOs have to reveal their financial sources for project applications anyhow, the register is suited to enable a tight grip of the Commission on the positions NGOs take, because the financial information could be used to forbid them to use Commission-funds for lobbying. If they do so, the basic reason for the existence of those NGOs is questions, because the Commission's original purpose of supporting them is to create a balance of voices at the EU level. If this is a legitimate purpose of a governmental institution can be debated (such a creation of interest groups is illegal in the US, and in democratic pluralist systems such interest groups should emerge bottom-up), but the financial register is not the means to do so, and as the major new budget lines of other Commission Directorate Generals show, is also not the desired goal.

So, what should be done in order to make the ETI work? Overall, the ETI fails to realise that – other than in the US, for instance – influence in EU policy-making is far less about money spent than about informal power, networking, contacts, and how good a lobbyist is at using them (Michalowitz 2007). It is more important to know who lobbyists have contact with and on which issues they are working. The register will give an indication of the broad issue areas interest representatives are working on – and this is where the emphasis in the analysis should be placed and should be linked to the policy-makers with frequent contact to interest representatives. The following measures are suited to ensure that information is obtained that can actually make lobbying more transparent and lobbyists as well as policy-makers more accountable:

- Assess by taking stock and comparing inputs to public consultations which issues interest representatives are working on
- Make regular surveys on the interaction between policy-makers and lobbyists. Which Members of the European Parliament and which Commission officials are in contact with which interest representatives, and how often, working on which issue?
- Regularly compare opinions given by Members of the European Parliament and Commission officials on particular issues and the position papers of respective interest representatives
- Collect participant lists of events attended by policy-makers as speakers. This is important because when policy-makers are invited as speakers, they are henceforth lobbied by the audience. The personal contact and the question round are for many lobbyists the main purpose of these events.

These measures should not have as a consequence to restrict this contact. The mediating role of lobbyists is important in large complex political systems such as the European Union. They should however help understand who is representing whom. This would help all sides – policy-makers, the public and lobbyists who desperately seek to improve their image, to gain more transparency.

## References

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