

## Transparency of lobbying at EU level

### SUMMARY

Lobbying has become an increasingly prominent issue in the European Union (EU) political and institutional debate over the past 20 years, with many comparing Brussels to Washington DC in this regard. The principal reason for this phenomenon is almost certainly the growing role of the EU as a policy-maker. As the EU institutions have expanded their regulatory competence in areas such as environmental law, the single market and consumer protection, and policy proposals have become more complex, they have increasingly come to rely on technical expertise to draft legislation, provided by outside interest groups among others.

In parallel, criticism of the balance of interests represented through lobbying in EU decision-making has grown. Concerns relate to the lack of official (and reliable) estimates of the number and type of interest groups, the amount of money spent on lobbying, and possible conflicts of interest. It is difficult to calculate the cost of opaque (or under-regulated) lobbying, either in monetary terms or in loss of confidence in EU institutions, but it may be argued that regulation of lobbying could have an impact in both these regards. Efforts to improve transparency of lobbying at EU level are ongoing. A revised European Transparency Register was launched in January 2015, and the European Commission has published a roadmap for the adoption of a mandatory register, whilst the Council of the EU launched discussions on initial steps towards joining the transparency register already established by the Commission and Parliament.



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### Glossary of terms

**Advocacy:** in legal terms, advocacy refers to all attempts by civil society organisations (e.g. non-governmental organisations, foundations, think-tanks, consultancies, or religious bodies) to influence policy and decision-making processes.

**EU lobbying:** all activities carried out with the objective of influencing the policy-making and decision-making processes of the European Union institutions (Source: [European Commission](#)).

**Interest group:** Behavioural theory defines interest groups on the basis of their activities related to influencing policy outcomes; an alternative definition of interest groups focuses on their organisational characteristics and presents them as voluntary, democratically accountable organisations based on individuals (Source: [Salzburg Centre of European Union Studies](#)).

**Lobbyist:** someone carrying out interest representation, working in a variety of organisations, such as public-affairs consultancies, law firms, non-governmental organisations, think-tanks, corporate lobby units ('in-house representatives') or trade associations (Source: [European Commission](#)).

## Regulating lobbying at EU level

Lobbying has become an increasingly prominent issue in the European Union (EU) political and institutional debate over the past 20 years, with many comparing Brussels to Washington DC in this regard. The principal reason for this phenomenon is almost certainly the **growing role of the EU as a policy-maker**. As the EU institutions have expanded their regulatory competence in areas such as environmental law, the single market and consumer protection, and policy proposals have become more complex,<sup>1</sup> they have increasingly come to rely on technical expertise to draft legislation, provided by outside interest groups among others. This process appears to have had several effects.

This process has created a **stronger relationship** between interest groups, which want access to the EU legislative process, Members of the European Parliament (EP), and EU officials more widely, who often welcome information that reduces uncertainty about policy outcomes and provides support for the policy process.<sup>2</sup> It has encouraged **moves towards greater transparency and accountability** in EU policy-making. Indeed, regulatory efforts to address lobbying practices may in fact also be explained as an attempt to respond to criticism regarding the transparency and accountability of EU decision-making, especially in the aftermath of scandals involving undue influence on EU policy-makers, such as '[Dalligate](#)' and the '[cash-for-laws](#)' scandals. It has favoured **inclusivity** of interests from the business and civil society sectors. Pressure groups have provided European citizens a 'voice' between elections, helping to overcome the democratic deficit within the EU.<sup>3</sup> Finally, it has encouraged **plurality** of EU decision-making. Not only do big corporations, trade unions and non-governmental organisations (NGOs) lobby the EU, but so too do smaller and weaker pressure groups, which have been able to access EU policy-making and provide to under-represented minorities a greater say in EU law-making.

### *Progress in regulation of lobbying in the EU*

The first official recognition of lobbying activities at EU level dates back to 1988, when a report issued by the European Commission – the 'Cecchini Report' on completing the single market<sup>4</sup> – recommended that business interests participate more actively and directly in EU policy-making. In 1995, the EP set up a register for interest

representatives, followed by the European Commission in 2008. The two registers were merged in 2011, becoming a [Joint European Transparency Register](#) (TR).

Since 2008, the EP has repeatedly called for a *mandatory* TR. In 2014, the newly elected Commission President, Jean-Claude Juncker, put the issue of transparency of lobbying regulation on the [political agenda](#), promising to introduce a proposal for a mandatory register by 2016.<sup>5</sup> This register would replace the current voluntary lobby register: on this point, the Commission's First Vice-President, Frans Timmermans, [promised](#) to introduce a draft interinstitutional agreement for a mandatory register, which would cover not only the Commission and the EP, but would also include the Council (which thus far remains only an observer in the system). In addition, since 1 December 2014, the Commission has undertaken to publish information regarding meetings held with lobbyists by Commissioners, members of their private offices, and/or Directors-General.

### Effective regulation

What effective regulation of lobbying should mean in practice is itself contested. On the one hand, regulation is supposed to favour the flow of information and data from interest group representatives to decision-makers. On the other, there are calls to guarantee transparency about who is influenced by whom, and with respect to which policy.

In the case of the EU, there are **four main concerns** with regard to the transparency and accountability of lobbying practices: (1) estimates of the number of interest groups that lobby the EU institutions; (2) information on the typology of EU interest groups; (3) information on lobbying expenditure; and (4) conflicts of interest.

The [Centre for Public Integrity](#) (CPI), a not-for-profit organisation that champions investigative journalism, has created an index to measure the robustness of regulatory systems against 48 criteria, with a point-scale ranging from 1 (minimum robustness) to 100 (maximum robustness). The earlier Commission (2008) and EP (2006) lobby registers scored poorly on the CPI index, at **24** and **15 points** respectively. The current TR gets **31 points**, a significant improvement, although this still puts it towards the lower end of 'medium-regulated systems' (regulatory systems scoring between 30 and 59 points).

Another example of such analysis is a report entitled '[Lobbying in Europe](#)', published by Transparency International in April 2015. It ranks the transparency and accountability of the Commission, the EP and the Council, giving them an **average of 36% for quality of lobbying regulation**. According to the report, the Council is the institution with the worst performance, with a **score of 19%** (17% for transparency, 29% for integrity), whereas the Commission and the EP score significantly better in quality of lobbying regulation, at **53%** and **37%**, respectively.

#### *Number of interest groups*

Estimates of the number and distribution of EU interest groups vary greatly. This is due to the fact that no single source of data exists on lobbying activities at EU level. Instead, a **variety of sources** includes: the TR, various Commission directories (e.g. CONECCS – the Commission's former database on consultation by the European Commission with

#### EU lobbying timeline

**1995** – European Parliament institutes its Transparency Register

**2006** – [European Transparency Initiative](#) is launched

**2008** – European Commission institutes its Transparency Register

**2011** – Joint Transparency Register unifies the transparency registers of the Parliament and the Commission

civil society), directories managed by private organisations operating in Brussels, and datasets published by non-EU entities, such as the list of international NGOs which enjoy participatory status within the Council of Europe.<sup>6</sup> These directories not only gather data from different recipients, they also categorise and systematise them according to different methodologies. In consequence, no reliable and 'certified' information exists on the number of lobbyists operating at EU level.

As of 1 December 2015, the TR includes a total of **8 728 registrants**. Although the number of registered lobbyists in the TR has grown by around **60%** since 2011, this figure underestimates the actual total population of EU interest groups. TR registration is not compulsory, which is reflected in the fact that TR coverage is estimated at around **75% of business-related organisations** and around **60% of NGOs**.<sup>7</sup>

Unofficial estimates abound - and often report different figures. Corporate Europe Observatory (CEO) – a not-for-profit organisation devoted to research and advocacy of transparent lobbying – estimated in a 2011 [study](#) that between **15 000 and 30 000** lobbyists were targeting EU decision-makers in Brussels. In 2001, the Commission estimated that Commission and EP officials face **20 000 lobbyists** on a daily basis.<sup>8</sup> Recent Politico [research](#) looked at the meetings with lobbyists declared by European Commissioners and their private offices between December 2014 and April 2015: in only five months, a total of **2 100 meetings** (of which 570 involved Commissioners) were reported.

#### *Typology of interest groups*

The typology of EU interest groups also varies considerably. According to the TR, lobbyists working for businesses and trade/business/professional associations account for over **50%** of registrants (**4 427 out of 8 728**), which may explain why they make up a majority of the meetings with the EU institutions. (According to Transparency International,<sup>9</sup> of the 4 318 lobby meetings declared by the Commission between December 2014 and June 2015, more than **75%** were held with corporate lobbyists.) NGOs make up the second largest share (**2 252 registrants**, and 18% of meetings with the Commission), followed by professional consultancies, law firms and self-employed consultants (**1 015 registrants**).

The accuracy of these data, however, is contested. Law firms are a case in point. These are considered among the most dynamic consultancies operating in Brussels (having multiplied **over five times** since 1995, and currently accounting for **53%** of the consultancy market in the EU).<sup>10</sup> At present, however, not only are there fewer than **100 law firms** registered in the TR, but the information they provide is often incomplete.

Other studies report different balances between EU pressure groups. According to a 2007 survey based on CONECCS, individual players (for example, think-tanks, companies and public relations firms), rather than business/trade associations, account for over **40%** of interest representation at the Commission and Parliament.<sup>11</sup> Other research from the same year reported that **75%** of EU lobbyists (**3 500** of the estimated **5 000** interest groups operating in the EU) represented businesses and professional organisations, whereas **only 20% represented civil society**.<sup>12</sup>

#### *Spending on lobbying*

Scarcity of information also affects expenditure on lobbying at EU level. At present, little information is available, and available data tend to be sector-specific. According to a

2013 [report](#), for instance, the financial services industry spends over **€120 million a year** lobbying EU institutions. Another report, published in 2014, examined lobbying expenditure in three sectors: the automobile industry, aviation and energy, concluding that between 2008 and 2013, these sectors increased their spending by around **70%**.<sup>13</sup>

[Lobbyfacts](#), a website that collects and aggregates data from the TR, reports that the top 10 companies engaged in EU lobbying spend a combined total of **€39 billion a year**. Philip Morris, ExxonMobil and Microsoft are the top three lobbying spenders in Brussels (over **€4.5 million per year** on lobbying each).

#### *Conflicts of interest and 'revolving doors'*

According to a widely used definition, conflicts of interest are 'a set of circumstances that creates a risk that professional judgement or actions regarding a primary interest will be unduly influenced by a secondary interest'.<sup>14</sup> With regard to lobbying practices, the primary concern is what is referred to as '**revolving doors**' – the practice of professionals moving from political or administrative posts to roles in the private sector, or vice-versa. Revolving doors are generally seen as an issue, either because of concerns regarding exploitation of former civil servants' insider knowledge by their new private-sector employers to gain privileged access to and influence in the EU institutions, or because public officials with a past in the private sector could be improperly influenced when carrying out their duties, thus compromising the integrity of public decisions.

Alter-EU – a civil society organisation focused on analysis of lobbying – has repeatedly denounced the lax rules in place at EU level to tackle the revolving-door phenomenon. According to Alter-EU, as many as **50%** of the staff who work at the biggest lobby firms in Brussels have a background in one of the EU institutions. A recent [report](#) by Alter-EU indicates that in 2009-10, **6 of 13** departing Commissioners moved from public office into corporate or lobbying roles.

The issue of revolving doors is addressed in the EU institutions' **codes of conduct**. The first code of conduct (1999) of the Commission introduced an obligation for Commissioners to declare their financial interests and a one-year 'cooling-off' notification period whenever a Commissioner left public office. This code was amended in 2004 and again in 2011, following an EP [study](#) underlining the shortcomings of the existing rules. In its latest version, the [code of conduct](#) prohibits (for a period of 18 months) Commissioners who leave office from lobbying on the same issues as covered by their previous EU portfolio. The EP has its own [code of conduct](#) banning former Members from using their life-long pass to access the EP for lobbying purposes. Finally, the [Staff Regulations](#) for officials and other staff in all the EU institutions include a 12-month cooling-off period for senior officials on lobbying jobs, a ban on lobbying activities during sabbatical periods (introduced in 2013), and a specific procedure for screening new staff for potential conflicts of interest.

### **Economic impact**

It is very difficult to provide anything more than general estimates of the financial impact of the shortcomings of the regulation of EU lobbying practices. Transparency itself is a difficult concept to quantify, as proven by the extreme variability of the indices providing access to records, information or policies. It may be assumed, however, that the economic impact of opaque (or under-regulated) lobbying includes direct and indirect consequences, mainly as a result of sub-optimal policy-making.

*Direct impact*

Direct impact has immediate consequences for the EU economy. Corruption is probably the most obvious and easily quantified example. According to the Commission, corruption costs the European economy **€120 billion a year**. It is not by chance that the [2014 EU anti-corruption report](#) includes 'illegal lobbying' among the causes of corruption in the EU, and stresses that more transparent lobbying would decrease the likelihood of corrupt practices. Direct economic impact may also be incurred in EU institutions' efforts to address conflicts of interests (ethics training, internal auditing, etc.). Related to this, one should consider the increased efforts put by the EU institutions to tackle forms of corruption and, on a more general level, to boost transparency of decision-making.

*Indirect impact*

Indirect impact does not affect directly on the EU budget. However, in the long-term, they may still negatively affect European public finances. It is noted, for instance, that lack of transparency may lead to the emergence of 'interest niches' (policy areas dominated by a small set of actors) that may hamper efficiency, growth and productivity.<sup>15</sup> In 2006, a [study](#) reported that European professional associations enjoyed the highest level of representation at the Commission (**43%** access rate, **38%** for the EP and **11%** for the Council), whereas national associations were the least represented. According to a study on state and interest group activity in the EU, **72%** of those with a seat on the Commission's consultative committees represent business interests.<sup>16</sup> Integrity Watch reports that almost all companies that had more than 10 high-level meetings with the Commission from January to June 2015 had declared at least €900 000 per year in lobbying expenditure. This prompts accusations of unbalanced representation: **75%** vs **25%** in favour of business (with the financial markets and the digital economy considered the most unbalanced portfolios, where respectively, 90% and 89% of meetings were with business representatives).

A recent [study](#) cites the example of the revised Tobacco Product Directive (TDI); where negotiations saw a significant shift away from the NGO position towards that of the tobacco industry (e.g. reduction in the size of pictorial health warnings from 75% to 65% of carton size, and rejection of the ban on slim cigarettes).

*Economic benefits*

The potential economic benefits of increasing transparency in the regulation of lobbying activities should also be acknowledged. Open Data is a case in point. The Commission [estimates](#) that the full use of data in an open format in the 23 largest EU member-state governments could **reduce administrative costs by 15% to 20%**. In a [study](#) released by Transparency International in 2014, the impact of Open Government was measured according to four variables (participation, co-production, transparency and economy), each graded on a 0/100 point scale. The generally positive economic impact of introducing Open Government was graded at **54.2 points**.

**Outlook**

There has been a sustained effort to make regulation of lobbying at EU level more efficient, in order to decrease (direct and indirect) costs and to increase benefits. This is, however, an on-going task: policies introduced by the Commission to increase lobbying transparency are currently being implemented, and the [TR was revised](#) in 2014. While the TR remains a voluntary register, new rules were introduced on financial disclosure (introducing a level playing field for all registrants concerning financial information) and

to encourage lobbyists to register. A 2014 study commissioned by the EP found that **Article 352** of the Treaty on the Functioning of the European Union would be an adequate legal base for making the TR a mandatory register,<sup>17</sup> although this would require unanimity within the Council.

[Directive 2014/95/EU](#) was also approved in 2014. This concerns the **disclosure of non-financial and diversity information** by certain large undertakings and groups (500 employees or more), notably on policies, and anti-corruption and bribery issues. The Directive (to become operational in 2017) is expected to apply to some **6 000 organisations** across the EU.

Following the TR revision, in April 2014 an [official statement](#) by the European Ombudsman called for further reform of the register and for greater transparency. She called on the Council to participate in the TR and encouraged the Commission to adopt stronger incentives to convince lobbyists to register, following the example of the EP (for example, by restricting access to its premises for non-registered organisations). She also called on the Commission to improve the monitoring and comparability of data in the register (to avoid TR-related cases of mismanagement).

Within the EP, a [timetable](#) to prepare negotiations for the further reform of the TR has been drafted by the EP Committee on Constitutional Affairs (AFCO). Earlier this year, the Commission released a [roadmap](#) leading to the adoption of a mandatory TR. Six Council members submitted a 'non-paper' to the preparatory 'Working Party on Information'. The paper, '[Enhancing Transparency in the EU](#)', contains practical proposals to enhance transparency in the Council. One proposal concerns initial steps towards a Council register on lobbying. The document states that 'it is essential that all co-legislators apply the same standards for transparency, which implies that the Council joins the transparency register used by the Commission and the EP'.

### Main references

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## Endnotes

- <sup>1</sup> See H. Klüber, The contextual nature of lobbying: Explaining lobbying success in the European Union, 12(4) European Union politics, 2011, p.483-506.
- <sup>2</sup> Lobbying activities aimed at Members of the EP, for instance, almost doubled between 1994 and 2005. See D. Coen, [Lobbying in the European Union](#), PE 393.266, 2007.
- <sup>3</sup> See, for instance, European Economic and Social Committee, [The Civil Society Organised at European Level](#), Brussels 1999.
- <sup>4</sup> See Commission of the European Communities, Europe 1992: The Overall Change, SEC 88(524) final, 1988.
- <sup>5</sup> This decision followed the positions taken by the European Commission and the Parliament. See, for instance, European Parliament, Directorate-General for Research, [Lobbying in the European Union: current rules and practices](#), 2004. The document states that 'lobbying is a legitimate part of the democratic system, regardless of whether it is carried out by citizens, companies, or firms working on behalf of third parties, think tanks, lawyers, public affairs professionals'.
- <sup>6</sup> See A. Wonka, F.R. Baumgartner, C. Mahoney and J. Berkhout, [Measuring the size and scope of the EU interest group population](#), 0(0) European Union politics, 2010, p.1-14.
- <sup>7</sup> See J. Greenwood and J. Greger, [The Transparency Register: A European vanguard of strong lobby regulation?](#), 2 Interest groups and advocacy, 2013, p.139-162.
- <sup>8</sup> See European Commission, [European governance - a white paper, COM \(2001\) 428 final](#).
- <sup>9</sup> See Transparency International, [EU Integrity Watch Brussels lobbying in numbers](#), Brussels 2015.
- <sup>10</sup> See C. Lahusen, [Commercial consultancies in the European Union: the shape and structure of professional interest intermediation](#), 9(5) Journal of European public policy, 2002, p.695-714.
- <sup>11</sup> See J. Berkhout and D. Lowery, [Counting organised interests in the European union: a comparison of data sources](#), 15(4) Journal of European public policy, 2008, p.489-513.
- <sup>12</sup> See D. Coen, [Empirical and theoretical studies in EU lobbying](#), 14 Journal of European public policy, 2007.
- <sup>13</sup> See M. Crepez, R. Chari, The EU's initiatives to regulate lobbyists: good or bad administration?, in S. Novak, The surprising effects of transparency on the EU legislative process, IEE, 2014.
- <sup>14</sup> See F. Zibold, [Conflicts of interest in public administration](#), European Parliamentary Research Service, 2013.
- <sup>15</sup> See F.R. Baumgartner, B.L. Leech, J.M. Berry, M. Hojnacki and D.C. Kimball, [Lobbying and policy change: who wins, who loses, and why](#), Chicago University Press, 2001.
- <sup>16</sup> See C. Mahoney, [The power of institutions: State and interest group activity in the European Union](#), 5 European Union Politics, 2004.
- <sup>17</sup> See M. Nettesheim, [Interest representatives' obligation to register in the Transparency Register: EU competencies and commitments to fundamental rights](#), Brussels 2014. Article 352 permits the use of a special legislative procedure in cases in which EU action is necessary to attain a specific objective and there is no specific legal basis in the Treaties. The study assumes that transparency could be the objective pursued by the EU.

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