

ALTER EU submission to the consultation on the ETI Green Paper – Chapter 1

Introductory remarks:



The Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), brings together over 140 civil society groups, trade unions and public affairs firms from across the EU. We believe that transparency around EU lobbying is currently insufficient. ALTER-EU would like the EU to adopt effective measures that will allow for public scrutiny of EU decision-making.

For more information about ALTER-EU please visit our website:
<http://www.alter-eu.org/about>

ALTER-EU made specific recommendations to improve lobbying transparency and ethics rules in January 2006. We include these recommendations in an annex as they are still valid and provide more technical details on specific questions. The following response concentrates on our main arguments of principle on lobbying and transparency.

Transparency and Interest Representation (Lobbying)

Do you agree that efforts should be made to bring greater transparency to lobbying?

We agree with the Green Paper's starting point that "relations between the Commission and interest representatives must be open to outside scrutiny".¹ We also fully support the assertion that "When lobby groups seek to contribute to EU policy development, it must be clear to the general public which input they provide to the European institutions. It must also be clear who they represent, what their mission is and how they are funded."²

The European Transparency Initiative should seek to secure what Commissioner Kallas described as 'visibility'. All European citizens, particularly those who are not based in Brussels, should be able to see who is influencing or attempting to influence EU decision making, how they try to do this, and on whose behalf they are acting. Comprehensive and detailed information on lobbying is a precondition for effective democratic scrutiny and improving the quality and legitimacy of EU decision making.

The European public will only be able to judge whether special interests have undue influence in the EU decision-making processes if they are provided with meaningful, comprehensive and detailed information on the activities of lobbyists. ALTER-EU believes that transparency around lobbying combined with an improved ethics code for European Commission staff are required to restore public trust in the EU institutions.

The European Transparency Initiative provides a significant opportunity for the EU to formulate a rigorous and reliable lobby registration system. This system can draw important lessons from the lobbying transparency registers developed in the US (where information from lobbying disclosure legislation helped expose the recent 'Abramoff' scandal), Canada, and new EU Member States like Poland and Lithuania. We believe that it would be a real missed opportunity if the ETI fails to move beyond the voluntary approaches that have been in place in Brussels for almost a decade. These have patently not delivered external transparency around EU lobbying.

The European Commission and the other EU institutions are among the most lobbied political institutions in the world. Yet, as the Green Paper points out, there is a serious “lack of information about the lobbyists active at EU level, including the financial resources which they have at their disposal.”³ We still do not know basic information about the lobbying industry. The oft-cited estimate of €60-90 million annual turnover in the Brussels lobbying business is a good example of this lack of information. The real turnover is likely to be many times higher. In a contribution to the *Handbook of Public Affairs* (2005), a former employee of a major lobbying consultancy estimated the turnover of corporate lobbying alone to be €750 million to €1 billion per annum.⁴ These figures suggest that the scale of lobbying activity in Europe is much greater than is commonly acknowledged and that the differences between Brussels and Washington D.C. are not as great as some claim. Annual spending on lobbying in Washington D.C. currently amounts to around \$2 billion.⁵

The EU should draw lessons from the existing lobbying disclosure systems in North America and the New Member States and develop an effective, state-of-the-art register that will allow public scrutiny of EU lobbying. This system should provide basic, up-to-date information about how much is spent on influencing the EU decision making process.

These models clearly demonstrate that mandatory lobby disclosure is feasible. However, the ‘Abramoff’ scandal in the US has been used to argue that a mandatory system like the US Lobby Disclosure Act (LDA) doesn’t work. Those arguments are fatuous as they disregard the very important fact that information from the LDA helped to unravel lobbyist Jack Abramoff’s net of influence and corruption. He has been convicted and imprisoned. In that sense, the ‘Abramoff’ scandal showed that the LDA works – although not perfectly. Monitoring and enforcement of the LDA could be improved. Therefore, the lesson to be drawn from the US Lobby Disclosure Act should be to strengthen the oversight mechanisms in a future European lobby disclosure system. A second lesson is the critical importance of developing an online searchable database for information on registered lobbyists to improve public scrutiny. This should be constructed so as to provide lobbyists with a simple facility to submit information.

The EU system must avoid loopholes and other weaknesses identified in disclosure systems elsewhere. This for instance means ensuring that ‘astroturf lobbying’ (i.e. fake grassroots campaigns that appear to mobilise the general public to engage in lobbying undertaken by consultancies on behalf of clients), a relatively recent and potentially deceptive method now used in Europe, is disclosed.

The ALTER-EU recommendations sent to the European Commission in January 2006 include more detailed proposals for how this can be achieved.⁶ ALTER-EU is concerned that the European Commission currently fails to implement strict ethics standards for its staff. The recurring concerns about revolving doors between the Commission and private sector companies with a direct financial interest in EU legislation are a problem that deserves urgent attention. Regrettably this is not addressed in the Green Paper.

Questions

Do you agree that lobbyists who wish to be automatically alerted to consultations by the EU institutions should register and provide information, including on their objectives, financial situation and on the interests they represent? Do you agree that this information should be available to the general public? Who do you think should manage the register?

ALTER-EU believes that *all lobbyists* (with a budget over a to-be-defined minimum)⁷ should register and report. The incentive proposed in the Green Paper (automatic alerts to upcoming consultations) will not secure meaningful levels of compliance.

Achieving high levels of compliance is vitally important. A register (including information on lobbying budgets) that gave only a partial picture of those lobbying the EU could be dangerously misleading. Those lobbyists involved in deceptive and illegitimate lobbying practices, and thus eager to avoid public scrutiny, are unlikely to register and report voluntarily. Commercial lobbyists with clients who wish to avoid visibility could be dissuaded from registering in a voluntary system. For a register to command the respect and confidence of the public, officials, elected representatives and indeed lobbyists themselves it cannot be at the discretion of individuals to choose to opt-in. The system must be mandatory.

The Green Paper states that voluntary registration is the most appropriate option, but this claim is not substantiated. We see this as a worrying gap in the evidence base underpinning this strand of the ETI. Critics of a mandatory system insist that voluntary measures can work but have provided no independent evidence for this. We are puzzled and concerned that the Green Paper does not fully consider the merits of making transparency and ethical standards obligatory for all EU lobbyists.

Finally, we note that the Green Paper fails to refer to recently enacted lobbying laws in Poland, Lithuania and Hungary. Each of these lobbying laws (despite some concern around potential unequal treatment of NGOs in the Hungarian law) includes forms of mandatory lobbying disclosure. In this context, it is surprising that the European Commission has not considered this an option for EU lobbyists. We would urge that the case for a mandatory register of lobbyists is reconsidered in the follow up to the Green Paper. We also note that the Danish Parliament – in a resolution approved unanimously on May 31st – calls for compulsory registration of EU lobbyists.

Experiences with voluntary registration and reporting both in Europe and around the world indicate that the best solution to ensure verifiable transparency is a legal requirement for lobbying disclosure.

In the recommendations of the Green Paper, the Commission does not make clear whether lobbyists need to report regularly or just register once. We would emphasise that a one-off registration would be insufficient to achieve transparency and visibility. To allow for outside scrutiny of lobbying targeting the EU institutions, regular reporting is needed.

A key question is what needs to be reported. The Green Paper does not address this. We think the regular reports must include data on how much money particular interests spend on lobbying. Lobbying firms must disclose their clients, on which issues they lobby and budgetary information relating to this work. Such specific information would

allow for comparisons over time and may help to highlight trends in lobbying activity. (The ‘Abramoff’ scandal in the US came to light in part because of the rapid growth in Mr. Abramoff’s lobbying budgets). A lobbyist register should be overseen by an independent public watchdog. Experience from North America shows that the absence of enforcement mechanisms seriously undermines the positive potential of lobbying disclosure systems. The body overseeing the EU lobbyists’ register must be given the necessary resources and authority to ensure optimal transparency around EU lobbying.

ALTER-EU agrees with the Green Paper’s starting point that: “Measures in the field of transparency must be effective and proportionate.”⁸ We therefore strongly regret that the measures proposed are disproportionately weak in the light of the clear public interest at stake. Relations with outside interests are fundamental to how a democracy functions. We call upon the Commission to introduce incentives and sanctions that will result in high levels of compliance and thus secure meaningful levels of transparency around EU lobbying. The choice is between commercial interests and the public interest. The latter can only be served properly by making decision-making accountable and transparent. This requires a mandatory register as a minimum condition for the scrutiny of lobbying.

Do you agree to consolidating the existing codes of conduct with a set of common minimum requirements? Who do you think should write the code?

ALTER-EU fully endorses the Green Paper’s statement that “undue influence must not be exerted on the European institutions through improper lobbying”.⁹ The voluntary codes of conduct, which have been in place for almost a decade, have clearly failed to prevent improper lobbying practices in Brussels. Indeed, the credibility gap of self-regulatory approaches is demonstrated by the fact that only a fraction of Brussels’ lobbyists have signed on to these codes. Furthermore, none of the numerous cases of very questionable lobbying practices, uncovered by NGOs, the media and MEPs, have been reported as cases of misconduct or non-compliance by any of the lobbying associations. This has everything to do with the preoccupation of these associations with protecting the image of their profession. This experience shows that a private body established by the lobbying industry to police itself will always face questions of independence and therefore lack credibility.

ALTER-EU strongly agrees with the Green Paper’s statement that “External scrutiny can act as a deterrent against improper forms of lobbying.”¹⁰ The European Transparency Initiative must first and foremost succeed in securing external scrutiny through an effective system of registration and reporting. We fear that the Green Paper’s proposals on the issue of codes of conduct – in which the register is narrowly linked with a code – might delay the urgently needed progress in lobbying disclosure. We very much doubt that the diverse lobbying sectors (ranging from commercial public affairs firms, consultants, law firms and industry associations, to trade unions and non-profit NGOs) will be able to develop a Code of Conduct that ensures lobbying transparency and probity for all their interactions with the European Institutions. Instead of reflecting public interest requirements, such an approach is much more likely to result in a lowest common denominator. We believe it is important that the Commission demonstrate real leadership and ambition in this area by developing a draft Code of Conduct (going beyond the very general provision of existing voluntary codes) and seeking feedback from interested stakeholders and citizen. The Commission must also take responsibility for the implementation of outcomes.

Besides rules of conduct for lobbyists, the Commission should also introduce “an improved code of conduct for European Commission officials, including an extended ‘cooling off’ period before Commissioners and senior officials can start working for lobby groups or lobbying advisory firms.”

Do you agree that a new, inclusive external watchdog is needed, to monitor compliance and that sanctions should be applied for any breach of the code?

Perhaps the most important issue concerning codes of conduct is that of enforcement. A private body established by the lobbying sector itself cannot have the necessary powers or credibility. The overseeing body must be a public body, fully independent of those it monitors. It must have sufficient powers to instigate its own inquiries, as well as powers to investigate all alleged breaches of the codes and of the disclosure system. There must be clear and effective incentives as well as sanctions (see the section “Oversight and Enforcement” in the annexed ALTER-EU recommendations from January 2006 for more details on the role of the overseeing body, its competencies and procedures.

Under voluntary registration systems strong sanctions for non-compliance with the codes cannot be imposed. Those who do not want to comply with codes and disclosure obligations will simply not register as lobbyists – but they will still be able to lobby decision-makers. This is the fundamental weakness of the voluntary approach that has yet to be addressed properly in the Green Paper.

This submission has been prepared by the ALTER EU Steering Committee:

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Notes:

- ¹ Green Paper, page 4.
- ² Green Paper, page 5.
- ³ Green Paper, page 6.
- ⁴ Simon Titley (former staff member of government relations consultancy Burson-Marsteller), “The rise of the NGOs”, in the *Handbook of Public Affairs*, Sage Publications, June 2005.
- ⁵ See <http://www.opensecrets.org/lobbyists/>.
- ⁶ [ALTER-EU letter to Ms Catherine Day and Mr Siim Kallas](#), 13 January 2006; [ALTER-EU recommendations on lobbying transparency and ethics in the European Union](#), 13 January 2006.
- ⁷ In order to avoid lobbying transparency rules that might inhibit individual citizens and local groups from expressing themselves, only lobbyists with a budget over a to-be-defined threshold should be obliged to register and report.
- ⁸ Green Paper, page 5.
- ⁹ Green Paper, page 5.
- ¹⁰ Green Paper, page 6.