



# Full lobby transparency now!

## *Frequently asked questions*

### ? How does lobbying work? What do lobbyists do?

Lobbying is when individuals or organisations seek to have direct or indirect influence on policy-making and implementation. Different kinds of organisations carry out lobbying activities: businesses and their representatives; lobby consultancies; law firms, which are specifically hired to lobby on behalf of a third party; trade unions; think tanks and civil society organisations such as NGOs or religious groups. In Brussels it is estimated that there are 20-30,000 lobbyists, making it the most active lobby capital in the world, apart from Washington DC.

Successful lobbying involves persuading a target (a commissioner, a Member of the European Parliament, an EU official) that you can be trusted, that you know what you are talking about and that it would be right for them to implement what you are asking. This persuasion can happen in a huge variety of ways.

The simplest ways to lobby include: meeting with officials or politicians; circulating briefings or other policy statements; organising events with decision-makers; securing media coverage of your issue, and many other activities which seek to influence legislation, policy-making and implementation. Another handy tactic at the EU level is to become a member of a Commission advisory group as this can provide you with a direct forum to influence the earliest stages of decision-making. Other popular yet controversial tactics include providing MEPs with suggested amendments to draft legislation that they are debating in the Parliament.

Lobbying can also involve spending a lot of money. Some groups try to seek influence by sending gifts to public decision-makers; hosting lavish breakfasts, dinners or cocktail parties; funding 'neutral' cross-party groups that meet regularly in

order to help build relationships with MEPs; organising promotional exhibitions; using official EU buildings to organise events to which lobby targets are invited; and even inviting public officials and politicians to go on expenses-paid visits (to overseas offices, factories, energy plants...) to help promote their case further.

All of this lobbying goes on in Brussels (and in many of our capital cities too). Sometimes lobby firms even try to recruit former MEPs, commissioners and officials who have insider know-how and political networks which can also boost lobbying influence. This phenomenon is known as the 'revolving door'.

When decision-making is not as transparent and accessible as it should be, those that have an active interest in EU affairs need to invest time and resources into finding out what is going on in Brussels. This inevitably means that those that have more time and more resources in the first place are better able to obtain up-to-date information about upcoming meetings and legislative initiatives and as a result, they are better equipped to make sure their voice is heard throughout the policy debate.

You can read our guide for MEPs "Navigating the lobby labyrinth" on the ALTER-EU website (<http://alter-eu.org/documents/2015/03/navigating-the-lobby-labyrinth>)



## ? Why is lobby transparency important?

Of course, lobbying is not, in and of itself, intrinsically bad. Lobbying can contribute to better policy-making. But it is important that all lobbying is conducted transparently so we know who has influenced which policies and laws. The idea of lobby transparency is that all lobbyists should sign-up to a 'register' and disclose precise information about what specific laws and policies they are lobbying on, who they are working for, and how much they are spending.

This will illustrate lobbying imbalances in terms of staff numbers and spending power and by doing so, hopefully encourage decision-makers to listen to a variety of views when making laws and policies. And transparency should substantially reduce the opportunities for unethical and unscrupulous lobbying. Ultimately, lobby transparency should lead to better public policy-making.

## ? What is wrong with the current EU lobby register?

The EU has a lobby register and thousands of lobbyists have signed-up, providing a degree of transparency about their activities. However, the register is deeply flawed in that it is not legally-binding, so many lobbyists simply refuse to join because it is only voluntary.

Recent ALTER-EU research (<http://alter-eu.org/documents/2015/01>) has highlighted a large number of organisations which have not signed up to the EU lobby register and which therefore are not transparent about their EU lobbying activities. These include major financial corporations such as Standard & Poors (ratings agency), the City of London Corporation, and Credit Suisse (bank). Electrabel (Belgian energy utility), Anglo American (mining), and General Motors are also among the major corporations that are active lobbyists at the EU level but which have chosen not to register.<sup>1</sup> There are many others too. They may not be household names, but many consultancies and law firms which earn hundreds of thousands, or even millions of euros each year from lobbying activities in Brussels, are not transparent about their activities.

<sup>1</sup> All examples accurate as of 13 April 2015.

However, that is not the only problem with the current EU lobby register. The information asked for is rather weak and organisations can get away with making very vague declarations. Hired lobbyists don't need to declare which dossiers they work on for clients; charities don't need to declare their funding sources; and no organisation is obliged to declare the individual names of their lobbyists.

Furthermore, too many of the entries contain missing, inaccurate or misleading information. For example:

- ▶ Over one hundred lobby consultancies and law firms fail to disclose who their clients are – which is a clear breach of the rules for the register.
- ▶ Sometimes they also mask their clients' identities behind meaningless acronyms.
- ▶ Lobby spending and lobbyist numbers are also often under-reported or based on data which is several years out of date.
- ▶ There are also far too many implausible entries. For example, Goldman Sachs (in its November 2014 lobby register entry) under-reports its lobby expenditure as the amount it declares is less than the amount it has paid out to lobby consultancies that it has hired to represent its interests in Brussels. NGOs have made a formal complaint about this (<http://corporateeurope.org/power-lobbies/2015/01/ngos-make-complaint-about-goldman-sachs-entry-eu-lobby-register>)

In these ways, the current EU register is of very limited value when it comes to transparency. Too many lobby organisations do not take the register seriously – either they do not join or they do not bother to make full and accurate declarations.

## ? But I thought Juncker had announced lots of positive pro-transparency reforms?

Jean-Claude Juncker took office as president of the Commission on 1 November 2014. Since then, he has announced a number of new initiatives which seek to boost transparency of lobbying activities directed towards the European Commission. These include the publication of an on-line list of lobby meetings held by commissioners, cabinet members and directors-general; and a requirement that lobby meetings with these senior Commission representatives can

only be held with organisations that have joined the lobby register.

In addition, Juncker and his deputy, Frans Timmermans, have announced that they will introduce a proposal for a “mandatory” lobby register. In particular, the Commission is proposing two approaches via a proposed inter-institutional agreement or IIA which it considers will make the lobby register *de facto* mandatory for lobbyists.

Firstly, it is introducing new measures that try to eliminate the options for access and influence for those who are unregistered. The ban on high-level Commission meetings with unregistered lobbyists is part of this approach. The Commission hopes that other EU institutions, including the European Parliament, will introduce similar measures.

Secondly, it proposes a broadening of the EU lobby transparency rules to include the Council which is not currently subject to the lobby register.

## ? What is wrong with the Commission’s proposals for a “mandatory” lobby register?

While it is very welcome that Juncker has chosen improved lobby transparency as a political priority in the coming five years, there are several problems with the Commission’s proposals.

Firstly, an incentives-based approach will need to be extremely thorough to cut off all options for unregistered lobbying and ALTER-EU is not yet convinced that the Commission and the Parliament will be able to put such measures in place. For example, we welcome the recent ban on commissioners, cabinet members and directors-general meeting with unregistered lobbyists. However, at most this will cover the lobby meetings of the top 300 or so Commission officials, out of a total staff of 33,000, which leaves plenty of opportunities for unregistered lobbyists to seek meetings with lower-level officials. We also recognise that there will be significant reticence on the part of MEPs to the introduction of new rules which would limit who they could meet. ALTER-EU believes that the Commission and Parliament should introduce further measures to curb lobby access for unregistered

entities (see What does the perfect lobby register look like? below) but we do not consider that this will be enough to make the register *de facto* mandatory.

Secondly, ALTER-EU considers that, in the short-term, it may be more important to significantly strengthen the rules for the Commission and Parliament, rather than adding the Council, as we do not believe that this will bring much additional lobby transparency immediately and could even hold up and undermine desperately needed improvements elsewhere. The Council has traditionally been rather sceptical about efforts to boost lobby transparency and it has been at pains to state that it does not want to join any transparency rules that would be binding on the 28 EU member states or their permanent representations. If this position were accepted by the Commission and the Parliament, that would only leave the Council’s secretariat to be included within the scope of the lobby register, although as a purely administrative body, it is not usually the target of much lobbying.

There is a third problem. The Commission plans to make these changes via an inter-institutional agreement or IIA. IIAs cannot impose rules on third parties, such as lobbyists; an IIA can only impose rules on the EU institutions and their staff. This means that lobbyists who choose not to register or who choose to provide inadequate or misleading information, will face no legal sanction as a consequence. Of course, not being able to meet with commissioners, officials and MEPs could pose a major problem to most lobbyists. But this approach would only work if all political actors played by the rules all the time – and this is difficult to control.

The only way to ensure that the EU lobby register is legally-binding on the EU institutions and on lobbyists is to ensure that it is backed by EU law. Via its new Full lobby transparency now! campaign, ALTER-EU is calling on the Commission to use the IIA negotiations to reach agreement with the Parliament on a proposal for legislation so that we can have a really effective EU lobby register.

## ? Why is it important that the lobby register is legally-binding on lobbyists?

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As explained above, to ensure full lobby transparency, it is vital that lobbyists who do not register, who act unscrupulously or who provide inaccurate or misleading information in the register face effective fines or other sanctions. Fines and sanctions require legislation. Such legislation could also bestow proper enforcement mechanisms on the authorities so that they can verify whether the information provided in the register is correct or not. At the moment, the register secretariat can only rely on the information provided by the registrant.

If the register is not made legally-binding on lobbyists, many kinds of lobbying by entities which are not registered would still be possible. Unregistered lobbyists could still send lobby materials to decision-makers (policy submissions, draft amendments, parliamentary questions etc) and would undoubtedly be looking into other ways to lobby without registration. Furthermore, there is a risk that unregistered lobbyists could well increase their use of deceptive tactics such as front groups to try to hide their true identity. Front groups, masquerading as grass-roots coalitions, are sometimes set up and funded by corporate interests to promote their own interests.

Finally, a legally-binding register backed by legislation will not be reversible, nor will it be dependent upon the whim of current and future political leaders. It will be a permanent fixture to improve the transparency of EU policy-making.

## ? Is a legislative proposal to make the lobby register legally-binding realistic?

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Legislation to introduce a legally-binding lobby register is perfectly possible to achieve, although it is likely to be a challenging process. Such legislation would need to be proposed by the Commission and it would need to receive the consent of both the Parliament and the Council, even if the Council was not included within the lobby register itself. There should be no problem with the endorsement of the European Parliament; after all, the Parliament's plenary has voted several times (most recently in April

2014) to demand a mandatory lobby register backed by legislation. The Council, however, may prove to be more challenging.

If the Commission were to present legislation to introduce a legally-binding lobby register, whether or not it includes the Council within its scope, there would need to be Council approval for the new law. Depending upon the treaty basis for the new law (see below) the Council may need to give its unanimous backing ie. it would need the support of all 28 member states. As a minimum, the Council would need to form a qualified majority to support the legislation which would comprise at least 15 member states, representing at least 65 per cent of the EU population. The 28 member state ministers responsible for this area of policy will make the ultimate decisions on these issues for the Council.

## ? Is a legislative proposal to make the lobby register legally-binding even possible under EU treaty law?

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All EU legislation must be based on the powers outlined in EU treaty law ie. the Lisbon treaty. In fact, the Lisbon treaty does not mention lobbying or the lobby register specifically, although it does say that “the institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society” (article 8b). There are several options upon which to base future legislation. The first is article 352 which allows for action to support the objectives of the EU if the treaty does not already directly provide the necessary powers. This is a general article which could be used, although legislation based on 352 would require unanimous support from the Council. The European Parliament has called for a legislative proposal for an EU lobby register based on article 352.

However, a legal opinion commissioned by ALTER-EU (<http://alter-eu.org/documents/2013/06/legal-study>) showed that article 298 could be used as an alternative to 352 because it refers to an “an open, efficient and independent European administration”. The advantage of using article 298 is that this would only require the support of a qualified majority of members on the Council, although because it refers only to “administration” and not “legislation” it is unclear whether or not commissioners and MEPs would be included in the scope of a lobby register set up under article 298.

A final option would be that, if there was EU treaty reform in the next year or two, a specific article which referred to the need to regulate lobbying could be inserted. However EU treaty reform is a huge exercise (necessitating referenda in some EU countries) and is obviously not a process which ALTER-EU can initiate.

## ? Why is ALTER-EU so focussed on EU lobbying; shouldn't we focus instead on member state lobbying at government levels?

Brussels is the lobbying capital of Europe. And with many of our national laws (more in some countries than in others) starting life at the EU level, it is not difficult to see why lobbying in Brussels is such big business – and why we should campaign to make it as transparent as possible.

However, it is true that a lot of lobbying happens at the member state or government level. That is why our Full lobby transparency now! campaign will have a dual focus, with action at both the EU and member state levels to make lobbying transparent.

## ? What is the link between the EU and member state levels in the Full lobby transparency now! campaign?

This campaign will target both the EU and the national member state decision-makers to deliver improved lobby transparency. In general we hope that momentum in Brussels to improve the lobby transparency regime could be used to build momentum at the national level for similar changes. And, we also hope that campaigns and advocacy to demand better lobby transparency at the national level should influence the way in which that country votes in the Council on this issue at the EU level. We hope to create a virtuous circle of positive decision-making for lobby transparency.

How this will look in each country is likely to vary: some countries already have lobby transparency regulations in place or there is a growing debate about the need to introduce them. In other countries, there is little discussion about the issues. Latvia, Luxembourg, Netherlands and Malta, as countries which will hold the European Council

presidency, in the coming months and years, could be especially important in generating public discussion and debate as EU issues receive greater prominence in national politics.

## ? Isn't lobby transparency a really technical and nerdy area that doesn't really affect people in their daily lives?

Talk about registers, inter-institutional agreements, EU treaties etc can sound very technical. But in fact lobby transparency is really important. Whether it is the EU-US trade deal (TTIP), austerity, food, internet data privacy, banking, climate change, fracking, tobacco, pesticides, arms trade or many other issues, they deeply influence our daily lives, and lobbyists are working hard in Brussels and in our capital cities to influence policies and laws on these topics. And too many of these lobbyists are working for short-term corporate interests, rather than the long-term public interest.

Improved lobby transparency will help us to know who these lobbyists are, who they work for, how much they spend, and what laws and initiatives they are working on. If they outnumber public interests and excessively influence EU decision-making, lobby transparency will help us expose that, and hopefully start to remedy it too. If they are acting unethically or unscrupulously, lobby transparency can help us to reveal that.

So if you are concerned about the influence and power of business interests on EU policy-making, you should support our campaign Full lobby transparency now! to demand far better lobby transparency at both the EU and national levels.

## ? What does the perfect lobby register look like?

Undoubtedly this will vary according to the country and the context but as ALTER-EU we would expect a rigorous and comprehensive EU lobby register to include the following essential information:

- ▶ full organisation name, address, website and contact details
- ▶ specific dossiers, laws, policies worked on
- ▶ names of all individual lobbyists

- ▶ up-to-date disclosure of all lobby expenditure (or turnover for consultancies); if bandwidths are used, they should be narrow to enable precise disclosure
- ▶ where relevant, full names of clients worked with, income received, and specific dossiers worked on per client
- ▶ where relevant, full disclosure of membership of and / or payment to other lobby vehicles: consultancies, campaign coalitions, trade associations
- ▶ disclosure of funding sources
- ▶ a clear threshold so that it is clear who should and should not register ie. community groups requesting a one-off meeting with an MEP should not need to register

In addition, updates should be required at least every three or six months; there must be strong enforcement measures and meaningful penalties for non-compliance; and a robust code of conduct for lobbyists which sets out clear duties and obligations. All lobby registers should apply to all lobbyists, both in-house and paid-for. There should also be a comprehensive definition of lobbying for each register; the EU's register refers to "interest representation" and provides a broad and generally helpful definition.

In terms of measures to incentivise lobby registration, here are some ideas:

- ▶ a public list of registrants suspended from EUTR ie. naming and shaming
- ▶ more capacity/ resources to enforce the register ie. a more robust and stringent process
- ▶ Commission should broaden ban on meetings with unregistered lobbyists to all Commission officials and the public list of Commission lobby meetings should include all lobbyists' EUTR registration numbers
- ▶ Commission should tighten its ban on unregistered lobbyists sitting on its expert groups, perhaps by requiring all expert group members to provide a lobby register ID number or an exemption
- ▶ MEPs and Parliament staff to refuse to meet unregistered lobbyists
- ▶ Parliamentary requirement that all submissions to rapporteurs will only be accepted if they include an EUTR registration number
- ▶ MEPs refuse to host or attend events and activities by unregistered lobby groups

Similar incentives could also be extended to the EU's executive agencies: European Medicines Agency, European Food Safety Authority etc.



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