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HOW COULD EU LOBBYING BE REFORMED ?

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" It is impossible to make lobbying at any level of European politics entirely transparent due to the impracticality of encoding a definition of lobbying acceptable to all participants and the possible infringement of privacy for individuals consulting their elected representatives. However by amending existing legislation and through the adoption of new regulations the EU could make significant strides in improving transparency. Lobbyists can play an important part in the legislative process by providing relevant expertise and information which can help identify unconsidered consequences of draft legislation. However in a democracy, governments should nonetheless work to ensure transparency.

A number of proposals have been put forward by several groups who support reforming the way lobbying at the EU level is regulated. Friends of the Earth, the Alliance for Lobbying Transparency and Ethics Regulations (ALTER-EU), Transparency International and the Corporate Europe Observatory have each suggested a list of reforms, many of which overlap.

The introduction of a mandatory register for all groups seeking to influence EU decisions is a reform which has attracted support from the organisations listed above. It is argued that in its current state the register is insufficient as special interests are not compelled to be signatories so it does not guarantee the desired level of transparency. ALTER-EU, a coalition of civil society groups, trade unions, academics and public affairs firms, wants to see this information made accessible via an online database. ALTER-EU favours making further records available in what it refers to as 'improving the code of conduct'. Commission officials would be required to record meetings between officials and lobbyists, and to maintain records of various forms of correspondence, all of which would likewise be available on an online database.

While a mandatory register may improve levels of transparency across EU institutions, it is important that the legislation specifies exactly who must register, as those who want to avoid disclosure insist that they do not meet the registration criteria. It is not sufficient, according to government affairs lobbyist Craig Holman and law

professor William Luneberg, to declare that those whose primary purpose is to influence legislation must register'. That leaves the judgment largely in the hands of the person whose activities should be subject to scrutiny. A lawyer, for example, may argue that his or her primary purpose is client counselling, not lobbying'. Many entries in the current register are vague, with lobbyists providing only minimal, incomplete or inaccurate details about themselves, their reasons for lobbying the EU and the amount spent on lobbying. A mandatory register with insufficiently precise criteria and requirements will not guarantee that outsiders have a clearer grasp of who is registered than they do at present.

By extension it would be necessary to determine exactly who is a lobbyist. There is a noticeable effort by the **ALTER**-EU coalition and, as the name suggests, the Corporate Europe Observatory, to highlight the scale of corporate lobbying and to constrain it. While lobbying by large corporations receives much attention there are numerous organisations whose behaviour constitutes engaging in lobbying EU institutions. Surveys of MEPs, EU officials and their national counterparts illustrate this point. Respondents were divided over whether trade associations, public affairs agencies and professional organisations could be considered lobbyists. Under current rules political parties, churches and local, regional and municipal authorities are not expected to be signatories of the Transparency Register, although there is a case for their compliance with this Register, as they are recipients of EU funding and their projects affect the social fabric of a country or region as well as impacting on lives of individuals. Maintaining records of correspondence between EU officials and special interest groups may improve transparency and openness yet it also raises several problems. Successfully gathering all forms of contact could be an onerous task in an age where multiple means of communication are available. EU insiders and lobbyists may therefore look to other means of contact to keep communications from going public. Furthermore it would have to be clearly outlined which documents and transcripts could be placed in the public domain on an online database and which documents, like those concerning national security, as is the case in Sweden and other countries, would be kept classified.

As a means to reducing the so-called revolving door phenomenon, which describes the movement of individuals between government and private companies, **ALTER**-EU favour extending the current cooling off periods which apply to outgoing Commissioners and senior civil servants. This measure is designed to prevent EU officials from going straight from an EU post into a job at a lobby group or an advisory firm and would instead require them to wait for a given period before taking up a new post. At present, there is a cooling off period of 18 months for Commissioners and 12 months for senior civil servants. **ALTER**-EU has stated that their preference is for a cooling off period of at least two years to be imposed on all EU institution staff. The effectiveness of **ALTER**-EU's proposal is debatable. Would the extension of a cooling off period by say, several months, make an EU official any less of a potential lobbyist for a particular special interest when they start work for other lobbyists? It is questionable whether legislation that would extend cooling periods for outgoing officials, MEPs and staff, as advocated by the **ALTER**-EU Coalition would be effective as former officials would have room to manoeuvre around these regulations by for example taking up private sector employment which does not ostensibly entail lobbying. It is also doubtful whether individuals, after cooling off, will not move straight into the lobbying industry and somehow become less of a voice for a particular special interest than before.

If the EU is to reform current lobbying laws then the control and oversight should be undertaken by an independent agency and not by elected officials, EU bureaucrats or lobbyists. This would surely be preferable to handing over these responsibilities to EU insiders or officers working on behalf of legislators.

This independent public body's role would be to ensure that all lobbyists register, provide correct and complete information, report regularly and adhere to rules on the conduct of lobbying. A threshold should be established. This would exempt actors that do little or no EU lobbying to simplify the register and keep it focused on those doing regular lobbying work in Brussels. Complaint procedures should be improved. The independent oversight body would have the necessary powers to investigate all alleged breaches of the lobbying disclosure system and initiate specific investigations on its own initiative. Any natural or legal person should be able to file a complaint about violations of EU lobby transparency and ethics rules, and should be guaranteed an investigation and complete answer. Complaints and the outcomes of the investigation should be available to the public via the Commission's website. Effective sanctions should be set up. Offenders should be excluded and publicly

blacklisted. In serious cases such as the submission of false or misleading information, further administrative sanctions or fines should apply. The Commission should consider the option of criminal prosecutions against serious and persistent offenders.

The availability of records, created by such a reformed system is an essential part in bolstering transparency. As Holman & Luneberg write: Public examination of these reports is not only critical to building the public's trust in the governmental process, but it also complements enforcement of it'. By placing this information on the Internet for all to see, the public provides critical backup for monitoring compliance with the law.' While expanding public disclosure has its obvious advantages, legislation would have to clearly stipulate what documents and other records can and cannot be added to an online database. Sweden and Denmark's approach to public disclosure, in particular the Swedes' Open Budget Index and the Danish Law on Transparency and Public Access to Public Administration, provide templates on which future reform of EU governance could be based. While the task of reforming the lobbying culture within the EU in terms of its definition and function may seem insurmountable, given the extensive requirements of vested interest groups, anything from a small charity to a multinational company, the current haphazard system requires attention to address public concerns and need for visible democracy. The creation of a compulsory Transparency Register accompanied by transcripts of the written responses from EU officials to the queries and suggestions of lobbyists would need enforcement by an independent body, possibly based on a Scandinavian model which encourages openness and accountability.

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