Bursting the Brussels Bubble

the battle to expose **corporate lobbying** at the heart of the EU

ALTER-EU

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about ALTER-EU

The Alliance for Lobbying Transparency and Ethics Regulation in the EU (ALTER-EU) is a coalition of over 160 civil society groups, trade unions, academics, and public affairs firms concerned with the increasing influence exerted by corporate lobbyists on the political agenda in Europe, the resulting loss of democracy in EU decision-making and the postponement, weakening, and blockage, of urgently needed progress on social, environmental, and consumer-protection reforms.

ALTER-EU is a coalition of organisations, not an organisation in its own right. It does not have its own staff or budget. Organisations on the Steering Committee, together with some other ALTER-EU members, contribute staff time and share the costs for specific activities.

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a foreword

Susan George

A particularly encouraging recent development is the emergence of a number of sharp and effective corporate lobby watchdog groups, including Corporate Europe Observatory in Brussels, German-based LobbyControl and UK-based Spinwatch. These groups understand the importance of studying the rich and powerful, especially transnational corporations. The watchdogs have proven relentless in their pursuit of information and know how to make their material come alive and to popularise it for a non-scholarly, ordinary-citizen audience. Now they are part of the Alter-EU coalition, made up of over 160 NGOs and trade unions from across Europe.

So it is a great pleasure for me to introduce this new collective book entitled Bursting the Brussels Bubble - the battle to expose corporate lobbying at the heart of the EU. ALTER-EU concentrates on the scandal of the thousands of corporate lobbyists who largely make policy in the European Union. The coalition has made some headway - at least the lobbies issue is now firmly on the political agenda and the EU has been forced to set up a voluntary register for lobbyists - laughably ineffective but a register still - and that is at least a foot in the door.

The forces that oppose any disclosure and any reduction of preponderant corporate membership in all the important EU 'expert groups' that make policy in every conceivable area can supply plenty of inertia to prevent change; they maintain privileged access to Commissioners, Commission staff (24,000 strong) and parliamentarians and they have, so far, won most of the battles - but not all of them. In fact, if the EU were at all democratic or transparent, the corporations would have already been forced to admit defeat. Even in the United States, not known for a virulent anti-business stance, lobbyists have to register with the Congress; they must declare how much they are paid and

by whom. In contrast, European political structures provide no foolproof way to discover who lobbies whom, for which policies, nor with what budgets. The solid firewalls, for the moment, are still standing and what one does learn must often be through stealth, loopholes or lawsuits.

ALTER-EU is not just up against a barrage of secrecy protecting special corporate interests - it faces two other formidable barriers preventing public knowledge of -much less control over - the way power is exercised in the EU. The first is the neoliberal, market-oriented ideology at the foundation of the European construction which permeates the entire enterprise and positively encourages corporate control; the second is a structural lack of democracy.

It is no accident that the defeated Constitution, now replaced by the virtually identical Lisbon Treaty, used the word "market" 78 times and the phrase "free and undistorted competition" in seven crucial articles; "competition" has even become an "objective" of the Union and all economic activities, including what one used to call 'public services' are specifically subject to competition. In line with the express wishes of BusinessEurope [formerly UNICE, the Union of Industrial and Employers' Confederation of Europe], there will be no Europe-wide taxation and fiscal policy must be decided unanimously. Or, as a member of the elite European Roundtable of Industrialists put it, the Commission is "extremely open to the business community so that when businessmen like myself face an issue that can only be solved politically, we have access to excellent Commissioners like [several names follow][1]. ALTER-EU and this book provide myriad other examples of deep corporate involvement in EU affairs.

Even more damaging is the regression of democracy that characterises the European Union. We are not merely facing the classic, well-known so-called "democratic deficit"—this is much too weak and mild description of the EU status quo—but rather an outright attempt to demolish the democratic achievements of the past two-hundred and some years. I am not exaggerating.

The democracy demolition squads have eliminated nearly all the possible checks and balances on power so that the Commission along with the Council can, one way or another, more or less do as they please. Take for example the popular mobilisation against the Bolkestein directive aimed at reducing workers' rights, salaries and working conditions. Thanks to citizen protests, the European Parliament forced through a few changes. But then the European Court of Justice made four important decisions that nullified the changes and reinstated Bolkestein.

Unanimity is the rule in crucial areas like revising or amending the Treaty, fiscal policy and most aspects of social and environmental policy. Twenty-seven countries with widely varying histories, politics and levels of development are never going to agree on improving Europe's social and fiscal standards and the Treaty will be virtually unchangeable. Despite a few marginal improvements, the Parliament still cannot introduce legislation and is totally excluded from having a say in foreign and security policy, trade, the internal market, monetary policy and most of agricultural and social policy. We have also promised - though some of us may not know it - to "increase [our] military capabilities" and the Lisbon Treaty will never allow Europe to have a security policy that differs fundamentally from NATO's.

The Constitution was drafted by an unelected Convention which could only discuss or amend texts handed to it by the presidency of Valery Giscard d'Estaing - but at least we knew who the Convention members were. No one has a clue who actually wrote the Lisbon Treaty - it would seem to be the legal services of the Council. Perhaps this isn't important. As Giscard himself explained the Lisbon Treaty to the Constitutional Affairs Committee of the EP in July 2007: "As for content, the proposals are largely unchanged, they are just presented differently. This is because the new [Lisbon]Treaty was not supposed to look too much like the Constitutional Treaty. European governments therefore agreed on cosmetic changes to make it easier to swallow...."

This was doubtless a wise precaution, given that the Constitution had been soundly rejected by three European peoples. The EU not only ignores but positively discards the notion of popular sovereignty - one of history's greatest conquests. "We the People" is at the heart of any truly democratic process and enshrined in the individual Constitutions of most member states. Yet hark to the remarks of former Commission Vice-President Gunther Verheugen, exhorting his fellow Commissioners after the No votes in the French and Dutch Constitutional referendums of 2005: "We must not give in to blackmail". So much for the people: their ballots are worthless as was once more proved by the Commission's refusal to accept the No verdict of the Irish in their June 2008 referendum.

Now that the Lisbon Treaty is in force, competitiveness, capital and corporate control have been definitively placed at the heart of the European project. ALTER-EU might have an easier road to travel if the Parliament, despite its structural bias towards the right of centre, had even a little more power, but since it has no legislative initiative it cannot even present a bill to force lobbyist compliance with a few basic and obvious rules.

That anyone, should be *obliged* to fight against such an agenda is revealing and underscores the fragility of all the victorious struggles for democracy since the American and French Revolutions. The common good has been relegated to last place; our elites, both corporate and political, are interested only in competition, privatisation, transnational corporate capitalism and money. A subtle political shift has accompanied this transformation and is expressed in the EU vocabulary.

We have moved, for example, from "government" to "governance". After a long period of neglect, the term "governance" enjoyed a renaissance from the 1970s onwards in the context of "corporate governance" - the set of business practices and processes aiming at maximum efficiency and therefore maximum profits. The World Bank and the International Monetary Fund later took up the word, introducing the requirement of "good governance" into their structural adjustment (austerity) policies forced upon indebted developing countries, assumed to be too corrupt or mismanaged to run their affairs properly. This condition, one of a long list of "conditionalities", was particularly convenient since no measurement or scale was known that could measure or certify a country's compliance with the requirement for good governance. The continued intervention by the Bank and the Fund could thus always find a suitable justification.

The World Economic Forum that organises the annual corporate-political jamboree in Davos also loves "governance" and no wonder - it manages to exclude any kind of identifiable popular political sovereignty in favour of a mixture of vague new notions that collectively replace the people's grip on concrete power.

Thus we no longer need an "electorate"—so why not ignore those of France, Holland and Ireland? In another subtle word-shift, we have instead "civil society" made up of the representatives of particular interest groups. As one quickly learns, where the EU is concerned, civil society includes mostly representatives of business. As is well known, the people are ignorant and unable to deal with complex issues which are better left to handpicked, usually self-selected "expert groups" which will reach the optimum result with the greatest efficiency, that is, capitalist efficiency.

We also have "stakeholders". It is only logical that most of them represent those who hold the largest stakes. The Oxford Dictionary definitions of "stake" (except for those concerning the kind of stake, or pointed stick, one drives into the

ground or through the heart of a vampire) all have to do with property, money and wagers; that is, bets. Being a stakeholder also allows a good dose of corporate intervention—after all, corporations are betting for higher stakes than citizens and they represent more money, so we don't need actual laws except for those approved, and largely written, by the corporate lobbyists themselves.

Naturally the EU must also be careful to have "consultations" in order to achieve"consensus". Citizens are indeed "consulted": my own experience with these consultations (in the area of trade) is that they consist in explanations of what the Commission intends to do anyway. If you disagree, you are assumed not to have understood and these intentions are then patiently explained again. Consensus is also a necessary bit of the pseudo-democratic window-dressing. It works very well so long as one agrees from the outset that the basic values are the free market, free trade, free movement of capital, "free and undistorted competition" and the like. So much for 'Liberté, Egalité, Fraternité' - sent off the field and destined for the dustbin of history.

Democracy, properly practiced, assumes conflict and conflict resolution through prescribed legal processes, whereas consensus assumes agreement but also the preponderant influence of the most powerful interests on the whole. The many can thus be dominated by the few, which is in any case the desired result. Consequently, almost nobody understands how decisions are actually made in the EU. We are not equal before the law but subject to the rule of obscure groups motivated by individual gain and collective corporate interests. And yet more than 80 percent of all the laws we must submit to in our several European countries now come from Brussels and the European Court of Justice has ruled that any decision of the Commission transcends national law, including Constitutional law.

The absence of law that protects citizens and decades of democratic achievements; of checks and balances, of recognised procedures for obtaining justice in clear cases of political conflict - all these encourage the unrestrained activity of lobbies and the privatisation of all standards and values. Why else would we now have governance instead of government, civil society instead of a sovereign people; "partnerships" rather than separation of powers, consensus instead of conflict resolution, dialogue and consensus in the place of votes and codes of conduct in the place of laws? Not to mention consumers instead of citizens.

In this context, what ALTER-EU has already been able to accomplish is phenomenal. Several of the chapters of the book are devoted to detailed descriptions of the campaigns to get lobbying on the agenda, practical ways to treat scandalous corporate behaviour with the derision it deserves (the Worst EU Lobbying Awards, for instance) and the many attempts to push the Commission to hold corporations legally accountable.

Today, politics without knowledge - the painfully acquired, detailed knowledge of the kind ALTER-EU has accumulated and continues to dig up every day - is no longer possible. The researchers you will read in these pages refuse to bow to the democratically meaningless regime of "governance"; they demand to know who decides what, and how; they challenge the most powerful, most secretive, most protected interests in Europe and they defend the genuine interests of Europeans and of Europe itself. They further know perfectly how to use the few openings left to European citizens to effect change, combining grim perseverance with precision and a sense of humour. In a word, they deserve a full measure of praise: Bravo.

Now enjoy the book, then take action and support them.

1 Baron Daniel Janssen, CEO of the Belgian Chemical Giant Solvay, in a speech to the General Assembly of the Trilateral Commission in Tokyo, April 2000

introduction

ALTER-EU Steering Committee

The book in your hands is written by activists, campaigners, and researchers from the ALTER-EU coalition,[1] drawing on their experiences of campaigning against excessive corporate influence and for greater lobbying transparency, ethics, and accountability within the European Union. It provides both an introduction and a guide to some of the ways in which power and influence are exercised in EU policy making, addresses how abuses of power can be exposed, and looks at the ways in which the system could be improved.

Each chapter provides a detailed critique of the role of lobbying in EU decision –making processes, revealing a disturbing reality of secrecy, privileged access, and other aspects of undue corporate influence. In so doing, the book not only sheds light on how lobbying works in Brussels, it also reveals why lobbying transparency and reformed ethics are crucial in order to develop a more accountable and democratic form of decision making in the EU. Case studies examine different aspects of EU lobbying and explore how decision makers in Brussels interact with outside interests and pressure groups. The picture they portray provides a compelling argument for the need for radical reform, revealing a political culture in which, behind closed doors, the influence of business has become the norm.

ALTER-EU wants to see a new political culture in Brussels and in EU decision making more generally, rooted in genuine transparency in lobbying and decision making. Without such transparency there can be no proper scrutiny or accountability, which are the hallmarks of vibrant democratic cultures. This goes to the heart of worries about the various democratic deficits associated with EU politics and the way decisions are taken.

ALTER-EU was established in 2005 as a coalition of over 160 civil society groups and trade unions concerned about "the increasing influence exerted by corporate lobbyists on the political agenda in Europe, the resulting loss of democracy in EU decision-making and the postponement, weakening, or blockage even, of urgently needed progress on social, environmental and consumer-protection reforms".[2] While these problems have far from gone away, intensive campaigning over the last five years has lead to a growing recognition of ALTER-EU's demands for democratic change. One of ALTER-EU's main achievements has been to launch – for the first time ever – a serious debate about the widespread secrecy and undue influence of industry lobbies in EU decision making, a debate that has been widely covered by European media. Several chapters in this book describe the counter-offensive led by Brussels-based lobby consultancy firms, primarily aimed at preventing effective rules on transparency in lobbying. Whereas a majority of the European Parliament supported many of ALTER-EU's demands, the European Commission has allowed these vested interests far-too-strong a say over transparency and ethics reforms introduced in the context of the European Transparency Initiative (ETI). As a result, the intense debate of the last five years has not brought about an end to lobbying secrecy nor any meaningful progress in halting the undue corporate influence over EU decision making.

In the light of the obvious need to increase trust in EU decision making the European Commission's unwillingness to pursue meaningful transparency and ethics reform is remarkable. The evidence of the past few years is that the wider European public is less than enthusiastic about EU politics and very often distrusts Brussels (the Parliament inspires marginally greater trust than the Commission).[3] Declining turnout in European elections is no coincidence. The difficulties that national governments have in selling EU treaties to their electorates (and memorably the abortive EU constitution as witnessed in the French, Dutch and Irish referenda) underline the disconnect between Brussels and citizens across the Union.

Many sceptics bemoan the loss of national sovereignty that accompanies the transfer of powers and competencies to the EU. Such a stance is both nationalistic and insular. This does not mean, however, that there is no alternative to the current approach. Europe has become enslaved by a free-market ideology that demands that economic competitiveness is the only true goal – and that if that means discarding individual well-being, that is the price to pay. This ideology has undermined many of the major social and

democratic gains that European societies struggled to develop in the post-war period. It is time to recognise the price being paid and to find more effective democratic ways of achieving common goals.

This book contains numerous criticisms of Brussels and of the EU system, but it is by no means an anti-EU tract. ALTER-EU shares a vision of a sustainable peace, cooperation, and prosperity across Europe, but profoundly disagrees with the means and policies currently being pursued in its name. The rationale for this book is that we believe far-reaching reform of the EU is necessary and urgent, and to identify some of the pressing issues that can and should be addressed as the first steps in a wider reform agenda. Beyond providing insights into serious problems in the democratic quality of EU decision making, the book aims is to encourage European citizens and civil society groups to get involved and bring their influence to bear in recasting this system.

This book is divided into four interlinking sections that together build a detailed overview of the issues and campaigns ALTER-EU has been involved in since 2005. The first section sets the scene and explains why lobbying in Brussels is a problem. It also includes detailed case studies, for example of how lobbyists mobilised to derail legislation threatening to register toxic chemicals in Europe. While the activities of lobbyists are its central focus, the book also highlights how the battle for influence is also a battle for ideas (which makes the role of think tanks significant) and a battle of perception (which is where the media's watchdog role is found to be compromised in Brussels).

The second section showcases some of the research and original investigative work undertaken by ALTER-EU and its member organisations, illustrating the problems associated with both privileged access to decision makers and conflicts of interest. What emerges from the chapters on trade policy being dictated by industry, the role of business in providing expertise and advice to politicians and decision makers, and on the close and very poorly supervised relations between politicians and lobbyists (for example, the revolving door which allows EU politicians and officials to end up working on behalf of business) is the unfettered access and influence enjoyed by business lobbyists. The systematic and pervasive influence of corporate lobbying across policy making, regulation, and the legislative process undermines trust, confidence, and the legitimacy of the system it so profoundly corrupts.

Reforming this structure is the focus of the third section, which presents an overview of some of the campaigns aimed at curtailing corporate influence on legislation and policy. This section looks at lessons to be learned from reform initiatives in Washington under the Obama Administration, as well as the ongoing struggle for lobby transparency in Europe. Transparency and accountability are key threads running through the chapters dealing with the naming and shaming of the EU's 'Worst Lobbyists', the story of the European Transparency Initiative (ETI), efforts to create corporate accountability, and the use of freedom of information and access to documents to hold the powerful to account and to inform the public about how decision making operates in Europe.

Whereas the chapters in the first three sections reflect the opinion of the individual authors (and not necessarily that of the coalition as a whole), the last section presents ALTER-EU's vision of the way forward. Drawing on the case studies and analyses presented in the book, it suggests a programme of action that we hope is both appealing and compelling. We hope you find this book informative and provocative. If our critique makes you think differently about how EU politics works then we have perhaps achieved half of what we set out to do. If it inspires you to find out more, and maybe even get active and involved in making the EU more accountable and transparent, then this book will have served a real purpose. Over to you...

1 The steering committee consists of Paul de Clerck (Friends of the Earth Europe); William Dinan (Strathclyde University & Spinwatch); Marc Gruber (European Federation of Journalists); Ulrich Müller (LobbyControl); Jorgo Riss (Greenpeace European Unit); Erik Wesselius (Corporate Europe Observatory); and Yveline Nicolas (Adequations).

2 ALTER-EU mission statement, ALTER-EU homepage http://www.alter-eu.org, Last accessed 29 March 2010.

3 European Commission, "Trust in the European Institutions", Eurobarometer 72 (August 2009). Fifty-four per cent of those surveyed were satisfied with the way democracy works in the European Union, 50 per cent trusted the European Parliament, while 46 per cent trusted the Commission.

Part 1

brussels – a rough guide to the bubble

1

brussels – a lobbying paradise?

William Dinan, Spinwatch and Erik Wesselius,
Corporate Europe Observatory

In the last 30 years, in the light of a series of new European Union treaties, thousands of lobbyists have flocked to Brussels, drawn by the increasing importance of EU-level decision making. Today on average 30–40 per cent of all national laws and regulations in the 27 EU Member States derive from EU rules and legislation; for environmental issues, it is more than 60 per cent.[1]

Lobbying is usually defined as seeking to influence legislation, policy, or regulation, usually in return for payment. A narrow understanding of lobbying focuses solely on direct representations by pressure groups to legislators. A wider and more realistic definition includes the different forms of communication and research activity that underpin, inform, and support the preparation of policy proposals before lobbyists put them to legislators and decision makers.

From the mid-1980s corporate lobbyists began to take an increasingly close interest in what the EU was doing, and how they could influence it. In 1985 there were reportedly 654 lobbyists in Brussels.[2] This figure continued to grow and by 1992 it was estimated that more than 3,000 public and economic lobbies were active in Brussels.[3] It is said that over 15,000 lobbyists are currently active influencing the EU institutions, most of them from offices in the four square kilometres around the European Commission headquarters and the European Parliament, the so-called European Quarter.[4] Brussels now vies with Washington for the title of lobbying capital of the world.

The vast majority of the Brussels lobbyists work on behalf of business interests. Citizens' groups and public-interest lobbies, on the other hand, are surprisingly thin on the ground. One estimate suggests that corporate lobbyists outnumber public-interest groups by a factor of five to one.[5]

Corporate lobbyists also have much more money at their disposal. While public-interest lobbies can benefit from the positive reputation of their organisations and the commitment of their staff, they are generally fighting an uphill battle. The uneven playing field between those lobbying for commercial interests versus the defenders of wider public interests is further skewed by the privileged access to decision makers that big business lobbyists enjoy. As a result, EU directives, regulations and other policy initiatives are often weakened by industry's lobbying power, as documented elsewhere in this volume.

The Brussels lobby scene is populated by a bewildering variety of different organisations and individuals who engage in lobbying activities. Most of them are so-called 'in-house lobbyists', who are employed by corporations or other organisations like trade associations[6], charities, and NGOs. In-house lobbyists represent their employer's interests to policy makers and regulators. They often cooperate with hired consultants, who work for a fee on behalf of a multiplicity of clients. Hired consultants usually work for specialist lobbying consultancy firms (often part of multinational public relations firms) or are lawyers working in the public affairs departments of large commercial law firms. The complexity of lobbying today means that we need to also factor in the role of media, public relations, and think tanks when analysing how pressure and influence are brought to bear on decision making.

Brussels has over 1,500 professional associations, representing almost every industry imaginable, ranging from the small Brussels office of the European Envelope Manufacturers Association[7] to the 150 staff in the headquarters of the European chemical industry federation (CEFIC).[8] Hundreds of public affairs firms are active in Brussels, big names like APCO, Burson-Marsteller, Hill & Knowlton, GPlus and Weber Shandwick, alongside smaller lesser-known consultancies such as Creative Strategies and the Polit Bureau.[9] Together they employ over a thousand 'hired-gun' lobbyists who will work for any industry or company that can afford to pay them. In addition there are hundreds of 'EU affairs' offices run by transnational corporations, and numerous think tanks, often heavily dependent on corporate funding.

This lobbyists' web provides a complex political echo chamber for pro-corporate messages to influence Brussels' decision makers. The receptions and policy seminars organised by these groups, their publications, brochures, and policy papers all help to reinforce and repeat business-friendly messages in policy discussions. The scale of the propaganda effort (in terms of outlets, volume, and access to key officials and politicians) helps to cement the impact

of big business ideas and interests on decision making in Europe.

Despite its extent, there is still no meaningful transparency around lobbying of the EU. The launch of the European Transparency Initiative in 2005 (see Chapter 13) sparked much debate about lobbying disclosure but to date it has largely failed to make this vital aspect of the political process visible or accountable.

The Commission's current voluntary register includes less than one third of the thousands of groups and firms that are lobbying the EU.[10] The information in the register on lobbying expenses is incomplete and unreliable. Owing to the continued secrecy surrounding EU lobbying, enforced by the weak transparency system, it is simply impossible to know how much any organisation is spending on lobbying the EU institutions in any year. It is also impossible to tell precisely which issues organisations are lobbying on, or indeed, who is actually doing the lobbying. These vital ingredients for lobbying transparency are not included in the EU lobbying register. An industry insider estimated in 2005 that the annual turnover of corporate lobbying in Brussels was between €750 million and €1 billion.[11] In Washington, where there are slightly more lobbyists than in Brussels, expenditure on lobbying amounted to $2.43 billion in 2005, rising to $ 3.47 billion (€2.6 billion) in 2009.[12]

Lobbyists in the European system – a brief overview

A political reality has emerged within the EU institutions where professional lobbyists play a far greater role than they do in any of the EU Member States. While there is certainly a legitimate role for lobbying, EU lobbying risks becoming simply a vehicle for the capture of politics by commercial interests. At the EU level, government of, for, and by the people has been quietly eclipsed by private interactions between professional power brokers and decision makers, who often have very little contact with, or interest in, mere voters. One of the reasons why this system has developed is the absence of a genuine pan-European public debate and the relative weakness of European civil society networks and social movements at the EU level.

Lobbyists seeking to influence EU legislation usually make the Commission their starting point: only the Commission can initiate new EU legislation and it plays a key role in the implementation of existing EU law. The relatively small size of the Brussels' administration is one of the reasons that Commission officials rely so heavily on outside 'experts' in drafting policy proposals and legislation. The entire European Commission employs

approximately 25,000 staff, with as many as a third of these in secretarial and translation posts. To fill gaps in its expertise, the Commission runs more than 1,000 advisory groups, many of which are crowded with industry experts/lobbyists (see Chapter 6). The Commission has in recent years faced criticism for granting privileged access to industry lobbyists, but has refused to acknowledge this as a major problem.

The Commission's close relationship with business dates back to the early 1980s when then Commission President Jacques Delors entered a strategic partnership with the European Roundtable of Industrialists (ERT), a lobby group composed of top executives from Europe's largest corporations.[13] The ERT was founded with the express intention of creating a business-led Marshall Plan for Europe. It teamed up with Delors to lobby EU governments to support the creation of a single European market and the ceding of decision-making powers to Brussels in order to make Europe more competitive and business-friendly.

The Commission sets the political tone and temperature in Brussels. Its powers mean that it can influence politics and policy throughout the European Union, although member states still have national autonomy in interpreting EU directives. The Commission has shown itself repeatedly to be open to lobbying by business, preferring cosy consultations with corporations to the rather more fraught negotiations with other social interests: in effect big business has a privileged seat at the Commission's table, while public interests (such as trade unions, environmental concerns, and other civil society interests) are under-represented and frequently excluded.

The Council of Ministers, made up of the governments of the 27 Member States of the EU, approves each piece of EU legislation, and is acknowledged as perhaps the most unaccountable of the EU institutions. National associations and individual companies often target the Council of Ministers by lobbying their member-state governments. Sometimes such efforts are coordinated on an EU-wide basis. As a result of such lobbying, national ministers or their civil servants often act as the mouthpiece for powerful corporate interest(s), presenting it as a 'national interest' when involved in intergovernmental negotiation in Brussels.

The European Parliament is important, not simply because it is the only directly elected EU institution, but because in recent years its powers have grown significantly. On many issues it now has the power to approve, block, or adapt proposals coming from the Commission, comparable in some ways

to the role of the Council of Ministers. The Parliament has therefore attracted a growing number of lobbyists, with some 4,500 now holding access badges for the Parliament – the equivalent of six lobbyists for each MEP.

Former EU Commissioner Mariann Fischer Boel recently called the European Parliament a "lobbying paradise".[14] One German MEP described his daily experience of lobbyists: "They phone me, they pick me up downstairs, they write me a hundred letters a day. It is not possible to get from here to the entrance and not see any lobbyists".[15] In 2004 a lobbyists' association complained to the parliamentary authorities that its members sometimes had to stand when they attended parliamentary committee meetings, as a result of the numbers involved.[16] The European Parliament buildings are enormous but they are still not big enough to accommodate the thousands of accredited lobbyists roaming the corridors of power.

An indication of the level of lobbying pressure to which MEPs are exposed can be found buried in an annexe to the resolution on the EU Emissions Trading Scheme (ETS), adopted by the European Parliament in 2008.[17] In an unprecedented move, Avril Doyle, the MEP leading the work (known as the rapporteur) published a list of the 168 lobbies that had contacted her on the issue. Doyle said she felt industry-generated pressure firsthand, but not only from lobbyists: her own party colleagues who had also been lobbied put pressure on her as rapporteur.[18] This lobbying also had a national dimension. Jo Leinen, chair of the Parliament's Environment, Public Health, and Food Safety Committee described how industry pressure was exerted across Europe: "The German government, the French government, the British government – they've all been lobbied like hell".[19]

In February 2009 Slovenian Liberal Democrat MEP Mojca Drčar Murko highlighted the role of pharmaceutical industry lobbyists during the EU's so-called 'Great Apes Debate' on animal testing. In a dramatic move, Murko distanced herself from the resolution on animal testing for which she was responsible as rapporteur after the Parliament's Environment Committee rejected almost all her proposals aimed at reducing the suffering of apes in scientific laboratories. Pharma lobbyists played a major role in this outcome. Murko observed: "A lot of colleagues were repeating the same arguments I heard all the time from the research community and pharmaceutical industry – the same arguments, and even the same words".[20] In protest Murko voted against the committee's conclusions and openly distanced herself from them in a letter to the committee's chair.

A recent study[21] analysed amendments submitted to the Parliament on the regulation of climate-destabilising F-gases and on the REACH system for registration and testing of chemicals. In both cases a lot of the amendments were either identical, or very similar to, industry lobbying position papers. On REACH the research revealed that well over 50 per cent of the amendments tabled by the conservative EPP-ED group on the relevant committees "could be traced back to a lobby source", mainly from the chemical industry.[22] Many of the amendments tabled by EPP-ED MEPs "used identical wording to that of a lobby group". While the study shows that the chemical industry lobby had the biggest influence on the EPP-ED group, members from several other parties also tabled industry-inspired amendments.

Parliamentarians have become dangerously reliant on the information and 'help' on offer from lobbyists. As is the case with the Commission (with its very limited internal research capacity), so too the Parliament relies on advice and information from outside organisations. This represents a massive opportunity for lobbyists with the resources and interest to influence decision making by 'subsidising' the work of officials and MEPs in their preparation and scrutiny of legislation.

David versus Goliath

Industry lobbyists generally outnumber and outspend public-interest campaigners in Brussels. In his book about his experiences as an MEP, Jens Holm describes the debate over the revision of the Cosmetics Directive.[23] The main lobby player on this issue was COLIPA, representing companies like Colgate Palmolive, L'Oréal, Procter & Gamble, Unilever, and Chanel. COLIPA employs 20 full-time staff at their Brussels offices, in addition to a number of hired consultants. At the European consumers' lobby BEUC, only one person works on cosmetics issues. As Holm points out, "she is certainly capable, but against 20 fulltime lobbyists and contracted consultants the playing field is obviously unequal". Cosmetics are just one example. The chemical industry lobby group CEFIC employs around 150 people in Brussels. The car lobby is estimated to employ more than 75 full-time lobbyists in Brussels. Lobbyists for the financial services, energy, and pharmaceuticals industries are among the most heavily represented sectors.

In the field of financial services, the imbalance has been particularly striking. In the midst of the financial crisis and the huge public bail-out of the banking industry, financial services lobbyists have mobilised to resist regulation and

scrutiny of their activities. Barely a week passes in Brussels without the opportunity for MEPs and officials to attend an event where they can hear the perspective of the financial services industry on the financial crisis and its preferred policy responses. There has been virtually no public-interest lobby to counter the constant pressure from the lobby of banks, hedge funds, insurers, and other financial industries.[24]

In the debate about (the lack of) transparency around EU lobbying, commercial lobbyists have fought against disclosing what they spend on lobbying. José Lalloum, who chairs the European lobbying consultancies' association EPACA, claimed that such financial information was only useful to "under-employed journalists [to] prove one thing or another". He said it was "very dangerous" to focus on the money spent by lobbyists and that "linking money with influence sends the wrong message".[25] It is not hard to imagine why those with superior financial means downplay the importance of money. Money does not always determine the outcome of lobbying battles, but financial clout clearly counts.

Looking at lobbying on EU climate policy, Norwegian researcher Anne Therese Gullberg found that the imbalance in resources between business and public-interest groups has serious impacts.[26] Business lobbies use their human and financial resources to engage in more comprehensive and prolonged lobbying than could environmental groups. Whereas environmental lobbies (often due to limited resources) mainly lobby decision makers with positions similar to their own, business groups target both 'friends' and 'foes'. Environmental groups are forced to prioritise and focus on influencing key policy decisions, whereas business organisations are able to also invest in more long-term, general lobbying. This more general approach aims not only to set the agenda but also to frame the thinking about which policy options are feasible and which are not.

Gullberg points out that lobbying at the EU level requires more resources than at national level because it is difficult to attract attention given the number of different lobbyists and volume of lobbying activity in Brussels.[27] While strategic lobbying is important, the study finds that "strategy is not enough because resources decide which strategies can realistically be pursued". In the case of climate policy, influence depends on having sufficient knowledge about the process as well as a network of contacts among decision makers. Such resources are costly and time-consuming, putting big business at an advantage.

Lobbying in Brussels is frequently described as being softer and more consensus-seeking than the aggressive approaches sometimes found in

Washington. Lobby consultants in Brussels like to compare the EU quarter to a harmonious village where everyone looks after one another. June O'Keefe from the lobbyists' lobby group SEAP argued: "In the small Brussels village reputation is everything."[28] But this cannot justify the industry's rejection of transparency and is in any case unconvincing. Likening Brussels to a quaint "small village" obscures the high stakes and far-reaching consequences of the decisions being made. Policy decisions in Brussels affect 500 million citizens, most of whom feel uninformed about EU decision making. The lobbying community in Brussels is utterly unaccountable to the wider EU public.

The lobbyists' benign and Panglossian versions of reality inside the Brussels bubble are at odds with a rather more candid assessment offered by EU lobbying veteran Daniel Guéguen. He has predicted that the Brussels influence industry will become more ruthless. "I think we are moving towards tougher lobbying strategies, towards more sophisticated approaches to economic intelligence that will probably involve practices such as manipulation, destabilisation or disinformation," he said.[29]

For-profit lobbyists often claim that Brussels hasn't seen any major lobbying scandals, as have been seen in the USA[30], suggesting this shows there is no need for mandatory transparency and ethics rules for lobbyists. But in a poll conducted in 2006[31], some 40 per cent of lobbyists polled indicated they thought a lobbying scandal could happen in Brussels unless measures were taken to avoid it. US scandals came to light as a result of transparency rules, and similar abuses in Brussels may well remain hidden. Is Brussels really an idyllic village full of conscientious lobbyists, or are manipulation, destabilisation, and disinformation the order of the day? At least with some system for compelling lobbyists to disclose their activities, budgets, and clients there is a much greater likelihood that malpractice can be identified and addressed.

Mandatory lobbying disclosure is a powerful means of informing citizens about the conduct of government and making the legislative process more accountable. When US courts forced the major tobacco companies to publish millions of internal documents, researchers were able to see evidence of the lobbying and PR strategies used by the industry to manipulate science and politics. One revealing story tells how a leading Brussels think tank, the European Policy Centre (EPC), helped British American Tobacco (BAT) and its corporate allies to fundamentally change "the way in which all EU policy is made by making a business-oriented form of IA [Impact Assessment] mandatory".[32] The result was an increased likelihood that the EU would produce policies that advanced the

interests of major corporations, including those whose products are damaging to human health. Think tanks are usually thought of as independent research institutes that specialise in policy development and analysis. However, most of the think tanks in Brussels are highly dependent on corporate funding and many engage more in advocacy than independent research (see Chapter 4). The researchers found that the European Policy Centre in the mid-1990s helped set up a Risk Assessment Forum, which brought together a range of large corporations to build "a large reservoir of informed and favourable opinion towards the project across the EU". A key part of the project was to ensure that policy makers could not use the precautionary principle in legislation and would instead use impact assessments as a means of evaluating proposals.

Conclusion

The power and procedures of the European institutions, their reliance on outside advice and information, coupled with almost non-existent rules and regulations, make Brussels a lobbyists' paradise. There is no proper oversight or scrutiny of lobbying and there is a shortage of investigative journalists and inquisitive media in the Brussels bubble. All this combines to allow lobbyists to go about their business unfettered by any concerns for public accountability. The result is anti-democratic because those who can spend most on lobbying have the best chance to influence EU decisions.

The only way to begin to get to grips with this democratic deficit is the introduction of a mandatory lobbyists register –but transparency alone is not a panacea to the problems associated with lobbying in Brussels. Examples described throughout this book show how corporate interests regularly use questionable lobbying tactics like scaremongering, flawed impact studies, delay tactics, deception and misinformation, and the use of front groups and third parties to advance corporate interests in policy and legislation. The privileged access and influence enjoyed by big business remains a key problem. These are symptoms of a political culture adrift, lacking a participative and engaged public.

ALTER-EU has consistently promoted an emphasis on ethics and the integrity of public life. We believe that robust rules and regulations regarding lobbying and ethics are needed to secure the probity of the EU system. The culture and assumptions that currently dominate the Brussels bubble are simply not fit for purpose – assuming that the purpose is not simply the corporate capture of EU decision making.

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2 Maria Green-Cowles, "The Rise of the European Multinational", *International Economic Insights*, July/August 1993, pp. 15–18.

3 European Commission, *An Open and Structured Dialogue between the Commission and Special interest groups* [OJ93/C63/02] (Brussels: 1993). Cited in: David Coen, *Lobbying in the European Union* (Brussels: Directorate-General Internal Policies/Citizens Rights and Constitutional Affairs, European Parliament, 2007), p. 6.

4 See for example: E. Corijn, C. Vandermotten, J.-M. Decroly, E. Swyngedouw, "Brussels as an international city", *Brussels Studies*, Synopsis no.13, 24 February 2009.

5 Corporate Europe Observatory, "Academia: a partner for advancing the corporate agenda?", *Corporate Europe Observer* 12, August 2002.

6 Trade associations exist to represent the political and commercial interests of a particular business sector. They are a significant sector within the Brussels lobbying scene.

7 http://www.fepe.org

8 http://www.cefic.eu

9 http://www.creative-strategies.be and http://www.politbureau.be

10 ALTER-EU, "Commission review of lobby register brings minor improvements but fails to fix fundamental flaws", press release, 28 October 2009.

11 Simon Titley, "The rise of the NGOs", in: Phil Harris and Craig S. Fleisher (eds), *Handbook of Public Affairs* (London: Sage Publications, 2005), p. 218.

12 http://www.opensecrets.org/lobby/index.php

13 See: Belén Balanya et al, "Writing the Script: The European Round Table of Industrialists" in: *Europe Inc : Regional & Global Restructuring & the Rise of Corporate Power* (2nd ed) (London: Pluto Press, 2003), pp . 19-36.

14 Joshua Chaffin, "Europe: A field to level", *Financial Times*, 9 February 2010.

15 Graham Bowley, "Brussels rise draws lobbyists in numbers", *International Herald Tribune*, 18 November 2004.

16 Letter by SEAP to European Parliament President Pat Cox, 24 March 2004.

17 Annex to Avril Doyle (rapporteur), *EP report on improving and extending the EU's greenhouse gas emission allowance trading system*, 15 October 2008.

18 Brigitte Alfter, "European Ambitions Hit a Wall of Carbon; Business, Industry Pare Back EU Climate Goals", for the International Consortium of Investigative Journalists project: *The Global Climate Change Lobby; Inside the battle to Influence the Most Important Environmental Treaty of Our Time*, 6 December 2009.

19 Ibid.

20 Pete Harrison, "Politician makes protest in EU's Great Apes Debate", *Reuters*, 24 February 2009.

21 Mary Craig, *Lobbying at the European Parliament – two legislative cases: F-gases and REACH*, commissioned by the Greens / European Free Alliance in the European Parliament, April 2008.

22 Ninety per cent in ENVI, 61 per cent in ITRE, and 51 per cent in IMCO. [Craig, op. cit.]

23 Jens Holm, *EU Inifrån – berättelser från EU-parlamentet* 2006–2009 (Stockholm: 20 April 2009). See http://euinifran.wordpress.com

24 A quick search of the Commission's Register of Interest Representatives (RIR) for the term "bank" returns 29 entries, all of which are banking and financial services lobbies except a tiny organisation called BUBEBA (Build a Better Bank), which has a declared operating budget of € 359.

25 "Commission register under attack at 'Action Day' event; SEAP's Stewart, ECPA's Spencer and EPACA's Lalloum share their views", *Public Affairs News*, January 2010.

26 Anne Therese Gullberg, *Strategy counts, resources decide: Lobbying European Union climate policy,* (PhD thesis, University of Oslo, Department of Political Science, 2009).

27 Ibid.

28 "Brussels lobbyists adopt revised code of ethics", *EurActiv.com*, 18 February 2005.

29 "PA veteran calls for professional body to scrutinise Brussels lobbyists", *Euractiv.com*, 4 May 2005.

30 For example, Jack A. Abramoff was an infamous 'super-lobbyist' with close links to the Republican Party who pleaded guilty to "defrauding Indian tribal clients of millions of dollars, conspiring to bribe members of Congress and evading taxes". He was convicted of fraud and corrupting public officials and was jailed for over five years for these crimes. Taken from the article on Jack Abramoff on www.sourcewatch.org

31 Andrew Hawkins, *The State of Public Affairs 2006*, (Brussels: COMRES, 7 March 2006).

32 Smith, K. et al, "Working the System" – British American Tobacco's Influence on the European Union Treaty and Its Implications for Policy: An Analysis of Internal Tobacco Industry Documents", *PLoS Med* 7(1), 2010.

2

chemical warfare – the lobbying battle on REACH

Jorgo Riss, Greenpeace European Unit

An EU proposal to introduce new legislation governing the safety of chemicals – the REACH directive – triggered one of the biggest industry lobby campaigns seen in the EU. The chemical industry's lobby groups went on the attack, shifting the focus from environment and health to concerns about employment, and competitiveness. Scare stories appeared suggesting a threat to jobs, competitiveness, and the future of the industry in the EU. National governments – including some outside the EU joined the attack, creating a damaging campaign which threatened to undermine the very purpose of the legislation. Jorgo Riss from Greenpeace looks at the process of the battle and assesses what was salvaged from the attack.[1]

In April 1998, EU environment ministers agreed that EU laws on chemicals must be fundamentally reformed to prevent serious illnesses and contamination of the environment. At the time, existing EU legislation allowed the chemical industry to manufacture, import, and market more than 100,000 substances without having to provide basic data about their effects on human health or the environment. This meant that public authorities had little or no information about the majority of hazardous chemicals in use, and so could do very little about them.

The call for new legislation did not come out of the blue. Greenpeace and other public-interest organisations had been calling for reform for some time[2] highlighting scientific findings that linked health problems – including allergies, infertility, and cancer – with people's everyday exposure to chemicals. The campaign groups had popularised research that showed how man-made hazardous substances were accumulating in the environment – in soils, rivers, rainwater, animals, and plants, and in the food chain. After the boom of the

chemical industry in the second half of the 20th century, invisible pollution of the environment had become widespread. Testing of blood and tissue samples showed that persistent non-degradable toxins even contaminated animals such as whales and polar bears, which live thousands of kilometres away from chemical factories. Given the incapacity of public authorities to respond to this problem, environmental groups called for action and proposed ideas for a fundamental and systematic reform of EU legislation on chemicals.[3]

The message being put out by public-interest organisations was supported by the European Environment Agency, which stated in 1998 that "[t]here is evidence about the health effects of manufactured chemicals in humans, including cancer, cardiovascular and respiratory diseases, allergies and hypersensitivity, reproductive disorders, and diseases of the central and peripheral nervous systems" and that "[a]lthough the ecological impacts of chemicals are complex, some effects are well documented. The effects on various animals, birds and fish, include birth defects, cancers, and damage to nervous, reproductive and immune systems."[4]

According to EU law, however, it was not the duty of chemical companies to assess the safety of their existing chemicals.[5] Instead, the 'burden of proof' was on public authorities, which had to undertake lengthy assessments of selected chemicals in order to prove the risks posed by any particular substance. Only then could the EU propose bans or restrictions. This risk assessment process was slow.[6] By 1998, comprehensive risk assessments had only started on 111 priority chemicals. None of these assessments had yet been completed, and no protective measures had been taken. The failure of existing EU chemicals legislation was obvious.[7]

In February 2001, three years after EU environment ministers had called for reform, the European Commission responded with a White Paper outlining its proposal for a new chemicals policy.[8] It recognised that the lack of knowledge about the impact of many chemicals on human health and the environment was a cause for concern. It proposed a reversal of the burden of proof as a central principle of the reform so that in the future chemical companies would have to provide relevant health and safety data before they could produce, import ,or market chemical substances. 'Substitution' was supposed to become a second central element of the future legislation, to ensure that hazardous chemicals, once identified, would be replaced (substituted) by safer alternatives. To make the reform palatable to the chemical industry, the Commission offered a deal: in return for delivering

safety data for all chemicals produced or imported in volumes over one tonne per year, EU safety assessment standards would be lowered.[9]

Both the European Parliament and the Council expressed their support for the reform,[10] which became known as '**REACH**', the proposed new EU law on **r**egistration, **e**valuation and **a**uthorisation of **ch**emicals.[11] The chemical industry opposed it, with representatives of the chemical lobby initially denying that there was a problem.[12] When this failed to work, they embarked on a coordinated lobby strategy to block the reform.

From the European Commission's first policy outline to the final adoption of the REACH legislation by the European Parliament and Council, took from 2001 to 2006. During this time, the chemical industry and public-interest organisations both sought to influence the EU decision-making process. A German newspaper, reporting from Brussels in 2003, referred to their respective efforts to shape the future EU chemicals policy as "the biggest lobby battle of all times".[13]

At the beginning, given the support of the European Parliament and Council for the Commission's White Paper, it looked as though the EU seemed on track to get new legislation that would tackle the problem of increasing environmental and human contamination from hazardous chemicals. Environmental groups had largely been successful in stimulating reform. The thinking in the White Paper reflected ideas that Greenpeace had been promoting, including the proposal to reverse the burden of proof on chemicals and to insist on substitution of hazardous chemicals with safer alternatives. The Parliament and Council called for further improvements to REACH that had been promoted by environment, health and consumer groups. But of course, that was just the beginning...

The toxic lobby[14]

From the moment that Parliament and Council expressed their support for REACH, the chemical industry increased its lobbying efforts against the reform. Four different tactics were apparent. Firstly, the chemical industry tried to shift the focus of the political debate away from concerns about environment and health towards employment and competitiveness. Secondly, it sought to gain influence with politicians and officials working on the REACH dossier. Thirdly, it tried to stimulate wider opposition against the reform. Finally, the chemical industry aimed to cripple the legislation with complex procedures that would increase bureaucracy and make progress difficult once REACH was adopted.

Shifting the focus

The chemical industry lobby started its coordinated public attack on REACH in autumn 2002, while the European Commission was still drafting the legislative proposal (adopted in October 2003). The industry's main argument against REACH was that the reform would undermine the competitiveness of European industry and lead to significant job losses. To support these claims, industry lobbyists cited several impact assessments. The first and arguably most effective one was published by the German Industry Confederation (BDI), which had engaged the consultancy firm Arthur D. Little (ADL) to calculate possible negative economic impacts of the reform (as outlined in the Commission White Paper).[15] The consultants developed three scenarios with the evocative titles "clouds", "storm", and "hurricane".[16] Arthur D. Little predicted that REACH could cause up to 2.35 million job losses in Germany alone. BDI presented the conclusions of this study at a press conference in Brussels, and the "catastrophic" figures were widely reported in the European press.

Industry did not make the full text of the study available at the press launch, and it was therefore impossible for anyone to make an independent assessment of its validity. Only months later did independent experts see the full text. After Germany's leading economic institutes had assessed the ADL study, they concluded: "the forecast made in the ADL study about national economic gross value added and job losses is methodically unsound and therefore not applicable".[17] It was a devastating verdict: the study was found to be fundamentally flawed in its methodology because it ignored the positive effects of REACH, it was based solely on industry information with cost estimates that were systematically too high, and it was based on a static model that did not account for the dynamics of the economy, such as technical progress. The study was also criticised for estimating that the costs of chemical testing were three times higher than normal market prices, and for not considering the availability of cheaper computer modelling techniques as an alternative to animal tests for assessing chemicals. As critiques began to appear, industry lobbyists soon backed off from defending the ADL study in detail, but the damage had already been done.

Up until 2002, policy makers had generally regarded REACH as a reform that aimed to improve protection of humans and the environment from hazardous chemicals. Attitudes changed after the industry lobby presented the ADL study and other impact assessments. Suddenly, REACH looked like a threat to

the competitiveness of the European chemical industry. The fact that the industry's impact assessments were methodologically flawed, exaggerated, and biased did not undermine their effectiveness. By the time it was established that the studies were useless, it was already too late.[18] Concern about possible negative impacts of REACH was spreading among decision makers, and the European Commission started withdrawing from the ambitions it had set out in the White Paper. The media, which had widely cited ADL's "catastrophic" figures in December 2002, gave little or no space to the critiques of the study in February 2003.[19] As Singhofen says: "einfache Schlagzeilen sind sexy, Richtigstellungen sind es nicht" ["simple headlines are sexy, corrections appear only as footnotes"].[20] The perception that REACH was a potential job killer persisted and was effectively used by the chemicals lobby throughout the legislative process.[21]

Mobilising industry

Within the chemical industry lobby, large German companies played a central role. BASF was possibly the single most important player in influencing politicians and in leading the industry lobby against the environmental and health objectives of REACH.

In 2002, the then BASF vice-chair Eggert Voscherau became president of the European Chemical Industry Council (CEFIC). Under his leadership, CEFIC made scaremongering claims about job losses and the loss of competitiveness its favourite weapon. In summer 2003, Voscherau claimed that with REACH: "we are in effect going to de-industrialise Europe".[22]

In 2002, BASF also became co-chair of the Transatlantic Business Dialogue (TABD), a coalition grouping together top managers from the biggest US and EU companies. This led to closer contacts with CEFIC's US counterpart, the American Chemistry Council, and helped internationalise lobbying efforts against REACH.

From 2003 to 2005, BASF chairman Jürgen Strube was president of the powerful European employers' federation UNICE (Union of Industrial and Employers' Confederations of Europe, renamed BusinessEurope in 2007). This direct involvement in CEFIC, UNICE, and TABD allowed BASF to mobilise business associations against REACH.

BASF also steered leading industry associations within Germany: from October 2003 to September 2005, Jürgen Hambrecht (BASF chief executive

from 2003) chaired the German chemical industry association (VCI), becoming its vice-chair in September 2005. In November 2003 Hambrecht became vice-chair of the German Industry Confederation (BDI)

....and politicians

BASF, as well as Bayer and other large chemical producers, used their economic power to influence German politicians. From 2002 to 2006, German industry representatives fiercely lobbied the German federal government, German federal states administrations, and German parliamentarians. It seems that the chemical firms did not just rely on the strength of their arguments. In 2005, a German news magazine reported that many politicians were on the payrolls of chemical companies. BASF confirmed that it had 235 politicians under contract in Germany alone.[23]

This influence also extended within the European Parliament, where German Members of the European Parliament (MEPs) occupied central positions in the REACH debate. In the 2004–2009 legislature, German politicians acted as lead MEPs (rapporteurs) in six of the ten European Parliament committees involved in REACH. German MEP Hartmut Nassauer, (the lead MEP on the Internal Market) was a vocal advocate of chemical industry interests. In his negotiations within Parliament, Nassauer agreed to be assisted by an expert working for the German chemical industry, as Greenpeace exposed in 2006.[24]

Strong support for the chemical industry position also came from the German government, which repeatedly raised concerns about REACH at EU level. In March 2002, then German Chancellor Gerhard Schröder agreed a joint position with the German chemical industry association and the German trade union of chemicals workers (IG BCE).[25] This stated that REACH was necessary, but "should not have a negative impact on the general conditions of competitiveness of the European chemical industry". In September 2003, Schröder asked the then UK Prime Minister Tony Blair and French President Jacques Chirac to co-sign a letter to the European Commission, urging a cautious approach to chemicals regulation. When the European Commission adopted its legislative proposal for REACH in October 2003, most of the German government's demands had been taken on board. From then on, the German government played a more constructive role, until autumn 2005, when national elections brought a change of government.

In November 2005, shortly after the European Parliament had voted in favour of mandatory substitution for very hazardous chemicals, the newly-elected German Chancellor Angela Merkel asked the Council in November 2005 to postpone taking its position on REACH. The German government was concerned that a significant number of countries might support the Parliament position, and threatened to block any further progress of the reform.

The role played by the Commission in 2005

The German government also had an important ally within the European Commission. While European Commissioners are supposed to be "completely independent in the performance of their duties", and shall "neither seek nor take instructions from any government" (Article 213 EC Treaty), the German Commission Vice-President Günter Verheugen seemed to find this difficult during the crucial phases of the decision-making process on REACH. In the negotiations that took place in 2005 between the Council and the European Parliament, the objective of both institutions was to agree possible compromises ahead of the first votes on REACH in November (Parliament) and December (Council) that year. The European Commission participated in these negotiations, and Commissioner Verheugen agreed with Commission President José Manuel Barroso that the Commission should accept lower safety-data requirements for most of the 30,000 chemicals that would in future be covered by REACH.

The College of Commissioners was never consulted on this change of position, which represented a significant weakening of the Commission's original proposal. Verheugen's interventions steered the discussions in Parliament and Council towards a weak agreement. His actions only became public when, in September 2005, the Brussels offices of Greenpeace and Friends of the Earth received and disclosed an informal Commission document ('room paper') that outlined Verheugen's proposal for weaker safety data. With this manoeuvre Verheugen and Barroso had breached the Commission's institutional role of acting as 'conciliator' between Council and Parliament, and instead taken a partisan position in the as yet unresolved discussions in Council.

In November 2005, Commission officials under Verheugen's authority presented another informal paper to the Council, this time on the proposed new system for the authorisation of very hazardous chemicals. Several Member States had argued for implementing the substitution principle, while

others, notably Germany, remained opposed to a mandatory replacement of hazardous substances with safer alternatives. The Commission's position on substitution was the weakest on the table, and it undermined efforts by the British presidency of the Council to strengthen the substitution provisions in REACH.

Revolving doors

While the activities of EU Commissioners occasionally attract media coverage, powerful officials in the European Commission's bureaucracy generally escape the public's attention. This lack of scrutiny is particularly worrying since a very effective lobbying practice in Brussels is to recruit former EU officials as lobbyists. This is also known as the 'revolving door' tactic, and the chemical industry used it in its campaign against REACH. In the 2006 report Toxic Lobby. How the chemicals industry is trying to kill REACH, Greenpeace exposed several cases where EU officials had become industry lobbyists, including a former Director-General of the European Commission's Directorate General Enterprise and Industry (one of the two Commission departments in charge of drafting and overseeing the REACH legislation), who left the Commission in 2004 to lobby his former staff on behalf of the industry that was opposed to the REACH reform. Greenpeace also listed several cases where individuals had moved from the chemical industry directly to the European Commission's REACH unit.

Since the publication of the Greenpeace report, at least one of the individuals concerned has left the Commission and resumed his employment with BASF.[26]

BASF was also implicated in another highly criticised example of revolving doors at the national level when the former Chancellor, Gerhard Schröder was appointed chair of the North European Gas Pipeline Company. At the time BASF owned a 24.5 per cent stake in this German–Russian joint venture.[27]

Stimulating wider opposition

European chemical companies were not the only players in the anti-REACH lobby efforts. From the start, the US administration under President George W. Bush, and the US chemical industry (one of Bush's biggest financial supporters), ran a fierce campaign to hinder EU efforts to regulate the European chemical sector. This was possibly one of the most impressive

examples ever of foreign lobbying efforts against a proposed EU law. American chemical producers teamed up with their European counterparts and their interventions contributed to delaying and weakening REACH.

In April 2004, a report by US Democrat congressman Henry Waxman revealed some of the lobbying strategies used by US chemical producers such as DuPont and Dow to undermine REACH and block the proposal.[28] According to Waxman's report, the American Chemistry Council (ACC) had worked closely with US administration officials since 2001 to draft the official US position on REACH. The activities carried out by the US government and by several federal agencies were unprecedented: the US Environmental Protection Agency, the State Department, as well as the Commerce Department and the US Trade Representative were all involved in the lobbying effort. The then Secretary of State, Colin Powell, sent several messages (faithfully reflecting all concerns raised by the chemical industry) to US diplomatic posts in the EU. Powell's main instruction to the diplomatic staff in Europe was to ensure that REACH was portrayed as a "costly, burdensome and complex regulatory system".[29] In May 2003, the US Administration expressed strong criticisms, claiming that REACH "could prove unworkable in its implementation, adversely impact innovation and disrupt global trade".[30]

The Waxman Report showed that the core of the US government strategy was to build opposition to REACH both within and outside the EU. Emails collected by the US public-interest organisation Environmental Health Fund show how the Bush administration and the American Chemistry Council orchestrated an exceptional campaign, targeting in particular EU Member States with large chemical sectors (Germany, the UK, France, Italy, the Netherlands, and Ireland), weaker industry sectors such as small and medium-sized enterprises as well as developing countries. Waxman's report points out that this international lobbying strategy, closely coordinated with industry representatives, proved to be effective especially in watering down the draft Commission proposal, leading to a much weaker final Commission proposal in October 2003. In 2004, Greg Lebedev, then head of the American Chemistry Council, praised the efforts of the Bush administration regarding REACH saying: "We arranged for multiple elements of our government – the Department of Commerce, the US Trade Representative, the Environmental Protection Agency, and the Department of State – all to express the understandable reservations about this proposed rule and its transatlantic implications. I only wish that we could exert so much influence every day."[31]

Making it complex

By 2006, the chemical industry had significantly weakened the proposed reform, but it was not in a position to stop REACH altogether. While this chapter focuses on the tactics used by the 'toxic lobby', it is important to recall that, at the same time as the chemical industry was exercising its influence within national governments and the EU institutions, public-interest organisations were building broad alliances to support the REACH reform. By the time the European Parliament held its first plenary vote in 2005, environment, health, and consumer groups, doctors' associations and women's groups, trade unions as well as thousands of individual citizens were making themselves heard across Europe. The arguments for and against REACH were no longer confined to the Brussels policy-making bubble, but could be seen on evening news programmes and read in newspapers across the continent.

At this last stage of the decision-making process, the chemical industry promoted amendments to the REACH law that would relieve chemical producers of much of the responsibility for providing safety information for their products, drastically increasing the workload of the future European Chemicals Agency which would run the REACH system in the future. Whereas the industry lobbyists had for years tried to argue that the Commission's original proposal was 'too burdensome and bureaucratic', they now pushed Members of the European Parliament to propose and vote for amendments that would make the implementation of REACH complex, costly, and ineffective. Overburdening the future European Chemicals Agency was now one of the chemical industry's main objectives, because its paralysis would allow the industry to continue escaping government oversight.

REACH was finally adopted in 2006 and entered into force in June 2007. Since then, a complex implementation process is underway, with a series of reviews and important deadlines over 10 years, starting in 2010. By 2018, 20 years after EU environment ministers first called for the reform of EU chemicals law, public authorities in Europe will finally have access to the relevant health and safety data for all chemicals produced or imported in volumes of more than one tonne per year. If the European Commission, the European Chemicals Agency, and EU Member States implement REACH correctly, many hazardous substances that pollute our environment and harm our health today will be replaced with safer alternatives.

But until then, the lobby battle around REACH is not over. As Cobbing and Jen write in their introduction to *Navigating REACH*:

> Despite the odds, the final version of REACH succeeds in taking the first steps towards a new approach to chemicals management. It puts the burden of proof onto the producers to show that their chemicals are safe, allows the public to get information about the use of some substances of concern in products and provides for some of the most hazardous chemicals to be substituted when there are safer alternatives. But REACH also contains serious loopholes and legal uncertainties. As a result the law remains vulnerable to further pressure by the chemical industry, which – mindful of their profits – can be expected to try to keep some of the most hazardous chemicals on the market, even in those cases where safer alternatives are available. Careful monitoring of REACH as it is put into practice, especially during its early stages, is imperative. The health, environmental, women's and consumer advocates involved in the legislative process believe that public participation and continued co-operation among NGOs will be essential to scrutinise the new European Chemicals Agency in Helsinki and to make sure that REACH becomes an effective tool to protect the environment and public health. The engagement of campaigning groups and the public at national level will be equally crucial to secure future substantial improvements in REACH, using the opportunities of the forthcoming reviews.[32]

Jorgo Riss is the European Unit Director for Greenpeace

The timeline for REACH

April 1998 Noting that existing EU legislation on chemicals has failed to protect public health and the environment, EU environment ministers (at the Environment Council) call for a reform.

June 1999 The European Commission starts drafting the new chemicals law.

February 2001 The European Commission presents the outline of the REACH law in a White Paper. It proposes taking precautionary measures to protect citizens from hazardous chemicals and to make industry responsible for providing safety information for its chemicals. The Commission states that substitution of the most hazardous chemicals is an important aim of the reform.

June 2001 – November 2001 The Environment Council and the European Parliament discuss the White Paper and ask the Commission to strengthen the future chemicals law, in particular to fully implement substitution as a central aim of REACH.

From 2002 The European Commission's Enterprise department, in close cooperation with chemical industry lobbyists, starts playing a more influential role. From now on vested interests in the European chemical industry will be central in the REACH debate.

December 2002 On behalf of the German Industry Federation (BDI) the consultancy firm Arthur D. Little estimates that REACH would cause millions of job losses in Germany and would have a disastrous impact on the economy as a whole. In July 2003, the leading German economic institutes unanimously reject the Arthur D. Little study as methodologically unsound and based on flawed assumptions.

May 2003 The Commission extends the period for the internet consultation from five to eight weeks after pressure from the chemical industry, making it impossible to adopt the proposal before the summer. This in turn makes it very difficult for Parliament to adopt a first reading before the end of the 1999–2004 legislature.

September 2003 The chemical industry warnings of massive job losses prompt leaders of the three largest EU chemical-producing states, Tony Blair, Jacques Chirac, and Gerhard Schröder, to send a letter to Commission President Prodi asking him to weaken the Commission proposal for REACH. The UK and France later take a more balanced approach towards REACH, while the position of the German government remains in line with the demands of the big German chemicals companies.

October 2003 The Commission adopts the REACH Proposal, which reflects many of the demands of the chemical industry and few of the suggestions made by citizens and public-interest organisations.

Following a proposal from the Italian Presidency, EU heads of government agree to shift the decision making on REACH from the Environment to the Competitiveness Council, so transferring the leadership to economy and industry ministers, as demanded by the chemical industry.

December 2003 Conservative members of the European Parliament's Industry and Legal Affairs Committees delay the legislative progress by disputing the responsibility of the Environment Committee on REACH. This makes it impossible for the Parliament to have a first-reading vote before EU enlargement and Parliament elections in June 2004. Once the delay is achieved, the Conference of Presidents of the Parliament decides unanimously to retain the lead role for the Environment Committee.

October 2004 Jean-Paul Mingasson, Director-General of DG Enterprise and Industry, leaves the European Commission for the Union of Industrial and Employers' Confederations of Europe (UNICE), where he starts working as General Adviser. UNICE is a leading player in the anti-REACH lobby.

March 2005 New European Commission President Jose Manuel Barroso announces 'growth and jobs' as his political priority and signals that the Commission is ready to further reduce the environmental objectives of REACH.

September 2005 Representatives of the European Commission circulate a paper among Member States and MEPs prepared by Commission President Barroso and Industry Commissioner Verheugen. This 'Room Paper' suggests that the Commission is prepared to give more ground to the chemical industry and weaken crucial safety provisions of the REACH legislation.

November 2005 Parliament first-reading vote – the European Parliament backs the introduction into REACH of the 'substitution principle': the mandatory substitution of very hazardous chemicals when safer alternatives are available. The Parliament also approves the 'Sacconi–Nassauer compromise', exempting thousands of chemicals from the requirement to provide appropriate health and safety information. The German government threatens to halt the decision-making process in the Council of Ministers. In Parliament, the two largest political groups (the European Socialists, represented by MEP Sacconi, and the EPP represented by MEP Nassauer) negotiate an agreement which further reduces requirements for the chemical industry to provide safety data.

December 2005 Council first-reading vote – after German Chancellor Merkel threatens to block further discussions, Member States only partially support the Parliament position on substitution, and instead vote to allow several very hazardous types of chemicals to stay on the market, even when safer alternatives exist. Member States also agree to drastically reduce safety data on thousands of chemicals that will stay on the market.

April 2006 European Commission and Council (upcoming Finnish Presidency) ask the European Parliament to drop its demand for mandatory substitution of hazardous chemicals.

October 2006 In the leading Parliament Committee, 68 per cent of MEPs vote for mandatory substitution, thereby confirming strong cross–party support for the European Parliament's plenary vote of November 2005, which had until then been ignored by the Commission and Council.

November 2006 Negotiators from the European Parliament, the European Commission, and the Council agree a deal ahead of the Parliament's second-reading vote on REACH. This agreement is approved by the European Parliament on 13 December.

June 2007 REACH enters into force. Full registration for all chemicals produced, imported, or marketed in volumes over one tonne is to be completed by 2018.

June 2008 The European Chemicals Agency (ECHA) is inaugurated in Helsinki, Finland. ECHA is responsible for the day-to-day management of REACH.

September 2008 Various public-interest organisations release the 'SIN (Substitute-It-Now!) List' to promote the substitution of hazardous chemicals with safer alternatives. This list contains 267 substances of very high concern (SVHC).

October 2008 ECHA publishes the first ever list of 15 substances of very high concern in the so-called 'candidate list'. This is a vital tool in speeding up the substitution of hazardous chemicals with safer alternatives. However it is a drop in the ocean when compared to the hundreds of well-known hazardous substances present in products used every day across Europe. EU Member States and the Commission have failed to make the list more comprehensive.

March 2009 The European Trade Union Confederation launches its own list of substances of very high concern.

June 2009 ECHA recommends seven substances of very high concern to be included in the first list for Authorisation, the procedure which should eventually substitute chemicals of very high concern with safer alternatives whenever possible.

1 I would like to thank Nadia Haiama and Axel Singhofen for their helpful comments on an earlier draft of this article.

2 Greenpeace International European Unit, *Risk assessing ourselves to death* (Brussels: 1996).

3 Greenpeace International European Unit, *The way forward out of the Chemicals Crisis* (Brussels: 1999); European Environmental Bureau, *What's wrong with the EU's chemicals policy?* (Brussels: 1999).

4 David Gee et al., *Chemicals in the European Environment: Low Doses, High Stakes?* (Copenhagen: European Environment Agency and United Nations Environment Programme, 1998).

5 The term 'existing chemicals' referred to those substances that had been registered before 1981. They accounted for more than 95 per cent of all chemicals that could legally be produced and marketed in the EU in 1998.

6 Hence the title of the 1996 Greenpeace report *Risk assessing ourselves to death*.

7 European Commission, *Report on the operation of community legislation in the chemicals sector* [COM(1998) 587/3] (Brussels, 1998).

8 European Commission, *White Paper on the Strategy for a Future Chemicals Policy* [COM(2001) 88] (Brussels: 2001).

9 This referred to standards that were in force since 1981 and which applied only to newly developed substances, not to the majority of 'existing' substances on the market.

10 European Parliament resolution A5-0356/2001.

11 Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006.

12 In 2001, before the European Parliament resolution on the White Paper, Alan Perroy, then Director General of the European Chemical Industry Council (CEFIC), stressed in a letter to MEPs that "there is little direct evidence of widespread ill health or ecosystem damage being caused by the use of man-made chemicals". CEFIC had to drop this argument when confronted with the proliferation of scientific studies showing the widespread health and environmental problems associated with chemicals.

13 "Angriff auf die grauen Zellen", *Süddeutsche Zeitung*, 9 December 2003.

14 This section reproduces updated selections from: Marco Contiero, Toxic Lobby. *How the chemicals industry is trying to kill REACH* (Brussels: Greenpeace European Unit, 2006).

15 Arthur D. Little GmbH, *Economic effects of the EU Substances Policy*, 31 October 2002.

16 For a more detailed critique of the ADL study, see: Frank Ackerman, *Poisoned for Pennies. The Economics of Toxics and Precaution* (Washington D.C.: Island Press, 2008), pp. 241–246.

17 German Federal Environment Agency, *Methodological Problems of Assessing the Economic Impacts of EU Chemicals Policy: Summary Results of the Conference of Experts at the Umweltbundesamt (Federal Environment Agency)* on 6.2.2003 Berlin (Berlin: 6 February 2003).

18 See also: Axel Singhofen, "EU-Lobbyismus am Beispiel von REACH – 10 Thesen", in: *"In der Lobby brennt noch Licht"; Lobbyismus als Schatten-Management in Politik und Medien*, Netzwerk Recherche Nr 12 (Wiesbaden: 2008).

19 As Singhofen points out: "Eine zeitnahe Berichterstattung in den Medien über die Demontage der vom BDI in Auftrag gegebenen Studie ... sucht man vergebens. Ein kritikloses Berichten industrieller Panikmache ohne spätere Richtigstellung wirft ernste Fragen über das Funktionieren von Medien auf." Ibid., p. 81.

20 Ibid.

21 The European Commission later carried out its own impact assessments. Although they were driven by the chemical industry, the Commission's 'Extended Impact Assessment' carried out in 2003 came to more moderate conclusions than the industry-financed studies. It estimated that direct costs of REACH for the European chemical industry would amount to a total of €2.3 billion over a period of 11 years, representing 0.04 per cent of the chemical industry's annual sales (which totalled €586 billion in 2004). The Commission also calculated that health benefits would be as high as €50 billion over 30 years. A further Commission study concluded that REACH would bring extra health and environmental benefits of up to €95 billion over 25 years.

22 Andrew Osborn, "2m jobs 'at risk' in chemicals sector", *Guardian*, 15 July 2003.

23 S. Ramspeck, "Diäten allein machen sie nicht satt – Politiker-Jobs", *Stern*, 13 January 2005.

24 Marco Contiero, *Toxic Lobby. How the chemicals industry is trying to kill REACH* (Brussels: Greenpeace European Unit, 2006), p.15. See also: Andrew Bounds and Raphael Minder, "Activists hit at EU chemicals law", *Financial Times*, 4 May 2006.

25 The position of IG BCE was not shared by the larger German and European trade union associations who supported substitution in REACH.

26 Movements of staff between the public and private sector may entail conflicts of interest. To date, the Commission does not provide any comprehensive, publicly accessible information that would allow independent parties to check whether cases of revolving doors between the private sector and the European Commission are free of conflict of interests.

27 Contiero, op. cit., p.13.

28 Henry Waxman, *A Special Interest Case Study: The Chemical Industry, the Bush Administration, and European Efforts to Regulate Chemicals*, prepared for the United States House of Representatives, Committee on Government Reform – Minority Staff Special Investigations Division (Washington D.C.: 1 April 2004).

29 Quoted in Waxman, op. cit.

30 Quoted in Waxman, op. cit.

31 Greg Lebedev, "Chemistry means business", keynote address for Pittsburgh Chemical Day, 11 May 2004.

32 M. Cobbing and S. Jen, *Navigating REACH. An Activists' guide to using and improving the new EU chemicals legislation* (Brussels: Chemical Reaction (European Environmental Bureau, Friends of the Earth Europe, Greenpeace European Unit), 2007), p. 5.

3

journalists caught in the lobbyists web

Marc Gruber, European Federation of Journalists

The European Union exercises legislative power over a vast range of issues, affecting the lives of millions of people across the continent and media scrutiny plays a crucial role in creating democratic accountability. But how easy is it for a journalist to scrutinise the powers in Brussels? And how independent is the Brussels media that provides that scrutiny? Marc Gruber, co-director of the Brussels-based European Federation of Journalists, discusses some of the obstacles faced.

The press is well represented in Brussels with around 1,300 accredited journalists, most of them reporting primarily on the EU institutions. About half of these are members of the Association of Foreign Correspondents (API – Association de la Presse Internationale).

While some cash-strapped European media have cut their coverage of Brussels in recent years, more journalists have arrived from outside the EU, in particular China, India, and countries in Africa. But the major result of this change is that the hard core reporting of Brussels is weakening as the media invest less in the research and investigation that is needed to provide scrutiny of the corporate and political influence at the heart of the EU.

One might expect such a mass of media professionals to deliver a wide range of diverse reporting and challenging reportage about institutions that produce more than two-thirds of the law that applies in each of the EU Member States.

This is not, however, the reality. The European mainstream media carefully report major political EU Summits and controversial directives, and most follow a pre-determined editorial policy –for or against the Lisbon Treaty, for instance, or being in favour of or opposing market deregulation.

Very few journalists have the opportunity to engage in investigative journalism or to produce extensive background stories about what the European institutions are up to. In fact most of the reporting is uncontroversial, and rarely gets under the skin of the bureaucracy. Instead it regurgitates the official lines and comments put out by EU institutions and their army of spokespersons, ever ready to deliver made-to-measure quotes for the 24/7 global media machine.

Why is this acceptable? One reason why Brussels reporting takes a 'one-size-fits-all' standard is that most media look at the EU through a distinctly national lens. Stories from Brussels have little meaning except when seen in the context of the national political agenda. For example, the French national newspaper *Libération* turned to its Paris staff to analyse the 2005 French referendum on the Lisbon Treaty. The Europe story was too important to be left to 'Brussels'.

This failure to fully cover the EU's broad agenda is partly due tothe behaviour of the media community itself, but the very nature of the EU also acts as a barrier to informed reportage.

Because European institutions do not have a culture of transparency, corporate power can work in a more secretive (lobbyists would use the word "efficient") way than in other capitals such as Washington.

In Brussels there is still a battle to put a figure on the actual number of lobbyists at work, but it is safe to assume that there are over 10,000 operating around the EU institutions, mostly in the pay of corporate power and occasionally on behalf of civil society organisations. By their very nature, they avoid public scrutiny.

Finding out who lobbies for or against a specific policy is not easy. There is no comprehensive register. Lobbying companies and law firms do not have to disclose information about who they employ, which companies they represent, and what they spend. There is no record of which policies or draft legislation corporate lobbies are working on – and the lobbyists want to keep it this way.

In the USA, in contrast, the US Honest Leadership and Open Government Act of 14 September 2007[1] obliges lobbyists to disclose their activities. The difference in approach is illustrated by the OpenSecrets.org website (http://www.opensecrets.org), which provides details of how some corporate groups which do business on both sides of the Atlantic manage to comply with US law.

This means that in the USA, even if not every citizen has the time or the inclination to browse the lobbying database, journalists can use it to find general information on lobbying and make more detailed enquiries. Nothing like this exists in Brussels, where corporate groups take fright at such rules being imposed.

If journalists cannot acquire information from lobbyists themselves, then why not ask the Commission directly about who it meets and on what issues?

Journalists can call civil servants at the European Commission, but internal rules now prevent individuals from talking to the media, except for high-ranking officials giving 'on the record' interviews. They are supposed to refer to the spokespeople who are "the official voice of the European Commission in its relations with the media".[2]

As a result, core information is diluted in a vast operation of political communication: pre-formatted daily press briefings, press conferences, and various in-house sources of information which do not help investigative journalists to do their job. In addition to this standard 'toolkit', some corporations organise events in collaboration with the Commission: in December 2006, several food multinationals had 'information stands' inside the Commission's press room during a meeting about junk food in the EU.[3]

The API protested vehemently, pointing out that "using the traditional setting of a Commission press conference with the result of highlighting the view of business leaders and companies of one particular sector may raise some fundamental questions concerning the Commission's information and, even more so, communication policy."[4]

The functioning of Europe's institutions, the creation of a large number of regulations and directives, and a complex communication environment do not make the EU more comprehensible. Indeed it is to try to make sense of this administrative, legal, and bureaucratic jungle that we need journalists to have access to information and the freedom to express analytical and critical opinion.

But many of the industry lobbyists really do not want the rest of the world to understand what is happening. They have their own agenda and their job is, after all, to exert influence. That is why some industry lobbyists offer EU specialist media financial sponsorship in order to shape the presentation of policy debate in their interests.

Can the public trust the media when a 'special issue on energy' is sponsored by major petrol companies?

Is it in the public interest when the 'health' section of a media website contains advertising for the Brewers' Association?

It is this sort of confusion and mixed messages that infect the work of some of the Brussels 'information portals' such as Euractiv.com. Most sections of this website are supported by companies. It is unlikely that citizens would trust their national media if, for example, a newspaper's 'environment' section was sponsored by a global oil company. So why should they trust a European source of information that uses similar methods?

When there is a lack of transparency about lobbyists' activities, and in particular about their relations with the media, there is always the potential for abuse. It is seldom clear who is exerting pressure on whom.

Lobbyists will not change unless they are forced to do so. After all, they must bear their own interests in mind. But journalists and the media should know better. Their interests are, in theory at least, public and they should guard against becoming the poodles and pampered friends of big business.

In 2007, the UK National Union of Journalists (NUJ) passed a resolution highlighting the role played by lobbyists in the Brussels media (see below).[5] This urged further investigation and a pilot campaign to encourage the media to sign up to the Code of Conduct for Journalism and Media in Brussels, which had been launched by the International Federation of Journalists (IFJ) together with API and the Brussels branch of the NUJ in 2004

> .... this Annual Delegate Meeting (ADM) is concerned that some industry lobbyists target EU specialist media with financial sponsorship in order to shape the presentation of policy debate in their interests.
>
> This ADM is concerned that some of these specialist media are financially over-dependent on lobby groups that there is a lack of transparency on lobbyists' relations with media and that journalists are unduly pressured to serve lobby interests.
>
> **National Union of Journalists Annual Delegate Meeting Resolution, Birmingham 2007.**

A number of Brussels media have already signed up to this Code of Conduct but questions remain as to how effectively it is implemented. It may be time to go back to that text and see how the media are performing.

Unless self-regulation by the media can maintain a clear distance between the work that journalists do and the work that lobbyists would like them to do, the notion of the fourth estate, with journalism acting as a watchdog over power, will be further weakened.

A good lobbyist is someone who is able to set the political agenda and a good journalist is someone who is able to investigate lobbyists. In Brussels you may certainly become a good lobbyist – but it appears much harder to be a good journalist.

Marc Gruber is Director of the European Federation of Journalists

1 Honest Leadership and Open Government Act of 2007.

2 European Commission, *Guide for Journalists* on the website of the Directorate General Communication of the European Commission.

3 Jean Quatremer, "Malbouffe à la Commission", *Coulisses de Bruxelles* (weblog), 9 November 2006.

4 Jean Quatremer, "Malbouffe à la Commission", *Coulisses de Bruxelles* (weblog), 9 November 2006.

5 European Federation of Journalists, "Challenge to EU as Journalists Launch a Code of Conduct for Media in Brussels" (Brussels: 25 February 2004).

4

paying the piper – think tanks and lobbying

Dieter Plehwe, LobbyControl

How do you get legislators to take your message seriously? One way is to have a think tank deliver a seemingly scientific report with the right conclusions. In Brussels there are lots of them, and if none of them fits your purpose, found your own!

The number of think tanks in the Brussels EU Quarter has grown steeply over the last decade. The Commission estimates there are over 60 Brussels-based think thanks focusing on EU policy making in a way that is effectively about lobbying, and the Commission's register of interest representatives currently includes 80 organisations that claim to bethink tanks.[1] Lobbying is often seen as a dirty word, but exercising influence through a think tank is considered far more respectable and discreet. Brussels-based think tanks are heavily dependent on corporate membership and sponsorship and in practice often act as a platform through which firms hope to shape or influence debate, policy and decision making in the EU.

For large corporations, sponsoring a think tank is just one of many options within the broad range of lobbying strategies (including in-house lobbying, working via industry coalitions, hiring a lobbying consultancy, and advertising). Given the secrecy surrounding some Brussels-based think tanks in relation to their funding sources, it can be hard to identify the hand inside the puppet. In addition, many think tanks have refused to join the EU lobby transparency register, which has brought strong criticism from European Commissioner Siim Kallas.

One example of a corporate-funded think tank is the Stockholm Network, a London-based institute that also coordinates a network of right-wing 'free-market' think tanks across Europe. The Stockholm Network has strong links

with the Heritage Foundation and other wealthy neoconservative think tanks in the USA, proponents of unfettered markets and deeply hostile to environmental regulations. Until recently, the Stockholm Network was a stronghold of climate sceptics and a staunch opponent of the Kyoto Protocol and other government efforts to reduce greenhouse gas emissions. In summer 2008, however, the Stockholm Network published its report, *Carbon Scenarios. Blue Sky Thinking for a Green Future*. This was the outcome of a Stockholm Network project in which a group of people with backgrounds in industry (Shell, BP), academia, and journalism participated.[2] The report claimed that the Kyoto process would not work even if improved at the 2009 Copenhagen conference on climate change, and instead promoted an alternative to the current effort to regulate emissions at the national level.

"Instead of all the complexity of regulating squabbling nations and billions of people, the price mechanism does the work: companies simply pass on their increased costs to consumers, and demand for carbon intensive products begins to fall," explained Mark Lynas, one of the participants in the *Carbon Scenarios* project, in the *Guardian* newspaper.[3] The key reference for the 'upstream cap approach' proposed is *Kyoto2*,[4] by Oliver Tickell, who also participated in the *Carbon Scenarios* project.

This alternative approach had already been put forward at the December 2008 United Nations Climate Change conference in Poznan, Poland.[5] Key corporate lobbies had mobilised their constituencies in Poznan as part of ongoing efforts to water down the EU proposals on climate policy.[6] But doesn't the Stockholm Network Carbon Scenarios study aim to promote environmentalism and more effective ways of lowering emissions? How does this claim square with watering down proposals? Are the business interest groups and neoliberal think tanks that promote upstream carbon caps better environmentalists who just happen to also believe in neoliberal market solutions? Or are they true market believers who simply try to obstruct advancing state regulation, and do not really care about the environment? What is the role of think tanks in this quagmire considering their claims to expertise and scientific knowledge? And is it not the job of think tanks to come up with fresh ideas as a result of thinking 'outside the box'? How then can we distinguish between good and bad ideas, between constructive public policy proposals and destructive lobbying efforts made to disrupt or delay urgent policy processes?

While there are certainly no short answers to these questions, this chapter aims to shed some light on the growing number of European political think tanks, and their overlap with lobbying activities.

Policy research organisations, idea agencies, or what?

European think tanks have only recently started to attract more systematic scholarly attention.[7] This is somewhat surprising given that there are more than 600 think tanks spread across 20 countries in western Europe, many of which were founded a long time ago.[8] These include policy research organisations judged to enjoy significant autonomy from government and interest groups including business associations and parties, many of which are set up legally as tax-exempt non-profit organisations. But the definition and classification of think tanks varies in different parts of the world.[9] In Europe, state-funded think tanks play a stronger role than in the USA, for example, though the recent growth of partisan think tanks suggests the landscape in Europe is changing along US lines.

Research so far has been wrought with contradictions. One US expert observed a dominance of left-leaning think tanks in Europe in contrast to a dominance of right-wing think tanks in the USA.[10] But it has also been pointed out that Europe has a lot of "proselytizing free-market institutes, mostly newly established but some of older provenance, which had embraced free market ideas". Indeed, "by the late 1980s, they formed the largest group of partisan think tanks in Europe with a clear ideological orientation and policy agenda, easily outnumbering any other ideological group and having at least one member in most West European countries."[11]

What's behind think-tank science and advocacy?

Studies lump together quite different types of organisations, from academic institutes (universities without students) to contract research organisations, advocacy organisations, and party-affiliated bodies. According to some breakdowns, advocacy work accounts for 45 per cent of think tanks compared to 38 per cent carrying out academic work, 10 per cent which are party affiliated, and 7 per cent which conduct research.[12] Although the line between an academic and an advocacy research organisation can be hard to draw, the overlap between research, advisory, and lobby efforts is arguably most difficult in the case of so-called advocacy think tanks and research organisations.

Academic research organisations are not generally ideologically consistent even if certain researchers do use their position in support of particular arguments. Party-affiliated think tanks openly admit a certain political bias in their research and advisory efforts. Advocacy organisations by contrast are more complicated to read and judge, because they can effectively hide their partisan political character by presenting themselves as politically neutral and scientific.

The founders of the British Institute of Economic Affairs (IEA) openly admitted a double bind. Oliver Smedley, an early recruit for the IEA, honestly wrote to his philanthropic boss, IEA founder Anthony Fisher, that it was "imperative that we should give no indication in our literature that we are working to educate the Public along certain lines which might be interpreted as having a political bias. In other words, if we said openly that we were re-teaching the economics of the free-market, it might enable our enemies to question the charitableness of our motives..." (quoted in Cockett 1994).[13] Due to the frequently hidden political dimensions of a think tank's work, it seems better to conceptualise advocacy research organisations as partisan think tanks, which can but do not necessarily have, party political affiliations –as in the case of neoliberal examples. Their business is not so much about new ideas, but about streamlining policies according to a specific ideology. They are frequently better at preventing new ideas from emerging than at producing them.

Lack of transparency

The recent establishment of 'Eurofoundations' (which are entitled to funding from the European Commission) provides a rough guide to political-party-related think-tank activity across Europe. Many of these new political foundations have grown out of previously established partisan think-tank networks, e.g. the conservative European Ideas Network, the new social democratic Policy Network, or the left-wing Transform network. To obtain Commission funding, Eurofoundations have to provide full transparency in terms of their funding sources.[14] There is not, however, any such requirement for other non-profit think tanks. As the Stockholm Network of neoliberal think tanks in Europe does not link its activities to a particular European party, it can operate without revealing its source of funding. We may soon know more about who finances the foundations and think-tank networks related to European parties, and yet continue to have no transparency with regard to the arguably strongest ideological network of neoliberal think tanks sheltering under the umbrella of the Stockholm Network.

EU think tanks –networked, and networking

One study, conducted by the French think tank Notre Europe, identified 149 European think tanks operating in 25 EU Member States with a total workforce of 3,000 researchers.[15] Thirty-six of these are categorised as organisations which are specialised in European affairs while the remaining 113 carry out research on European affairs among other subjects. This figure is probably an underestimate, given that the Stockholm Network alone claims to have 130 think tanks among its members. Of course such networks may exaggerate the size of their member base in order to appear more attractive to funders and more important to politicians.

Little work has been done so far to clarify the extent to which transnational networks of partisan think tanks have become a political force in conjunction with funding agencies and other allies. Think tanks in fact have much to offer to those who can afford to fund them, especially given the post-Maastricht (and now post-Lisbon) complexity of the EU. They are easy to set up, relatively cheap to run and control, and can accomplish a lot at the interface of more or less academic research, policy advice, and public communication. The Stockholm Network openly admits being "Europe's only dedicated service organisation for market-oriented think tanks and thinkers. Spanning almost 40 countries and over 130 think tanks, our unique network has the capacity to deliver local messages and locally tailored global messages across the EU and beyond".[16] If this sounds more like a complex propaganda machine than a diverse group of individual advocacy organisations that are 'catalysts for ideas and action', this is no accident.[17]

A Swiss Army knife for the battle of ideas

Neoliberal think tanks have indeed become effective multi-purpose instruments advocating market solutions for all problems in their own right, but also ready for use by corporate spin doctors and lobbying consultancies. The global Sustainable Development Network (SDN), for example, was founded in 2001 to coordinate and steer the efforts of free-market think tanks, funders, and corporate allies in discussions about sustainability.[18] Obstruction was no longer an option by 2001, so the neoliberal battalion changed course and jumped on the sustainability train to put forward its own set of market-oriented ideas on sustainability. The SDN just happens to share its staff and web server with the International Policy Network (IPN), which has been a

prominent pedlar of climate scepticism in the debate on global warming, and has received substantial funding from ExxonMobil.[19] ExxonMobil funding for climate scepticism is probably the best-known case of corporate influence exerted through coordinated funding of think tanks[20] But since this attempt has been undermined, ExxonMobil has withdrawn its funding from the radical climate-change sceptics coalescing around the Heartland Institute,[21] and is expected to pursue other strategies to undermine effective environmental regulation – like the market-friendly 'sustainability' programme presented by the SDN or the Stockholm Network.

The IPN has other interesting connections with the corporate world including links to the Washington-based for-profit corporate lobbying company, the White House Writers Group.[22] Both IPN and SDN are closely intertwined with the Stockholm Network – even if the Stockholm Network claimed a huge distance from such right-wing US climate sceptics, allowing it more effectively to advertise its own version of free-market solutions to the problem of climate change. The climate scepticism promoted first by the Stockholm Network think tanks and others had not succeeded in derailing the Kyoto process. With the Bush Administration increasingly unlikely to prevail, the strongest ally was no longer reliable. In order to influence the policy process effectively, previous obstruction in the interest of corporate carbon profits had to be redesigned and the erstwhile obstructionists now try to sell their own version of serious environmentalism which they hope will be less detrimental to corporate carbon profitability while promising to be more pro-market and pro-growth than alternative regulatory approaches.

In any case, Mark Lynas blamed the US right for the denial literature,[23] and unwittingly or not, provided the previously climate-sceptical Stockholm Network with a new aura of environmental credibility. He and the Stockholm Network should openly admit that its members have been responsible for much of the climate-sceptic research and advocacy in the past. Members of this network (such as the Berlin Institute for Free Enterprise) continue to promote campaigns to deny climate change and feature climate-sceptic material on their websites. If anything this activity has intensified recently with criticism of the International Panel on Climate Change (IPCC) and its research before and after the Copenhagen climate summit.

New ideas, read carefully – throwing spokes in the Kyoto wheel

Given the track record of the Stockholm Network and the obvious contradictions of its version of free-market environmentalism, it is very likely that any new ideas promoted by the latest band of neoliberal environmentalists have been developed to cast doubts on the ongoing Kyoto negotiations rather than to promote better solutions – even if some of the individuals involved may think otherwise. The new ideas promoted by the Stockholm Network's energy and environment project are in any case backed by some of the most powerful energy companies in the world. The allegedly market- and growth-friendly alternative to 'Kyoto bureaucracies' is certainly consistent with the overall aim of the Stockholm Network's Energy & Environment Programme, created in 2005. "It promotes a practical market-oriented approach to meeting our future energy challenges while *also addressing* environmental and climate change concerns. Our work recognises the importance of environmental policies in safeguarding future prosperity and endeavours to produce solutions that *recognise economic realities* while *solving environmental policy dilemmas* (emphasis added)."[24] Dilemmas can be solved in different ways, of course. It remains to be seen if Stockholm Network forces are in fact interested in lowering carbon emissions, or if they continue to be primarily concerned about carbon profitability.

Regulatory alternatives –don't call them think tanks

The neoliberal partisan think-tank networks have been rightly criticised for sailing under the flag of non-partisan public-interest organisations. George Monbiot wrote that the BBC should:

> stop describing [IPN and similar] as 'think tanks'. This is unfair and partial. When, for example, someone from Friends of the Earth – which is rightly described as a 'campaigning organisation' or a 'pressure group' – is up against someone from the International Policy Network, which is described as a 'think tank' or an 'educational charity', the person from the IPN looks like the more objective commentator, even though he is the one with a direct financial interest in the outcome of the discussion (IPN, for example, which argues that we should not seek to reduce our carbon emissions, has received $295,000 from Exxon). I think a better description would be 'lobby group' or 'corporate-funded campaigning group.'[25]

In the USA, efforts are underway to require think tanks to register their lobby activities in the same way as other lobby organisations have to account for their efforts, and to make tax authorities distinguish (advocacy or partisan) think tanks from other tax-exempt educational institutions according to their primary activity and primary funding source.[26] It is already possible to find out who finances neoliberal and other partisan think tanks in the USA thanks to tighter financial transparency rules. In Europe, there is a long way to go in casting a light on the grey zone between think tanks and corporate lobbying, not just on climate change but also in many other policy fields. Using the US think tank : population ratio as an indicator, we can expect ongoing growth in the think-tank business in Europe,[27] leading to a growing urgency to subject partisan think tanks to greater scrutiny and regulatory oversight in order to limit if not eliminate the grey zone between peddling ideas and straightforward lobbying in the name of science and knowledge.

Commissioner Kallas challenges the secrecy of think tanks

The European Commission seems to agree that think tanks are involved in lobbying. Commissioner Kallas insisted that think tanks must join the lobby transparency register, as their activities were clearly aimed at influencing EU decision making. According to the Commission's definition lobbying means "all activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions".

In a speech made in early 2009, Commissioner Kallas highlighted the example of Friends of Europe, which – like most other Brussels-based think tanks – boycotts the Commission's voluntary register. The events organised by this Brussels-based think tank are routinely sponsored by corporations and clearly intended as lobbying opportunities. Kallas cited a Friends of Europe debate on investing in Africa's growth and health. The event, which involved the EU Development Commissioner, MEPs, and other decision makers, was sponsored by French oil giant Total. In return for the sponsorship, two company speakers appeared as panellists.

Kallas' remarks sparked an angry reaction from Friends of Europe boss, Giles Merritt, who issued a statement denouncing the categorisation of think tanks as lobbyists: think tanks have "major reservations about volunteering to classify themselves as lobbyists when they so clearly are not". It is somewhat ironic for Merritt to make these claims, given he has played a significant role

in the emergence of a new type of think tank in Brussels, more akin to corporate service providers than independent research institutes. Both Friends of Europe and the Security & Defence Agenda (both founded by Merritt) provide their corporate members with opportunities to interact with and influence EU decision makers. These organisations do not commission or produce original research. Rather, corporate members of Friends of Europe are offered VIP treatment (at an annual cost of some €6,500), meaning Visibility, Input, and a Platform.[28] There is an increasing blurring of the distinction between think tanks and events organisers in Brussels (and events in this context are those where lobbyists can access decision makers), as can be seen by the recent merger of Forum Europe and Epsilon Events, creating "the largest EU-affairs dedicated events management outfit in Brussels".[29]

While Kallas urged think tanks to join the lobby register (and has offered concessions to think tanks by creating a special category of registration), these bodies are still exempt from real transparency. Think tanks are only asked to declare their sources of income in very broad categories ('public financing', 'donations', 'programme support'), allowing the sources of corporate sponsorship to remain invisible. Large think tanks, including Friends of Europe, the Centre for European Policy Studies, and Bruegel are all heavily dependent on corporate donations and sponsorship.

Many of the smaller free-market think tanks that have recently appeared in Brussels do not divulge the sources of their funding. A survey in 2005 and 2006 found that many, including the Centre for the New Europe, the European Enterprise Institute, Institut Economique Molinari, Institut Thomas More Brussels, and the International Council for Capital Formation, refused to disclose their funders.[30] That they do not feature in the Commission's lobby register is no surprise. Commissioner Kallas was right to insist that think tanks become more transparent. His reasoning – that they are clearly engaged in influencing policy and decision making – has been clearly illustrated with revelations that corporations including British American Tobacco, in conjunction with the European Policy Centre, successfully lobbied to get their preferred form of Impact Assessment adopted by the European Commission.[31] It is doubtful that the Commission's voluntary approach to transparency will overcome the deep-seated resistance in parts of the think-tank community, which means that there will not be proper transparency in the battle of ideas in Europe unless think tanks are compelled to disclose who pays for their ideas and events.

Dieter Plehwe is a board member of LobbyControl

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25 George Monbiot, "Who's paying?", the *Guardian*, 26 September 2006.

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28 Giles Merritt is a veteran think-tank entrepreneur, who in the 1990s ran the Philip Morris Institute for Public Policy Research. He founded Forum Europe in 1989 and Friends of Europe in 1999. In 2003, he established the New Defence Agenda, a think tank designed specifically for the arms industry, which signed up in large numbers as 'partners'. This was later renamed the Security & Defence Agenda.

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Part 2

inside the bubble

5

insider trading – how big business helped set trade policy

Vicky Cann, World Development Movement

The European Union's trade strategy Global Europe was forged in close cooperation with big business, while other interests and views were sidelined. The consequences are now being felt in the Global South.

> In too many major emerging economies, the state is so much in the business of business, interfering so much in a wide range of so-called 'strategic' sectors, that our products and services are kept out or theirs are given an unfair advantage...It is a level of unfair competition which we cannot accept.[1]
>
> **Peter Mandelson, European Trade Commissioner, 2007**

Without doubt, trade policy and decision making constitute one of the most controversial and secretive areas of European Union competencies. Few other areas are criticised so harshly by European civil society or so divide MEPs. Yet, trade policy is not universally reviled. Far from it: the close links between the Directorate General (DG) Trade and business, particularly big business, mean that trade policy very much serves the interests of European big business. DG Trade does not seek to deny this; in fact it is very honest about its drive to deliver new and enhanced profit-making opportunities for European multinationals overseas – no matter the consequences for jobs and livelihoods in Europe or elseswhere. This approach is epitomised in the trade strategy launched in 2006 called *Global Europe – Competing in the world*, and subsequent documents, which are at the heart of DG Trade's agenda.

Global Europe nails its colours firmly to the mast by supporting free trade and open markets and should be seen as part of the external dimension of the 'Lisbon strategy', seeking to build on the existing internal free market within the EU. As outlined below, the Global Europe strategy partly comes out of European frustration with talks at the World Trade Organisation(WTO). It closely replicates the interests of big business in Europe, which has been involved in its design and delivery every step of the way.

Global Europe strategy

In October 2006, the then Trade Commissioner Peter Mandelson launched a new trade strategy for the EU: *Global Europe: Competing in the world*. It set out how the EU would pursue "activism in creating open markets" in developing countries.[2] The Trade Commissioner perceived a world in which European companies were being treated 'unfairly'; a world in which the governments of developing countries were erecting unjustified barriers to European products and investment.

Specifically, *Global Europe* sets out an agenda for trade deals with numerous developing countries[3] which expects them to:

- cut import taxes on European industrial and agricultural goods
- remove so-called 'non-tariff barriers' on imports from Europe
- eliminate restrictions on exports to Europe, particularly of raw materials
- enforce strict intellectual property rights for European companies
- remove regulations on European service companies
- remove regulations on investment by European multinational companies
- stop giving preferential treatment to their own companies when awarding government contracts.

By the time the Global Europe strategy was published, the EU had already started negotiating regional trade deals with 76 African, Caribbean, and Pacific (ACP) countries. In these so-called 'Economic Partnership Agreements' (EPAs), the EU was pushing ACP countries to remove import taxes and regulations on European companies, in return for access to the European market (which the ACP countries had previously enjoyed without having to give anything in return).

In addition to the ACP countries, *Global Europe* sets out targets for trade deals with other countries and regions that the EU regards as having the greatest "market potential".[4] By mid-2007, negotiations had been launched with the Mediterranean region, South-East Asia, Central America, the Andean Community, and India. Negotiations with Mercosur countries in Latin America are in the pipeline, and a deal has been signed with South Korea. Together, these regions are home to 2.2 billion people including 920 million living on less than US$2 a day.

Since the Global Europe strategy was published, various related documents have further developed Europe's aggressive trade-liberalisation agenda. The *Market Access Strategy* (April 2007) sets out explicitly to "focus on the concrete problems that EU businesses face in third country markets".[5] The *Access to Raw Materials Strategy* (jointly produced by DG Trade and DG Enterprise) looks at how Europe could secure future access to energy, timber, and minerals to feed its industry. At the time of its publication, Friends of the Earth Europe said: "Europe's wish to feed its insatiable appetite for raw materials has translated into a direct attack on developing countries' sovereignty over their natural resources".[6]

Impacts in the global South

With the European Commission making a radical effort to open markets across much of the global south for the benefit of European multinationals, the question is what can be expected for the hundreds of millions of poor people in those 'target' countries?

The answer, or at least part of it, can be found in two of the bilateral deals the EU has already concluded – namely with South Africa in 1999 and with Mexico in 2000. While these agreements set time scales for liberalisation over 10–12 years, some of their impacts can already be seen.

In South Africa, for example, there has been an almost 50 per cent increase in imports of food and drink from Europe, undercutting local producers. Jars of cucumbers, for example, are being imported from Poland and sold for half the price of the locally-grown cucumbers. The reduction of tariffs on European confectionary in South Africa has resulted in a 25 per cent fall in employment in the local sweet-making industry. As a result, South Africa's trade deficit with the EU has grown since the trade deal.[7] Professor Ben Turok MP from the South African parliament's committee on trade and industry concluded that this deal "is not a good agreement. It has not brought benefit to South Africa. Europe has been the beneficiary".[8]

With the EU–Mexico trade deal, Mexico can no longer regulate the proportion of foreign shareholdings in banks. This has meant that foreign banks now control 80 per cent of the assets of the Mexican banking sector; the European banks of Bancomer, Santander, and HSBC control 50 per cent alone. Overall this has led to higher interest rates and reduced access to credit for small and medium-sized companies and small farmers.[9] Meanwhile, European multinational companies (including Riu Resorts from Spain and Viva from Italy) now operate 90 per cent of the tourist services near the coastal resort of Cancún. Local campaigners complain that European companies have bankrupted local businesses by creating effective monopolies by offering 'all inclusive' package deals. As there are no requirements for any profit made by European companies to stay in Mexico, one estimate is that on the Maya Riviera, 92 per cent of profits return to Europe.[10]

There are many other negative impacts arising from the South Africa and Mexico trade deals, yet they have provided a blueprint for the proposed Global Europe deals now being negotiated.

A manifesto for multinationals

In many ways, the new Global Europe strategy marked a turning point for DG Trade. For years, the EU had pursued more open markets in developing countries based on a 'we-know-what's-best-for-you' approach with the language of development being used to justify the EU's demands for other countries to liberalise. In Global Europe by contrast, much of the development rhetoric was ditched and a more brazen strategy to open markets for the benefit of European business set out, especially since the EU had been struggling to achieve its ambitions at the WTO.

It should come as no surprise that the Global Europe strategy so clearly reflects the interests of European big business, which was after all involved throughout its development.

In 2005, officials in DG Trade published an 'issues paper' on trade and competitiveness to kick-start discussions about the creation of a new European trade strategy. Through meetings, memos, and position statements, the Brussels-based lobby groups representing big business throughout the EU were able to tell DG Trade exactly what they wanted.

Overall, European businesses were enthusiastic about the proposed move towards bilateral free-trade agreements, but felt that the issues paper lacked

the sharp economic focus required. "New negotiations should be clearly labelled as trade agreements and not be linked to parallel political cooperation accords," demanded the employers' federation BusinessEurope (formerly called UNICE). "That will ensure that the EU approaches commercial negotiations with as strong a hand as possible."[11]

The European Services Forum (ESF), which represents the big players in the European services' industry, called for the EU aggressively to pursue the removal of regulations such as caps on foreign ownership of service companies, requirements for a company to gain a licence, requirements for a foreign services company to be part of a joint venture with a local company, and limits on the repatriation of profits. In addition, opening government procurement to European companies was put forward as an area where European service companies could particularly benefit, especially as it represents a very large area of expenditure from which European companies are keen to profit.[12]

One common demand was to target the countries that would bring most benefits, particularly the so-called emerging economies such as Brazil, India, countries in South-East Asia, and China. As the ESF puts it: "[We] therefore call on the EU to allocate adequately its resources in its bilateral trade strategy with a particular focus on the countries/regions with the highest growth potential and commercial opportunities for European business ahead of more general political cooperation agreements".[13]

Not surprisingly, when the final strategy was published in October 2006, it was welcomed by big business. BusinessEurope said: "In many ways the Global Europe strategy represents a significant improvement over past policies and [we] appreciate that the Commission has heard many of [our] policies for strengthening EU trade policy".[14]

Over the subsequent months, the Global Europe strategy was refined further as DG Trade sought inputs into specific free-trade agreement (FTA) negotiations. In an October 2006 meeting between DG Trade and BusinessEurope, David O'Sullivan, the Director General of DG Trade, "called on business to make itself heard in relation to the content of future FTAs, in particular with respect to ensuring that commercial interests were fully served".[15]

In March 2007, the director of services and investment in the bilateral trade negotiation team at DG Trade, João Aguiar Machado, contacted EU companies and business lobby groups to ask what regulations they should be targeting

for removal in trade negotiations. The Commission asked five questions of business for each specified region or country, including:

> "What are the main barriers that your sector encounters in cross-border services trade with these countries?"

And:

> "What are the main barriers that your sector encounters in establishing a commercial presence in the primary, secondary or tertiary sector in these countries?"[16]

This questionnaire gave big business interests another significant opportunity to lobby for specific interests in the upcoming FTA negotiations. In particular, the ESF cameup with a detailed 17-page memo outlining perceived barriers to trade in services in Korea, India, and the South-East Asian nations.[17]

In Korea, the ESF wanted a bar on foreign ownership of accountancy firms removed and the lifting of mandatory lending requirements to small business in the banking sector. In India, it demanded liberalisation of the retail sector and the equity cap on foreign banks lifted. For Thailand, it said that "ESF has considerable concerns about the attitude to foreign investment shown by the current government".[18] Other lobby groups also submitted their own detailed lists of demands and interests.

DG Trade and shadow lobbying

Since the publication of the Global Europe strategy, DG Trade has moved rapidly towards implementation through detailed negotiations with the target countries. It has not been shy in encouraging European big business to get involved, sometimes by setting up 'shadow lobby groups', knowing full well that the business lobby will be an active friend and defender of the negotiations.

Such an approach by DG Trade can be traced back to the late 1990s when Leon Brittan, the then EU Trade Commissioner, approached the chair of Barclays Bank with the suggestion that he create a European services lobby group to influence the negotiations at the WTO. The ESF was duly set up in 1999 and has since enjoyed generous access to the EU's trade policy-making machinery.[19]

Far more recently, in information obtained by Corporate Europe Observatory via access-to-documents requests, DG Trade is shown to have orchestrated African business groups to support negotiations on the Southern African Development Community (SADC) EPA. In 2005, a DG Trade official contacted an ex-DG Trade official then working in Botswana to bring African business groups into the EPA negotiation debate by creating the joint 'Business Trade Forum EU-Southern Africa'. The Commission funded travel to Brussels for participants and even wrote a draft structure and core objectives for the forum. DG Trade asked BusinessEurope to try to foster other bi-regional fora, saying: "DG Trade will obviously be supportive of [BusinessEurope] on these initiatives".[20]

Meanwhile, an access-to-documents request to the European Commission made by the World Development Movement regarding exchanges between the European Banking Federation and DG Trade in January 2008 about trade barriers affecting financial services and market access, revealed information about the possibility of setting up an "EU-based working group on financial services barriers".[21]

But it is not just DG Trade which promotes shadow-lobbying through industry representatives. Information has also been released to the World Development Movement under UK Freedom of Information rules regarding two meetings held between Barclays and the UK Government between 2007 and 2008. An email from an unnamed UK government official to Barclays sent in August 2008 said: "It was great to catch up with you and your team yesterday ... it's always good to have more examples / background to ensure that the UK is well placed to continue to argue that financial services should remain at the top of the Commission's priority list in terms of negotiating trade agreements ... I also hope that Barclays can begin to raise its profile in fora such as the BBA (British Bankers' Association), IFSL (International Financial Services London) and the ESF".[22] The government official appears to be encouraging Barclays to back up the UK's own lobbying of the Commission by advocating that it becomes more involved in industry lobby groups with a shared agenda.

Opposition voices

Of course, criticising the close relationship between DG Trade and European big business is not to say that the Commission should never talk to the business sector and should not listen to what they want. The questions are, how much emphasis do they give to what they hear from big business? What weight is given to those views? And do other groups have the same degree of access?

It is hard for a representative from civil society to recognise the above picture of privileged and apparently friendly access to DG Trade as enjoyed by big business. More importantly, it is hard to find evidence of DG Trade responding positively to the agenda and interventions made by members of the Seattle to Brussels Network and others demanding a more socially and environmentally progressive approach to European trade policy. Few, if any, of our demands end up being reflected in DG Trade papers and activities.

During the development and implementation of the Global Europe strategy, trade union and NGO concerns were marginalised, apart from the occasional lip service paid to sustainable development in the final communication. Although only consulted superficially on the original 'issues paper' within DG Trade's Civil Society Dialogue (which consists of Commission presentations and responses to questions, but no dialogue), several NGOs raised questions about the lack of a development dimension. The Commission replied that "this paper did not aim to address specifically these issues. They were mentioned when there was a direct link with competitiveness".[23] Céline Charveriat, head of Oxfam's Make Trade Fair campaign said: "This is not a plan for competitiveness but a plan for exporting inequality and poverty".[24]

Trade unions are also critical of Global Europe. As the European Trade Union Confederation puts it, Global Europe "sees rules and standards as nothing more than obstacles to trade or 'red tape'... European regulations and standards must not be governed solely by the imperative of competitiveness if this concept is limited to maximising the share of the global market held by multinationals operating in Europe".[25]

Meanwhile, while big business may be content, other parts of the European business community are not fully on board with the Global Europe strategy. The response from UEAPME (a lobby group for small and medium enterprises (SME)) stated that: "both the study [Global Europe] and the subsequent action points fail to mention, let alone address, the impact on European small and medium-sized businesses, especially as far as non-internationally active SMEs are concerned".[26]

The European Parliament had no formal role in developing the Global Europe strategy and it was not until May 2007 that it finally expressed its view on it. But a quick look at the voting figures indicates just how controversial and open to debate these issues really are. Ultimately, Global Europe was endorsed by MEPs but it was one of the closer votes of recent times and the Greens, GUE/Nordic Green Left, and a majority of the socialist bloc voted against it.

DG Trade likes to say that policies such as Global Europe are in the interests of both Europe and developing countries. In fact, they simply represent the interests of big business: a manifesto for European multinationals that will prioritise their so-called rights over the genuine rights of the peoples of the global South and to enjoy a sustainable path to development. The apparently happy marriage between big business and DG Trade has produced the Global Europe strategy. Yet European citizens and the sustainable development of the global South have much to fear from this love-child.

Vicky Cann was a policy officer at WDM

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6

expert groups – letting corporate interests set the agenda?

Yiorgos Vassalos, Corporate Europe Observatory

The European Commission relies on external advice to fulfil its legislative and policy-making tasks, convening so-called expert groups which bring together government representatives and industry, plus some academics and representatives from trade unions and NGOs. The high level of industry involvement shows how the Commission is prioritising corporate interests, giving corporations a formal role in EU decision making to an extent reserved for no other sector.

Expert groups are the European Commission's most frequently used consultation method.[1] Their input frequently forms the backbone of Commission proposals and, through a process that often involves very little change, eventually becomes adopted in European legislation.

In 2009 there were more than 1,000 expert groups (with an estimated 38,000 members) co-drafting the Commission's policies and legislative proposals on a wide range of policy areas including research, environment, enterprise and industry, and the financial regulatory framework. Business is the most strongly represented sector among the non-governmental participants in expert groups, with an estimated 7,500 members. Business representatives dominate more than 100 expert groups.[2]

The Commission made substantial progress in improving the transparency of expert groups in 2009, although few had revealed any details about their membership until then. Details have now been published for the vast majority.[3] But expert groups still remain opaque, meeting behind closed doors, seldom publishing minutes and consulting only a limited number of outsiders.

Powerful bodies

Expert groups or 'High Level Groups' (expert groups involving Commissioners, MEPs, and top-level executives) have played a key role in a number of examples of EU decision making:

- The High Level Group CARS-21 was jointly set up in January 2005 by then Enterprise & Industry Commissioner Günter Verheugen and the president of the European Automobile Manufacturers' Association (ACEA). Its membership was dominated by big automobile and petrol corporations. The group introduced what is described as the 'integrated approach' for assessing CO_2 emissions, which went on to be adopted as EU methodology. This approach separates the main responsibility for car emissions from the car industry, arguing that emissions are the responsibility of all actors involved (i.e. drivers, public authorities etc).[4]
- The High Level Group on Competitiveness, Energy and Environment (2006 to 2007) was made up of representatives from eight Member States, fourteen corporate representatives, one trade union, and two environmental organisations. The European Parliament was invited but refused to participate saying that such groups "were undermining the independence of EU institutions". Through this group companies like Areva, BP, and Siemens managed to persuade the EU that technologies such as nuclear energy and carbon capture and storage were solutions to climate change.[5]
- The De Larosière Group (High Level Group on EU Financial Supervision) was set up in late 2008 by Heads of States and Government and European Commission President Barroso, to look at reform of Europe's financial system. Five of the eight members work for the private financial sector, while the other three comprise the former head of the UK Financial Services Authority (which failed to prevent the crisis), an ardent advocate of deregulation, and an employee of a public bank. The Commission "broadly endorsed" the group's report after just two weeks' consideration, putting it forward as a solution to the global financial crisis.[6]

Ignoring calls for transparency

For the last 40 years, the number of expert groups has grown as the competencies of the EU have extended.[7] But the role of expert groups remained shrouded in secrecy.

Jens-Peter Bonde, a former Danish MEP (1979–2008), has persistently pushed for greater transparency of the various committees and working groups set up by European institutions, including expert groups.[8]

In 1999 he received the first ever 'draft' list with the names of over 1,500 working groups. This was the first chink in the layer of secrecy that had until then surrounded them. The Commission Secretary-General however refused to disclose details of who was on these working groups.

In the run-up to the 2004 European elections, Bonde raised the issue with the new Commission President Barroso, who ordered the Secretariat-General to provide him with a comprehensive list of expert groups. Bonde received a list that had 3,000 groups on it, but again no membership details.[9] Barroso promised to provide this information "as soon as possible".

The Commission then launched an online register of expert groups, listing some 1,200 groups. This categorised members as scientists, academics, industry representatives, NGOs, trade unions, etc.[10] This list only included half the groups from the previous list because it did not include sub-groups. Barroso didn't fulfil his promise to provide membership details.[11]

Although expert groups involve lobbyists, they were not included in the European Transparency Initiative launched in November 2005 designed to increase lobbying transparency.[12]

Following concerns about bias in expert groups, the Conference of the Presidents of the European Parliament decided in January 2006 that MEPs should no longer take part in High-Level Groups.[13] The leaders of the political groups argued that this bias was undermining the independence of EU institutions. But this instruction was not followed by all MEPs.[14]

The following year, the European Parliament threatened to block the budget for travel expenses for meetings of expert groups unless full transparency was provided.[15] But at the last minute Barroso announced "a database with names, title and sex of most experts", saying it would be completed in 2008. Commission Vice-President Kallas repeated the commitment.[16]

ALTER-EU analysis shows extent of problem

A study of the composition of expert groups undertaken by ALTER-EU in March 2008 revealed that MEPs had cause for concern. The study[17] analysed the

membership of 44 expert groups, using regulations on access to documents. The Commission released the names of the organisations involved for just 25 of these groups (60 per cent) and the names of individuals for 18 of them (43 per cent).

More than half (54 per cent) of all 1,214 expert groups on the register had members from outside European, national, regional, and local governments. Sixty per cent of these groups included business representatives.

Responding to journalists' questions on the report, the Commission said it would make full details of membership available by summer 2008.[18] This deadline was later deferred to the end of 2008.

In a letter to ALTER-EU, the Commission suggested that the number of expert groups had fallen to "less than 1,200 today" (there were 1,400 in 2006). This would mean that a 40-year trend of ever-increasing numbers of expert groups had been reversed. The Commission also denied that the unbalanced composition of some expert groups was a problem.[19]

Fewer groups – or groups still in the shadows?

In March 2009, the Commission told ALTER-EU that all membership details had been disclosed "in January 2009".[20]

ALTER-EU went through the Commission's online Register of Expert Groups during March and April 2009. By then there were only 987 groups listed. So, the number of expert groups – which had increased by 40 per cent from 2000 to 2006 – had, according to the Commission, decreased by 30 per cent (1,400 to 987) between 2006 and 2009 and by 20 per cent (1,214 to 987) in just one year.[21] According to the data there were 224 fewer groups in March 2009 than at the start of 2008.

The biggest drop was in the number of groups with non-governmental participation.[22] These groups raised the greatest concerns about their legitimacy because of questions regarding the balance of their composition. Yet their decline seems to have coincided precisely with the point where the Commission had to publish all the names of the participants in order to meet its previous commitments.

ALTER-EU's assessment of the register also revealed that it was still far from complete, with expert groups that were still active (e.g. CARS 21) not

included.[23] Conversely, groups which had been said to have been dissolved were still listed.[24] ALTER-EU focused its final assessment on the 328 groups with non-governmental participation and discovered transparency problems with a third of them at that point.[25]

Corporate dominance seen as normal by the Commission

ALTER-EU has repeatedly raised concerns about the fact that corporate representatives dominate in more than 100 expert groups. This clearly contradicts the Commission's rules on consultation[26] and use of expertise[27] that stress that:

- "The final determinant of quality [for expert advice] is pluralism."
- [Commission] "departments should aim to ensure that the different disciplines and/or sectors concerned are duly reflected in the advice provided."
- "The aim is to minimise the risk of vested interests distorting the advice."
- "Wherever possible, a diversity of viewpoints should be assembled. This diversity may result from differences in scientific approach, different types of expertise, different institutional affiliations, or contrasting opinions over the fundamental assumptions underlying the issue."
- This diversity will: "reduce the risk of policymakers just listening to one side of the argument or of particular groups getting privileged access".
- Groups should not underestimate: "the challenge of ensuring an adequate and equitable treatment of participants".

ALTER-EU has consistently argued that there is no real pluralism when industry interests dominate over other types of non-governmental interests (independent academics, consumer groups, social movements, environmental organisations, or trade unions). When most non-governmental seats in an expert group are granted to corporations or lobby groups with an interest in the policy area in question, there is clearly a risk that the advice they provide will bedistorted by vested interests. The Commission is inviting advice based on the business side of the argument rather than ensuring diversity of viewpoints.

The Commission's Secretariat-General has repeatedly responded that it does not consider the dominance of business to be a problem or in breach of its own rules.[28]

This goes against the will of the European Parliament, which has called "upon the Commission to conduct a thorough review of the composition of its expert groups before the end of 2008 and to take action to ensure a balanced representation of interest groups in the membership of expert groups".[29]

Hiding lobbyists under the carpet

Before 2008, it was impossible for the public to check whether the rules on consultation and use of expertise were really being followed, since there was little public information on the composition of the groups. The Commission is now trying to limit the scope of these rules and exempt a large number of groups from transparency requirements. It is doing so by using two main assumptions:

- 'Experts' in some groups are there in a "personal capacity"
- The codes of conduct do not apply to groups that "address purely technical issues".[30]

The Commission claims that people who work for companies which allow them to join expert groups and take part in them in work time are acting in a personal capacity – and that they have put aside their employers commercial interests.

In April 2009 there were 24 groups with members from industry who participated "in a personal capacity". The balance of most of these groups cannot be judged as full details are not clear, but in some cases there is plainly cause for concern.[31]

The Coal Combustion, Clean and Efficient Coal Technologies Carbon Dioxide (CO_2) Capture group, for example, justifies its pro-industry bias on the basis of "technical issues", with most members from companies involved in the coal industry.[32]

This group deals with controversial carbon capture and sequestration (CCS) technology, which has been given substantial EU funding since December 2008. The group has continued lobbying to get more EU research funding for this technology. Should the question of how to use limited resources to fight climate change be classified as a technical issue?

ALTER-EU has argued that no group should be exempt from the rules and that corporate executives and the staff of trade associations should never be considered as acting in a personal or purely technical capacity.

What are expert groups really about?

Expert groups are supposedly needed to supplement the Commission's lack of in-house expertise.[33] There are fewer than 3,500 people on the staff of the Commission's research and statistical facilities serving half a billion EU citizens. This is a small administration with limited staff and administrative capabilities, particularly when compared with the size of national governments.[34]

This explains why the Commission has become so dependent on external advice. It doesn't, however, explain why this should be done in relative secrecy, drawing primarily on national governments and big corporations. Why not, for example, involve more European Community agencies, other public research facilities (universities and foundations), public-interest groups, consumers, and workers?

The reason why the Commission uses these advisers, as pointed out by a number of academics who have researched the issue of expert groups, is that they allow the European Commission to develop policy proposals that are 'pre-approved' by Member States and by powerful interest groups.[35]

The Commission prefers dealing with Member States at a technocratic level to avoid the politicisation of the Council of Ministers' negotiations with their complex voting system. The process of using expert groups means that the Commission is less likely to meet huge resistance from the larger Member States which have more voting power.

Securing the support of big business lobby groups also makes the Commission's life easier. Some 70 per cent of the 15,000-plus lobbyists in Brussels represent big business interests. They follow the legislative procedures and can intervene as proposals pass through the different European institutions. Involving them in expert groups means they are more likely to support the process.

Engaging with national administrations at a technical and apolitical level is a characteristic of a technocratic system that wants to avoid confrontational scientific and social debates that in fact involve large parts of society.

Engaging with corporations as the second-biggest 'expert' category, way ahead of the other non-governmental categories, reflects the Commission's somewhat skewed understanding of who makes up 'civil society' and what counts as 'participatory democracy'. The Commission is not seeking its legitimacy in society at large but solely within the business community.

In March 2008, a Commission spokesperson said that business represented 20 per cent of all 'experts'.[36] In August 2008, the think tank Open Europe conducted a survey that found there was an average of 38 members per expert group.[37] If we combine these two figures with the number of groups listed in the register in April 2009 (987) this would give us 7,500 business advisers. There are 12,648 Commission officials (A–D grade) dealing with policy making.[38] This would mean there is more than one corporate policy adviser for every two in-house policy makers in the Commission.

These business 'experts' do not of course work full time on drafting policy. The frequency of their meetings varies from monthly to yearly, although some also have email contact. The most crucial element for business participants, however, is the privileged access to Commission officials and the official status they obtain as advisers.

It is exactly because of this status that lobbyists consider expert groups a cornerstone of their strategies and receive training in how to use them. The European Training Institute, founded by veteran lobbyist Daniel Guéguen, organises such training courses. On one such course lobbyists were advised to lobby for a new expert group to be set up, giving them control of its agenda. Gaining control of expert groups' agendas is a routine part of the commercial lobbyists' toolbox.[39]

Conclusions

The importance of the Commission's expert groups is such that they can in some cases make an even greater contribution to the final legislation than the European Parliament. The composition of expert groups involving non-governmental actors demonstrates the European Commission's clear preference to consult with corporate interests.

There are currently at least 100 expert groups in which most of the non-governmental participants come from business, and where the existing rules on fair composition are breached. ALTER-EU believes that these groups should either to be dissolved or the composition amended to give more balance.

The Commission has continually denied the need for common rules across all the Directorates-General, as called for by the Parliament. Given the current bias in favour of business interests the Commission should introduce new criteria that ensure a fair and open selection process and apply a moratorium on the creation of new groups until these criteria are in place.

The low turnout in the 2009 European elections and growing public mistrust of European institutions[40] should sound a warning to the new College of Commissioners that voters are disengaged from the EU process and that transparency and accountability need to be improved. The College must act to overcome the resistance from some Directorates who seem to prefer to keep expert groups in the shadows.

On the other side of the Atlantic, the US Congress is considering legislation on ensuring that participants in its expert panels are free of conflicts of interest and disclose financial ties. Will the new Commission go in the same direction, or will it remain anchored to the status quo?

The Commission's approach stands in stark contrast with the efforts of the Obama Administration. In autumn 2009, Obama's Special Counsel for Ethics and Government Reform proposed restrictions on the presence of lobbyists in federal agency advisory boards and commissions, fulfilling a commitment made in the election campaign.[41] During the Bush Administration, industry control of federal advisory bodies had reached disturbing levels, in many cases worse than many of the Commission's expert groups. How this new initiative will be put into practice remains to be seen, but the substantial steps taken by the Obama Administration to prevent regulatory capture sets an example for the European Commission to follow.

ALTER-EU believes the Commission should acknowledge that corporate dominance of advisory bodies is a problem and address this through its framework policies to improve transparency and democratic governance.

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1 Torbjörn Larsson, *Precooking in the European Union – The World of Expert Groups* (Brussels/Stockholm: 2003).

2 In April 2009, there were 182 groups with business participation and 105 with other non-governmental presence but no business representatives. The composition of 110 groups was clearly biased in favour of industry. Even if all the other 105 groups were controlled by NGOs or trade unions, for instance, (which is far from the case), there would still be fewer of these than those dominated by industry.

3 In October 2009, the Commission acknowledged that in 38 cases the information presented in the Register needed to be corrected, as ALTER-EU pointed out in a formal complaint.

4 Agnes de Rooij, Nina Schulz, Andy Rowell, *Driving Climate Change; How the car industry is lobbying to undermine EU fuel efficiency legislation* (Amsterdam: Greenpeace International, 2008);
Christine Pohl, *Whose views count? Business influence and the European Commission's High Level Groups* (Brussels: Friends of the Earth Europe, February 2009);
European Parliament, *Legislative resolution of 17 December 2008 on the proposal for a regulation of the European Parliament and of the Council setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO_2 emissions from light-duty vehicles* [COM(2007)0856 – C6-0022/2008 – 2007/0297(COD)] (Brussels 17 December 2008).

5 Christine Pohl, *Whose views count?* (Brussels: 2009)

6 European Commission, "High Level Expert Group on EU financial supervision to hold first meeting on 12 November", press release, 11 November 2008.
Kenneth Haar, Andy Rowell, Yiorgos Vassalos, *Would you bank on them?* (Brussels: Corporate Europe Observatory, Friends of the Earth, LobbyControl and SpinWatch, February 2009).
High Level Group on Financial Supervision, *Report* (Brussels: 25 February 2009);
Yiorgos Vassalos, "Commission's advisers on financial markets: bankers only?", *Brussels Sunshine blog*, 9 November 2009.

7 In 1975 it was reported that there were 537 groups. In 1990 the number had increased to 602 (W. Wessels, "Comitology: Fusion in action. Politico-administrative trends in thsystem", *Journal of European Public Policy* 5 (2008), pp. 209-34 – quoted in Gornitzka and Sverdrup, *Who consults?* By 2000 the number had reached 851 (Torbjörn Larsson, *Precooking in the European Union*, Stockholm, 2003). This gradual growth has been replaced by a radical increase of 40 per cent from 2000 to January 2007 when they were 1,237. Academics Gornitzka and Sverdrup collected data from academic surveys published before 2005 when there was no public data at all and compared them with what they found in the Commission's Expert Groups Register in January 2007. Åse Gornitzka and Ulf Sverdrup, Centre of European Studies, (University of Oslo, 2007 -2008).

8 Corporate Europe Observatory, *Lobbying the European Union by Committee* (Amsterdam: July 2007).
See table "The European Union's Committee System".

9 "LISTE DES GROUPES D'EXPERTS ET DES AUTRES ORGANISMES 2004".
http://fairchair.eu/fileadmin/user_upload/pdf/WorkgroupsCommission.pdf

10 Around 200 more groups were found dispersed across different websites (Social Dialogue Committees and the Scientific Committees).

11 This also stated that the "list shall be updated on a regular basis and made public".European Parliament, *Framework agreement on EP-Commission relations* (Brussels: 26 May 2005).

12 European Commission, *Communication to the Commission from the President, Ms Wallström, Mr Kallas, Ms Hübner and Ms Fischer Boel proposing the launch of a European Transparency Initiative*, 9 November 2005.

13 The Conference of Presidents consists of the President of Parliament and the chairmen of the political groups.

14 European Public Health Alliance, "European Commission High Level Groups questioned by the European Parliament", update on website, February 2006;
Christine Pohl, *Whose views count?* (Brussels: 2009);
Claude Turmes (MEP, Verts/ALE), "Written question to the Commission", 5 January 2006.

15 European Parliament Committee on Budgetary Control, "2005 discharge - Member States' responsibility in question", press release, 26 March 2007.

16 Discussion on the European Transparency Initiative in the European Parliament's AFCO committee, 16 July 2007.

17 ALTER-EU, *Secrecy and corporate dominance - a study on the composition and transparency of European Commission Expert Groups* (Brussels: 2008).

18 "The process of collecting and publishing the names of members of the different groups shall be completed by the summer", Commission spokesperson Valerie Rampi told the *Financial Times* on 25 March 2008. On the same date Associated Press and the *International Herald Tribune* wrote: "EU Commission spokeswoman Valerie Rampi told reporters the EU's executive office was going to make public online the names of expert group members and who they represent by the summer".

19 Letter from Catherine Day, Secretary-General of the European Commission to Erik Wesselius of ALTER-EU [D(2008)7434].

20 Jens Nymand Christensen (of the Commission's Secretariat-General), letter to Erik Wesselius, 9 March 2009 [D(2009)590].

21 The register was checked between 28 November and 3 December 2008 and 1022 groups were listed. So, 35 groups were dissolved between December 2008 and April 2009, meaning that 189 groups were dissolved between the first months of 2008 and April 2009.

22 The number of expert groups with non-governmental participation also appeared to have decreased from 652 (53.7 per cent) in 2008 to 328 (33 per cent) in 2009, while there were 61 more only with government participation in March 2009.

23 CARS21 had a sherpa meeting (ie a guidance meeting) scheduled to take place in February 2009.

24 In September 2008, the Commission's General-Secretary Catherine Day informed ALTER-EU that the Alternative Fuels group had been dormant since 2003, yet in April 2009 this group was still listed on the register.

25 Of the 328 groups, 105 groups were not fully transparent, making public scrutiny and evaluation impossible: 1) There was no membership list at all for seven of the groups (i.e. no names of individuals or organisations), 2) in at least 26 groups, industry was listed as participating, but no names of the organisations or individuals involved were given; 3) in eight groups, the total number

of the participants was unclear, making it impossible to determine whether the information was complete; 4) For 24 groups, the Commission claimed that industry participants were there in a personal capacity. The declarations about their supposed independence were not available, and it was not specified which individuals had links with industry. It was therefore impossible to see if any particular interest was favoured, 5) There were no names at all for 40 groups, sometimes with no explanation, and sometimes with reference to the Regulation on personal data protection, but with no justification of the grounds for non-disclosure.

26 European Commission, *Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission* [COM(2002) 704] (Brussels: 11 December 2002).

27 European Commission, *The collection and use of expertise by the Commission: principles and guidelines; "Improving the knowledge base for better policies"* [COM(2002) 713] (Brussels: 11 December 2002).

28 See correspondence with the European Commission on the ALTER-EU website (www.alter-eu.org).

29 Committee on Budgetary Control, *Transparency in financial matters* ((2007/2141(INI)) (Brussels: 19 Febraury 2008).

30 Reply by Mr Barroso on behalf of the Commission to a written question by MEP Erik Meijer (E-7074/08), March 2009.

31 In the following groups, for example, there are many corporate employees supposed to be there 'in a personal capacity': 1) Groupe Politique d'entreprise - Chambre Professionnelle; 2) ISTAG - Information Society Technology Advisory Group; 3) ESMEG – European Securities Market Expert Group; 4) Ore agglomeration and Ironmaking, 5) Clearing and Settlement Advisory and Monitoring Expert Group; 6) Contrôle des installations, problèmes sociaux et environnementaux/Factory-wide control, social and environmental issues; 7) Casting, reheating and direct rolling; 8) Coal preparation, conversion and upgrading; 9) FP7 Expert Advisory Group on SMEs; 10) Strategic Advisory Board on Competitiveness and Innovation.

32 Details on expert group on "Coal combustion, clean and efficient coal technologies, CO_2 capture" in the Commission's online Register of Expert Groups.

33 This is how the Commission describes it on its website: "The preparation and implementation of EU policies by the Commission rely increasingly on expert advice" and "the collection of expert knowledge is crucial to secure a sound knowledge base for better policies". *Expert Groups Explained*, (Brussels: undated). Accessed at http://ec.europa.eu/transparency, last accessed 24 March 2010

34 Åse Gornitzka and Ulf Sverdrup, *Who consults?* (University of Oslo, 2007).

35 Expert groups are more about the substance of policy and linkages with the interest groups and Member States, as shown in Torbjörn Larsson, *Precooking in the European Union*, 2003. Eighty-seven per cent of expert groups relate to policies and not to 'general services', 'external relations', or 'internal services', according to Åse Gornitzka and Ulf Sverdrup, *Who consults?* (2008).

36 Les experts de l'ombre sur la sellette", La Libre, 26 March 2008.

37 Open Europe, *The EU's 170,000-strong army of bureaucrats* (London: August 2008).

38 The distribution of officials and temporary agents by Directorates-General and categories (all budgets) can be found on the Commission's website.

39 Corporate Europe Observatory, *Lobbying the European Union by Committee* (Amsterdam: July 2007).

40 Distrust of the European Institutions increased by 10 per cent between 2007 and 2009, according to Eurobarometer, *Attitudes of Europeans towards Corruption* (Brussels: November 2009).

41 Norm Eisen (Special Counsel to the President for Ethics and Government Reform), "Lobbyists on Agency Boards and Commissions", *Open Government Initiative weblog*, 23 September 2009.
The initial proposal was for narrowly focusing on federally registered lobbyists, while these are not the only ones influencing government on behalf of special interests. The proposal also failed to make a distinction between lobbyists working for nonprofit public-interest groups and those working for for-profit concerns. See: OMBWatch, "White House Moves to Limit Lobbyists on Federal Advisory Committees", 29 September 2009.

7

banking on the bankers – regulation and the financial crisis

Andy Rowell, Spinwatch, Christine Pohl, Friends of the Earth Europe, Kenneth Haar, Corporate Europe Observatory, and Yiorgos Vassalos, Corporate Europe Observatory

The 2008 global financial crisis led to wide-ranging questions on the financial regime. Why had the financial sector taken such high risks – and why had no one realised? And how did the rules come about that let them gamble irresponsibly?

Analysis of the expertise drawn on by the European Council and Commission shows that the financial sector has effectively been allowed to write its own rules, with all too predictable consequences.[1]

In 2008 the world economy suffered a heavy blow. A near collapse in the financial sector sent severe shocks through first the USA, then the rest of the world. Millions of people lost their jobs and their homes.

The scale of the financial crisis took many by surprise, yet there were those who saw it coming. Many independent financial experts – from academics to politicians and activists – had warned that both the lack of regulation in the sector, and its flawed nature, meant a crisis was inevitable. But their warnings were not heeded by the European Commission, the only body with the power to propose EU-wide legislation on financial services.

Instead, the Commission turned repeatedly to 'experts' who came almost exclusively from inside the financial sector itself. Their advice focused on ways to sustain growth in their sector. If you listen only to money men, who can wonder that proposals that can generate profits take centre stage, while other considerations are ignored?

In the case of the European Union, the legislation that paved the way for the crisis was heavily influenced by the financial lobby, not least thanks to their key position as advisers to the Commission in a large number of so-called 'expert groups'.

A decade of listening to money men

External expert advice is regularly sought by the Commission to help it fulfil its legislative and policy-making role. Often this comes from advisory bodies called expert groups (see chapter 6). There are hundreds of these groups, set up to draw on the expertise of a wide range of people – from academics and national civil servants to private-sector employees.

Expert groups have played a key role advising on financial regulation at the EU level since the adoption of the Financial Services Action Plan in 1999. But their role has been extremely controversial from the very beginning due to their often unbalanced composition.[2] An analysis of the composition of the groups which gave or still give advice to the Commission on financial issues shows they are overwhelmingly dominated by representatives from the financial industry. This means that large private banks, such as BNP Paribas and Deutsche Bank, insurance giants, and a whole range of financial enterprises control a series of expert groups and therefore wield significant power within the EU process – from the drafting of EU strategies and laws to their implementation.

Today, there are more than 1,000 active expert groups, with 21 groups providing ongoing policy advice on the financial sector. Of these, nine are dominated by industry,eight by Member States, one has equal NGO/industry membership, and one is mainly made up of academics. Two cannot be assessed because their full membership is not disclosed. Within these groups, industry experts outnumber representatives from academia, consumer groups and trade unions by a ratio of four to one. The 229 industry experts also outnumber the Commission's civil servants (approximately 150), who are officially responsible for financial policy.[3]

According to the Commission, expert groups are always supposed to include a diversity of opinion, from independent experts to smaller investors and consumers. Yet representatives of these groups have been almost wholly absent in the Commission's expert-group process.

Building up to the crisis – three cases

When the Commission asked for expert advice on the very key pieces of legislation which regulated the kind of bad investments that unleashed the crisis, they asked experts almost exclusively from the financial sector itself. Individuals who had a clear vested interest, as the following three examples show:

1. Banks One of the key factors generally considered to have contributed to the financial crisis was that banks systematically lent or invested far too much relative to their capital resources. International rules are supposed to ensure that banks keep adequate amounts of capital, but the key set of rules, Basel II, in fact allows banks to assess the risks of their investments themselves, enabling those which had invested in high-risk sectors (the so-called toxic assets) to appear more solid than they actually were.

Basel II is not an EU financial instrument, but was agreed by the Basel Committee on Banking Supervision (BCBS). It was incorporated into EU law by the European Commission under the Capital Requirements Directive.[4] Before adopting the directive, the Commission set up a number of expert groups to consult the European financial industry on the Basel recommendations.

The members of these groups came predominantly from the private financial sector. In the Banking Expert Group that looked at EU banking regulation, for example, 21 of the 23 members came from the private finance sector. The other two came from academia and a consumer organisation.[5] Their final report saw no reason to question Basel II,[6] which allowed for a level of freedom that was most welcome in the banking world.[7]

A further Capital Requirements Directive was adopted in October 2005 allowing rules on banking supervision to be defined by the Committee on European Banking Supervision (CEBS). This drew on the expertise of the big banks through its Consultative Panel.[8] Together these regulations established the regulatory framework which failed dramatically in 2008.

2. Credit rating agencies As with the banks, the inability to assess risk properly also applied to credit rating agencies. In recent years, many investors have relied on these agencies to assess certain investments. They are private institutions that analyse and classify the risk involved in various financial instruments.

Credit rating agencies played an important role in the financial crisis, since in many cases their advice turned out to be seriously flawed. Investors taking the agencies' advice invested heavily in what often turned out to be 'toxic debts' which included 'subprime loans' – mortgages provided to people on low incomes who had little or no hope of repayment. These were actually given the highest possible rating – triple A – by the main credit rating agencies, which. were also among the last to react to the downturn in the US real-estate market.

Could this blunder have been foreseen, or even prevented? Concern about credit rating agencies existed well before the current crisis because of the role they had played in the dot.com saga of 2000 and the collapse of Enron. On both occasions, the agencies' assessments turned out to be wrong. After the Enron scandal, legislation was introduced in the USA to try to prevent the same mistakes from happening again.[9] But thanks to heavy lobbying by the financial lobby, changes were not far reaching. Rules on the rating process were left to the agencies themselves. The result was legislation that was too weak to prevent the US credit rating agencies from repeating the mistakes of the past.

The European Union did not go any further. In fact, our investigation found that standards in Europe were even lower than in the USA.[10] In 2004, at the behest of the Parliament, the Commission asked its Committee of European Securities Regulators (CESR) to offer advice on the future regulation of credit rating agencies. An expert group was set up consisting of representatives from member states' financial authorities. A period of "extensive dialogue" with the financial sector, particularly the credit rating agencies industry, followed. It included consultations with CESR's own consultative panel, dominated by bankers and investors, which considered "the prescriptive regulation of the rating process as inappropriate".[11] In March 2005 the CESR advised the Commission to stick to a voluntary approach. The Commission accepted its advice.[12]

3. Accounting standards A third example of how lax rules enabled financial institutions to escape supervision is the situation regarding accountancy rules. During the crisis it was revealed that banks had managed to look considerably more solvent than they actually were by moving hazardous investments into 'special investment vehicles' or 'special purpose entities'.

With these investments formally off the books of the bank itself, its investments looked more solid to investors and to the authorities. How did financial institutions get this golden opportunity to hide bad investments? An important moment in this regard was when an international standard for accounting was approved in the EU.

In fact, when it came to regulating accountancy practices in Europe, the Commission did little more than review the international standards developed by a private body, the International Accountancy Standards Board (IASB). The Commission asked the expert group advising on accounting standards to do this. This group, the European Financial Reporting Advisors Group (EFRAG), was originally a private group which was invited to become an expert group by the Commission.

The members of EFRAG's 'Technical Expert Group' (TEG) all come from the private sector, and are mainly from big accounting firms. TEG's current membership includes members from KPMG, Deloitte, and Ernst & Young. It reads like a 'who's who' of the accountancy industry and influential large companies.

How thoroughly did this group assess the IASB recommendations? The standards they agreed to adopt included a rule on 'Special Purpose Entities' (IAS 27 on Consolidated and Separate Financial Statements) which requires a parent company to present consolidated or single accounts, allowing banks not to declare subsidiary accounts. Where banks have set up a company or 'Special Purpose Entity' (SPE) to try and keep certain risky assets off the balance sheet, these do not have to be declared.

The Commission did not consult with any stakeholders or independent experts before IAS 27 was adopted in September 2003.[13] Instead, it simply asked EFRAG who recommended its approval alongside a number of other standards.

Deaf ear to a wake-up call

The private financial sector has its fingerprints all over key pieces of EU legislation. And when the crisis broke, the Commission soon realised that the rules on banking, credit rating agencies and accounting standards had to be reconsidered.

For a while it seemed as if the Commission had learned a lesson, not just about the kind of regulation needed, but also about the kind of advisers it should seek. The Commissioner responsible for financial services, Charlie McCreevy, lambasted the influence of the financial lobby and claimed to open a new era based on a different relationship.[14]

But those who thought that the crisis would open a new era of comprehensive regulation in the financial sector were soon to be disappointed.

The Commission set up a 'High-Level' expert group to advise the Commission and the Council on what action to take in response to the financial crisis. Chaired by Jacques de Larosière, a former adviser to French bank BNP and the co-chair of financial sector lobby group EuroFi, the group brought together eight 'financial experts', including six who were key players in banking system, and several with direct links to the financial corporations implicated in the crisis.

The Larosière report concluded that Basel II had "underestimated some important risks and over-estimated banks' ability to handle them" but never seriously considered the inappropriateness of self-regulation.[15]

These recommendations were reflected in the EU Council and Commission's response. Although regulators were under both political and public pressure to act, and despite the fact that many experts advised them to review the fundamentals of Basel II, there was in the end no debate about self-assessment. The focus was on the need to simplify and improve assessment of risk.[16] The short debate on banking regulation resulted in only minor adjustments.

The role of credit rating agencies in the EU was also examined, drawing once again on outside expertise. The European Securities Markets Experts Group (ESME), made up of 21 individuals from financial companies mainly involved in securities trading,[17] published a report that said that while there was consensus that credit rating agencies were to blame for a large part of the crisis, regulation of the ratings process should not be regarded as an option.

The Commission tabled its proposals for regulating credit rating agencies in November 2008.[18] Rather than tightening regulation, the proposal copied the rules used in the USA – the very rules that had proved inadequate in the run-up to the crisis.

As for accounting standards, the issue remains unresolved, including the infamous IAS 27 standard. However, the IASB, which made the rules in the first place, has stated that change is not likely to occur before 2012.[19] In the meantime, the European Commission seems to be happy to wait.

Conclusion: near total capture by the finance industry

These are just some examples of what is a widespread issue as ALTER-EU's investigation revealed.[20] The overall conclusion we draw is that the Commission has not sought legitimacy from society at large but solely from within the private financial sector.

Despite the clear failings of the current regulatory regime, the EU Commission has continued to rely on the expertise of those within the financial sector in formulating its approach to financial regulation. The views of wider society, including independent experts, are by and large excluded from EU policy making.

This failure to ensure broad consultation has given the financial services industry a stranglehold on the policy-making process in the EU which is blind to the industry's own failings. It also results in a total lack of democratic transparency and accountability in terms of how these decisions are reached.

When we published our investigation, MEPs from different political groups said they were deeply concerned about the corporate capture of Commission advisory groups, but the Commission seemed to be in denial. When asked by the EUObserver to comment on the report's findings a Commission official responded that "if you want financial advice you don't ask a baker".[21] The Commission seems, even after the biggest crisis in 70 years, to think that advice on how to regulate financial markets can be left to the big banks and investment funds themselves.

If this situation is to be changed, as many in the Commission and in national governments have argued must happen, then the EU Commission must recognise the validity of outside voices and seek out a broader range of independent advice, drawing on experts from outside of the industry – opening up the whole sector to greater scrutiny. It is the only way in which a resilient financial sector can be achieved.

1 This chapter is based on: ALTER-EU, *A captive Commission – The role of the financial industry in shaping EU regulation* (Brussels: November 2009).

2 See for instance: European Parliament, Committee on Economic and Monetary Affairs, *The Current State of Integration of Financial Markets*, 18 January 2005, p. 5.

3 For details on composition of expert groups see: ALTER-EU, *A captive Commission*.

4 European Commission, *Re-casting Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions and Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions* [COM (2004) 486] (Brussels: 14 July 2004].

5 Ibid. p. 12.

6 Expert Group on Banking, *Financial Services Action Plan: Progress and Prospects*, final report (Brussels: May 2004), p. 24.

7 These conclusions were challenged by the Financial Service Users Group – FIN-USE, the only one that has equal NGO/ industry membership – which warned that the Banking Expert Group represented a "one-sided closed-shop of suppliers and technical finance experts". But their call to include other stakeholders appears to have been ignored. See: FIN-USE / Financial Service Users group, *A User Perspective on the Reports on Banking, Asset Management, Securities and Insurance of the Post FSAP Stocktaking Groups* (Brussels: October 2004), pp. 20–24.

8 Committee of European Banking Supervisors (CEBS), *Consultative Panel to support CEBS in implementation of Capital Requirements Directive*, 15 October 2004.

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8

members only? conflicts of interest in the european parliament

Andy Rowell, Spinwatch

For some Members of the European Parliament (MEPs) there's no clear dividing line between their political responsibilities and their private business, no conflict between their own vested interests and the public good. Andy Rowell examines cases where MEPs' motives are under question and asks what can be done.

In December 2008, in an old convent not far from the Brussels political quarter, a ceremony was held to announce the winner of the fourth Worst EU Lobbying Awards. The event has become an annual 'celebration' of the underbelly of politics in Brussels, exposing some of the worst lobbying practices at the EU (see Chapter 12).

Since the inaugural event in 2005, the awards have increased awareness of the influence that the estimated 30,000 Brussels lobbyists have over the democratic process. In 2008 a special category was introduced, the 'Worst Conflict of Interest Award', reflecting concerns that some Members of the European Parliament (MEPs) could have potential conflicts of interest arising from their commercial activities and links. There is increasing evidence that the internal rules of the European Parliament concerning MEPs' interests need radical reform. According to one UK MEP, Chris Davies, "The European parliamentary rules are 20 years behind those of Westminster [the UK Parliament]. They really are a scandal waiting to happen".[1]

Despite these existing parliamentary rules, an investigation in 2008 found that MEPs were taking gifts, wages, and hospitality from businesses with a vested interest in their work. The report revealed that MEPs had received funding from industries they promote in their parliamentary work, and that some have financial interests in the areas for which they have legislative

responsibility. Others were in prominent legislative positions at the same time as being involved with powerful industry lobby groups.[2]

The host of the 2008 Worst EU Lobbying Awards, British political comedian Mark Thomas, opened the ceremony saying: "It is not that what these people have done is illegal – what we object to is what these people have done should be illegal. We think lobbying activities should be regulated properly and they are not".[3]

The winner of the Worst Conflict of Interest Award was Piia-Noora Kauppi, an MEP for the Finnish conservative party. From 1999 Kauppi sat on the Parliament's important Economic and Monetary Affairs Committee (ECON), whose main responsibility was the "regulation and supervision of financial services". At the same time, Kauppi was the President of the European Parliament Financial Services Forum (EPFSF), a joint parliamentary / industry lobby group.[4]

Organisations such as the EPFSF are seen as "de facto lobbying vehicles for corporate interests aiming to influence EU decision-making in their favour", and have been a source of concern in recent years because they are not bound by any parliamentary ethics or transparency rules.[5]

On 1 January 2009, Kauppi stood down as an MEP to become the managing director of the Federation of Finnish Financial Services, the main Finnish banking lobby group. The chair of the Federation's board explained why hiring Kauppi was such a coup for an organisation whose focus was shifting to Brussels: "From the standpoint of financial services lobbying, Kauppi has an effective network of contacts in place in both Finland and the EU".[6] Kauppi said she had been approached due to her "expertise in the EU financial markets regulation".[7] A perfect case of the revolving door in action, from regulator to regulated.

Kauppi is not the only MEP on the Economic and Monetary Affairs Committee with connections to the EPFSF. The Committee's Chair, French socialist MEP, Pervenche Berès was also an EPFSF member. In other words, while chairing the most influential financial committee regulating financial services, Berès was also a member of the lobbying vehicle for the financial services industry which seeks to influence that regulation. This included lobbying her own committee.

There is a potential conflict of interest between these two positions, especially as Berès has acted as a rapporteur (lead author) on reports affecting the

financial services industry. But the MEP defends her position, arguing: "I'm not an active member of the EPFSF's board and therefore don't have a direct influence on its agenda and regulations... I believe that in the European legislative procedure, the consultation dimension is very important".[8]

Kauppi, in fact, only just pipped two of her colleagues to the title for 'Worst Conflict of Interest' in the public vote. The runners-up were British MEP Caroline Jackson and Germany's Klaus-Heiner Lehne.

Waste not, want not

Until she stood down in 2008, Caroline Jackson had been a Conservative MEP for 24 years and an influential member of Parliament's Environment Committee. She also acted as the 'rapporteur' for both the revision of the Waste Framework Directive in 2006,[9] and the new Waste Framework Directive that was ratified in November 2008.[10] These directives established the legal framework for the treatment and management of waste in the EU – a multi-billion and rapidly growing business sector – and have a direct impact on the commercial planning, strategy, and profitability of companies engaged in the waste business across Europe.

At the same time that Jackson was working on these directives, she was also acting as a paid adviser to two waste companies. The first, Shanks, is an independent waste company based in the UK and the Netherlands. Jackson was paid £6,000 (approx 6,700 euro) as a member of its Environmental Advisory Board (EAB).[11] Professor James Bridges, head of the board, acknowledged that Jackson's input, including her "wide knowledge of European legislation", was "a benefit to our work".[12]

According to Bridges: "EAB member Caroline Jackson was able to keep us updated on progress" of the Waste Framework Directive which "will have far-reaching implications for waste management and the EAB will consider its impacts on Shanks' activities in the UK and mainland Europe".[13]

So, the rapporteur for a Parliamentary report on waste was also a consultant to a company with a commercial interest in this policy field. Jackson maintains: "There is no conflict of interest because Shanks is not really involved in the kind of waste treatment activities that are touched on by the Waste Framework Directive".[14]

In September 2008, just months after being publicly criticised for the potential conflict of interest with Shanks, Jackson became a paid adviser to a second waste firm, SITA UK. This company is a subsidiary of the waste giant Suez Environment.[15]

Patently absurd?

Just behind Jackson in the public vote for the Conflict of Interest Award was German lawyer and MEP Klaus-Heiner Lehne, a member of the European Parliament's Legal Affairs Committee. Lehne has been one of the most influential backers of the EU software patents directive which, according to critics, granted large corporations stronger intellectual property rights over software. At the same time Lehne was a partner at the law firm Taylor Wessing, which advises clients "on patenting strategy in the software sector".[16] Taylor Wessing's clients include SAP, the world's largest business software company.[17]

Lehne sees no conflict of interest in being an MEP involved in EU patent legislation and acting as a lawyer to clients on patents. "Being a lawyer and being an MEP in the Legal Affairs Committee of the Parliament is normal", he says.[18]

An influential MEP who worked with Lehne on the patents directive is the British Liberal Democrat MEP Sharon Bowles, who is a patent lawyer[19] and a partner in a patent firm (along with her husband Andrew Horton, a European patent attorney).[20] Critics ask if it is possible for Bowles to "see the other side of the debate" given that she is so in favour of patents. Bowles maintains that there is no "conflict of interest with me being an MEP and a patent lawyer, as I am not practising. Technically I do maintain my ability to practise because of my partner in the business, my husband".[21]

Another influential player in the software patents directive debate was the 'Campaign for Creativity', which won the 2005 Worst EU Lobbying Award.[22] The man behind the campaign, Simon Gentry, noted that Sharon Bowles had been key as she had "excelled in putting the case for our side of the argument".[23] Bowles did not like being criticised about her commercial links and rather dramatically likened her critics to the "forces of evil".[24]

Dismissing the critics

Other MEPs have been similarly dismissive of questions about their outside interests. Take for instance John Purvis, who was a Scottish Conservative MEP

from 2004 to 2009. During this time, he had a number of financial interests in the nuclear, financial, and biotech sectors. In the European Parliament Purvis was a keen supporter of the biotechnology sector and a spokesperson on the issue for the Conservatives.[25] At the same time, he was also a partner in Life Science Capital, a biotech company run by his son-in-law.[26]

Purvis was also involved in the hedge-fund sector,[27] serving as Chair of the London-based recruiting arm of a Swiss company investing in hedge funds,[28] creating the potential for an even more serious conflict of interest. For many years experts have been calling for tighter regulation of hedge funds. Their excessive risk-taking, short-termism, and lack of transparency have all been cited as issues of concern and have affected the prudence and conduct of financial markets.[29]

In 2003 Purvis acted as a rapporteur for the Economic and Monetary Affairs Committee on an own-initiative report into hedge funds, which argued for the industry-friendly formula of a "light-handed and appropriate EU-wide regulatory regime" for the hedge fund industry.[30] Purvis does not see any conflicts of interest arising from any of his commercial links. "They are fully declared", he argued, and dismissed the allegations as "clutching at straws".[31]

Other MEPs declined even to answer questions concerning their commercial interests. Elmar Brok is one of the Parliament's most influential MEPs, having served for nearly 30 years and chaired the powerful Committee on Foreign Affairs. In this capacity Brok was seen as the European Parliament's 'ambassador at large'.[32] Since the early 1990s, Brok has also been the Senior Vice President at the German media company Bertelsmann. Many have highlighted the potential conflict of interest in having a senior MEP involved in lobbying activities for a major media company. As the Financial Times put it: "Few people could be in a better position to open doors to decision-makers".[33]

When faced with questions about this issue, Brok refused to answer.[34] This appears to be a typical response from MEPs to questions about their outside interests. At a national level such high-handed dismissal of serious questioning usually provokes intense media scrutiny. In Brussels, barely anyone notices.

Another German MEP with complicated business links is Jorgo Chatzimarkakis. Before becoming an MEP in 2004, Chatzimarkakis worked in public relations. From 1999 to 2004 he was Managing Director of Polit Data Concept, a lobbying firm also known as PDC EU Affairs.

When Chatzimarkakis entered Parliament in 2004 he wrote that "the work of an interest representative for industry is not compatible with the status of an MEP", and said he was resigning from Polit Data Concept. The company, he said, had been dissolved and "without my participation was refounded with new partners".[35]

Documentary evidence, however, contradicts this claim. According to Parliamentary records, Chatzimarkakis retained shares in Polit Data Concept.[36] Company documents also reveal that MEP Chatzimarkakis held an interest in Polit Data Concept until the end of 2007 and that just a month after becoming an MEP in July 2004 he actually increased his share in the company from 50 per cent to 55 per cent.[37] Polit Data Concept was not dissolved until December 2007, some three and a half years after he became an MEP.[38]

A lobbyist for Polit Data Concept (PDC), Alexander Schelhase was registered at the European Parliament from 2006 to 2008.[39] This raises the question that if the company was no longer active, as Chatzimarkakis' office claims, who was Schelhase working for? In spring 2007, a new PDC EU affairs company was set up by associates of Chatzimarkakis, including the person who had been head of his parliamentary office from 2004 to July 2007.[40]

No such thing as a free lunch?

Other MEPs face potential conflicts arising from the gifts and hospitality they accept from the industries they are charged with regulating. One is British Conservative MEP Malcolm Harbour, a key champion of the interests of the car industry in the European Parliament. Harbour spent 30 years in the motor industry before becoming an MEP. He has become a leading figure in the debate on CO_2 emissions and fuel efficiency in Brussels, and has promised to ensure the Commission's proposals on CO_2 will "not damage the auto industry".[41]

Since 2004 Harbour has received some 18 cars on loan, including Alpha Romeos, Range Rovers, and Jaguars. He has also attended seven European Grand Prix, courtesy of the industry, and received free cross-country driving instruction. Harbour says: "I drive cars because I need to understand what is going on [in the industry], and I declare it as I feel that I have nothing to hide".[42]

Martin Callanan, another British Conservative MEP accepted a generous discount from Ford on a new car in 2006. Callanan too has tabled crucial amendments favourable to the car industry, one of which was described as

"disastrous" by Green MEPs. Callanan argues that he declared the discount "to avoid any accusation of conflict of interest",[43] as if the simple registration of such an interest resolves the conflict.

The former leader of the British Conservatives in the European Parliament, Giles Chichester, was also president of the European Energy Forum, a lobby group promoting the interests of the oil, gas, and nuclear industries. In May 2007, Chichester was the guest of nuclear company Areva at the America's Cup yacht race off the coast of Spain. Chichester argues that this trip had no bearing on his long-held pro-nuclear views: "It made a change from visiting nuclear power plants, which is what I normally do".[44] Chichester resigned as leader in 2008 over a damaging expenses scandal.

The future

Many MEPs defend their commercial links by arguing that the very act of disclosure removes any conflict. Others claim that it is better to have MEPs with expertise in particular industry sectors because of the technical nature of much of the Parliament's work.

While expertise is undoubtedly beneficial to decision making, it becomes a concern when MEPs are financially or materially benefiting from the companies they are regulating, or where they are still involved with their first profession in such a way that it could conflict with their parliamentary duties.

Based on my investigation into MEPs on behalf of Spinwatch, which highlighted many of the cases above, it appears that the European Parliament could help restore public trust by introducing and strengthening guidelines, including:

- MEPs should declare all financial interests, along with the value of those interests (this could also include spouses and partners);
- MEPs should never receive money, gifts, or hospitality over €50 from industries associated with their work;
- MEPs should give up all outside commercial lobbying interests on entering the European Parliament.[45]

The Spinwatch report was sent to the Quaestors, the MEPs elected by their colleagues to oversee the administrative side of the Parliament. Although they gave the report "thorough consideration", they did not implement any of the recommendations.[46]

Just days before the European elections in June 2009, one Brussels-based correspondent recommended that voters should read the Spinwatch report, noting:

> With the public outcry over expenses in Britain and mistrust of politicians widespread throughout Europe, many MEPs would no doubt be in favour of greater transparency. A good grilling from their constituents on issues of accountability would mean that the surrounding issues can no longer be ignored.[47]

Perhaps the European Parliament will get its house in order before a scandal humbles the institution and tarnishes its reputation. Those charged with ensuring its probity will not be able to claim they have not been warned if and when their internal rules and procedures are found to be wanting.

Andy Rowell is a director of SpinWatch

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9

a failure to act – the commission turns a blind eye to conflicts of interest

Olivier Hoedeman, Corporate Europe Observatory

European Commission officials, particularly the Commissioners themselves, exercise significant power in the EU decision-making process. Rules are needed to ensure that they are not affected by close links to business or possible relationships with future or previous employers. Olivier Hoedeman looks at the need for tougher rules regulating outside interests in the Commission – and questions the administration's apparent reluctance to intervene.

At the start of 2010, Commission candidate Rumiana Jeleva withdrew from the team of proposed new Commissioners following an intense debate which put the issue of conflicts of interest in the spotlight. MEPs had queried whether she was qualified for the job, but it was the questions that emerged from undeclared business interests that led to her demise.[1] The Jeleva case is significant as it reflects broader, structural weaknesses in the way in which the Commission deals with potential conflicts of interest.

That the Commission does not have its house in order when it comes to avoiding conflicts of interest is evident from the numerous scandals during Commission President José Manuel Barroso's first period in office – as for example when former Trade Commissioner Peter Mandelson personally signed an EU decision to lift import tariffs for a giant corporation owned by a Russian oligarch friend; when ex-Commissioners and high-level officials went through the revolving door to become highly-paid lobbyists; and when a lobbyist for Microsoft and Pfizer became Special Adviser to the EU's Consumer Commissioner.

In 2009, 76 per cent of EU citizens said they believed that "there is corruption within the institutions of the European Union", up from 66 per cent in 2007.[2] The Commission's failure to crack down on conflicts of interest is no doubt part of the explanation for this rise.

Mandelson's scandals

The rules on ethics for Commissioners and for Commission staff are both full of loopholes and are weakly enforced. This allows the system to be abused, making it possible for interested parties to exert undue influence. The dos and don'ts of the 27 European Commissioners are outlined in a code of conduct that was last updated in 2004.[3] In autumn 2009, as part of his campaign to get re-appointed, Barroso promised the European Parliament that he would launch a review of the Code of Conduct for Commissioners.[4] A few months earlier, a European Parliament report had concluded that the code needed tightening to avoid conflicts of interest. The report criticised the Commission for "complacency due to its failure to ensure a systematic review".[5] The current rules, the report concluded, hold a "significant risk" of future scandals, highlighting among many other weaknesses, the absence of "a definition of the term 'conflict of interest'".

The OECD's definition of a 'conflict of interest' is "a conflict between the public duty and private interests of a public official, in which the public official has private interests which could improperly influence the performance of their official duties and responsibilities".[6]

A review of the ethics rules for Commissioners is indeed long overdue. In November 2009, a Channel 4 documentary broadcast in the UK revealed that in 2005 Commissioner (now Lord) Mandelson personally signed the decision to lift import tariffs for Rusal, the aluminium giant owned by his close friend Oleg Deripaska.[7] German MEP Dr Ingeborg Graessle described Lord Mandelson's behaviour as "completely improper", arguing that there is "a conflict of interest, when you have a close friend who profits from your decision".[8] Lord Mandelson is not the only Commissioner who has been criticised for accepting luxurious hospitality from wealthy businessmen. In 2005 Barroso himself came under fire over a holiday on a Greek billionaire's yacht. A company owned by the billionaire shipping magnate Spiros Latsis later won Commission approval for a major state-aid package, which led to accusations of conflicts of interest. Tightening gifts and hospitality rules for Commissioners is crucial, but far wider changes are needed.

Commissioners going through the revolving door

The Commission first introduced 'revolving door' rules for Commissioners in 1999, after Industry Commissioner Martin Bangemann, responsible for

regulating telecommunications, was headhunted by the Spanish telecommunications giant Telefónica. As a result of the subsequent controversy, the Code of Conduct for Commissioners, adopted in September 1999, included a 'cooling-off period' of one year after leaving the Commission, during which Commissioners had to request permission before moving into new jobs. But the Code of conduct is far too lax to prevent conflicts of interest.

Five years ago, when Commission President Romano Prodi's team of Commissioners was replaced, the one-year cooling-off period was ignored in the case of Pavel Telička, who had been EU Commissioner for Health and Consumer Protection. Within weeks of leaving the Commission, Telička co-founded BXL Consulting, a lobby consultancy firm with offices in Prague and Brussels. BXL Consulting assists large corporate clients, including Microsoft, with influencing EU decision making. The Commission's decision to approve Telička's new job was made without any serious scrutiny of possible conflicts of interest. The Telička case shows that enforcement of the cooling-off period for Commissioners lacks teeth and that the Commission uses a far too narrow interpretation of what constitutes a conflict of interest.[9]

The threat of potential conflicts of interest also seemed to be overlooked for Barroso's previous team of Commissioners. In November 2009, Austrian newspapers reported that Benita Ferrero-Waldner, then a Commissioner, was considering a job as a lobbyist on the Nabucco pipeline project for Austrian oil giant OMV. Both Ferrero-Waldner and the OMV boss confirmed that they were in discussions.[10] She did not seem to worry about the restrictions on job moves for former EU Commissioners.

Tight enforcement of cooling-off periods for former EU officials is essential in order to prevent abuses of power. The ALTER-EU coalition wrote to Commission President Barroso in November 2009 arguing that the Code of Conduct lacked sufficient safeguards against conflicts of interest arising when Commissioners take up employment in the private sector. ALTER-EU argued that "a cooling-off period of at least two years and clear criteria for assessing conflicts of interest are needed".[11] For example, decision makers should be discouraged from negotiating future lobbying jobs while still in office, as this could influence their stance on issues affecting their future employers. In the first period after going through the revolving door, top decision makers can exploit their previous status to unduly influence their former staff and colleagues.

Kallas shies away from strict rules for Commission officials

In the letter to Barroso, ALTER-EU also called for an in-depth review of the rules on conflicts of interest for European Commission staff, which contain many of the same weaknesses as the Code of Conduct for Commissioners.[12] These are outlined in the Staff Regulations and provide guidelines for some 25,000 civil servants who work for the Commission. During his term as Commissioner for Administrative Affairs, Audit and Anti-Fraud matters (2004–2009), Siim Kallas actively promoted awareness among Commission officials about ethics, but shied away from tighter rules or what he dismissed as "a 'strict compliance' approach" for conflicts of interest.[13] As a result of Kallas' soft approach, the Commission still faces a range of potential conflicts of interest, for example:

- Commission officials going through the revolving door to private sector lobbying jobs – and vice versa
- Commission officials accepting gifts, hospitality and other benefits offered by lobbyists in return for influence
- Special Advisers influencing Commission policy, while being lobbyists for commercial interests.

Commissioner Kallas reacted swiftly when it was revealed in March 2008 that 33 lobbyists, many on the payroll of private firms, were working in the Commission as 'seconded national experts' or 'temporary administrators' (see Chapter 10). When confronted with the scandal, Kallas announced that he would phase out this practice. But this determined approach did not extend to the Commission's new guidelines nor to the internal Ethics Code that was presented the very same month.[14] These documents focused on raising awareness among Commission staff, including training, and the appointment of 'ethics correspondents' in every Commission department. While these measures are valuable, they did not include tightening the rules and procedures to prevent conflicts of interest and treated 'ethics rules' as an entirely internal matter. The Commission did announce, however, that: "the current rules on potential conflicts of interest should be clarified, with respect to gifts, favours, and outside activities". That such clarification was much needed became clear when a new scandal broke around Commission employee Fritz-Harald Wenig.

Corruption at the heart of the Commission?

In September 2008, UK newspaper, the Sunday Times reported that a high-level official from the Commission's trade department had offered to leak commercially sensitive information in return for financial rewards.[15] Undercover reporters from the Sunday Times, posing as lobbyists for a Chinese businessman, offered the official – Fritz-Harald Wenig – a payment of € 100,000. Wenig was reported to have suggested putting the money in a frozen bank account to which he would have access after he retired. According to the newspaper, Wenig disclosed information about a pending anti-dumping case concerning a Chinese candle-making firm as well as other information. The allegations led to Wenig's suspension and an investigation by Olaf, the EU's anti-fraud agency.

Fourteen months after the scandal broke, the European Voice reported that Wenig had been found guilty, but would not suffer any sanctions. The EU's Civil Service Tribunal overturned Wenig's suspension "due to procedural errors" and the Commission had to repay him the €6,000 deducted from his salary during the six-month suspension period. According to the judgement of the Tribunal, the Commission's decision on how to handle the Wenig case had only been published on the EC intranet and not in the appropriate print publication. The fact that Wenig was found guilty of violating the Commission's internal rules, but in the end suffered no disciplinary measures, raised questions about the Commission's ability to handle corruption. The Wenig case may also reveal problems with the political culture in the Commission's trade department. Are lobbyists able to buy influence over trade policy decisions? For public trust in EU decision making, it is imperative that the Commission act far more decisively in cases like these.

In another smaller case, it took the intervention of the European Ombudsman to make the Commission accept that two DG Trade officials should not have accepted VIP tickets from Nike for the Rugby World Cup in Paris.[16] Friends of the Earth Europe complained to the Ombudsman, arguing that this paid hospitality could have resulted in a conflict of interest. The Commission had in early 2008 rejected this criticism claiming that the Commission had clear rules concerning the ethics of its officials and that the two officials had been granted permission to accept the tickets in accordance with its internal rules and procedures. The Ombudsman's ruling said the Commission should do more to "maintain public confidence in its work and to protect its staff from unjustified suspicion". Only then did the Commission grudgingly

acknowledge "that it would have been better not to have allowed the officials to accept the tickets". The Commission is currently updating its internal rules relating to the acceptance of gifts.

Revolving door spins faster

The Commission claims that it has everything under control concerning the revolving door which allows industry lobbyists to become Commission officials, and vice versa. "The system works", a high-level Commission official told an audience of academics and government officials specialising in ethics in June 2008.[17] But in reality there is a growing number of cases of Commission officials taking up corporate lobby jobs in areas they were responsible for regulating.

In an interview with Belgian daily newspaper De Standaard, Russell Patten of lobbying consultancy giant Grayling Global revealed the lucrative nature of lobbying in Brussels: "If you are really good, you can earn up to 350 euro per hour", he said, adding that "for ex-Commissioners or top civil servants this can be up to 500 euro per hour".[18] Patten estimated that about half of the Brussels-based lobbyists previously worked in the EU institutions. Lobbying consultancy firms and law firms that offer lobbying consultancy services are increasingly headhunting Commission officials, sometimes to work on the same issues they covered in the Commission. GPlus and Alber & Geiger, for instance, have used their ex-Commission staff as a selling point in attracting industry clients.

Commission officials are required to request permission before going through the revolving door and the Commission can attach conditions before authorising the move.[19] But judging by the many controversial cases of the revolving door that have surfaced in recent years, the Commission is far too lenient in giving the go-ahead. Between 2005 and 2008, 273 Commission officials asked for 'post-employment' authorisation. Three were refused. Thirty were granted conditional authorisation.[21] In addition to these permanent departures, a far larger number of Commission officials take an open-ended sabbatical, reserving the right to return to a Commission job later. In 2008, 457 Commission officials said they were taking sabbatical leave to take up a new job, with 33 per cent of these going to the private sector.[21] The number of officials going on such sabbaticals has increased year by year. Assessing possible conflicts of interest in these cases is virtually impossible because the

Commission refuses to disclose any further details. The names and functions of these Commission officials and of their new employers are considered confidential, as a result of "protection of personal data and the private character of certain information".[22]

But while the Commission considers revolving-door cases to be confidential, those that hire former officials can be eager to showcase their new lobbyists to potential clients. In November 2009, Brussels-based lobbying consultancy Interel Cabinet Stewart European Affairs announced that Jean-Philippe Monod de Froideville had become their new associate director.[23] Until the end of 2008, de Froideville had been a personal adviser and member of the cabinet of Competition Commissioner Kroes. Interel's press release said de Froideville would focus on "competition and trade matters" working "horizontally across the client portfolio", the very same issues he had been responsible for in the Commission.

In those cases where the Commission has imposed conditions, these were often too weak to prevent conflicts of interest. For example, Commission officials Michel Petite, Robert Klotz, and Lars Kjølbye all went through the revolving door in 2007–2008 from the Commission's competition and legal affairs departments to work for the Brussels' offices of international law firms. The firms (Clifford Chance, Howrey, and Hunton & Williams) all combine traditional lawyers' practices with lobbying for corporate clients, but have refused to disclose the clients for whom they are lobbying.[24]

Internal documents concerning the authorisation process for the three officials showed that the Commission does not have a consistent approach to revolving-door cases, with significant variations in the conditions imposed. While Petite was instructed not to lobby former colleagues or deal with cases involving his previous department for one year, the two others were given more limited restrictions, including in Klotz's case a six-month break from lobbying DG Competition.[25] This case-by-case approach seems very incoherent. To slow down the revolving door and avoid conflicts of interest, uniform rules are needed, whose enforcement has more teeth. Countries including the USA and Latvia already have clear rules with substantial cooling-off periods in place,[26] but the Commission has until now ruled out this option. The Commission has said it will update the rules on these matters in 2010, but has also indicated that there will not be any major changes to the current approach.[27]

Some very special advisers

Concerns about conflicts of interest are not limited to Commission officials, but also apply to non-officials who occupy powerful advisory roles. In March 2007, the Commission released for the first time a list of 'Special Advisers' who were working for Commissioners. The list included 55 names, some paid, and others not. This initiative from Commissioner Kallas was a long overdue move to end the secrecy and ambiguity concerning 'Special Advisers'.

One of these had already been scrapped from the list: Rolf Linkohr, the former Member of the European Parliament (MEP), who became a Special Adviser to energy Commissioner Andris Piebalgs. Linkohr also ran a Brussels-based lobby consultancy firm, working for large energy firms, a role which created a clear conflict of interest. In a ground-breaking decision, Commissioner Kallas terminated Linkohr's status as Special Adviser when he failed to provide a statement declaring that he had no conflicts of interest. Later in 2007, the Commission introduced rules for approving 'Special Advisers', with what appeared to be more elaborate checks-and-balances. But in practice, the Commission's approach has proved disappointing. The rules do not include a clear definition of conflicts of interest and the Commission has no means to properly enforce them.

One of the 54 remaining Special Advisers was Etienne Davignon, a former European Commissioner and vice-president of water and energy giant Suez. Davignon advised the then Development Commissioner Louis Michel on African development issues. MEPs and NGOs felt that these roles might be incompatible and asked the Commission for clarification. Wasn't Davignon providing advice about EU aid spending on infrastructure projects in Africa, an area where Suez has direct commercial interests? The Commission's answers were far from clear, simply claiming there was no conflict of interest. Davignon was arguably one of the most influential corporate power brokers at the EU level. Terminating his status as Special Adviser, it seemed, was simply not an option for the Commission.

Similarly, in summer 2009, the Commission blankly refused to see any conflict of interest in role of Pat Cox. An MEP for 15 years and president of the European Parliament for two years (2002–2004), in 2006 Cox became a Special Adviser to the then Consumer Commissioner Meglena Kuneva. The risk of conflicts of interest seemed clear: Cox was working directly and indirectly (through lobby consultancy giant APCO) for large corporations

including Microsoft, Pfizer, and Michelin, all of which had significant interests in influencing EU consumer policies. Corporate Europe Observatory (CEO) wrote to Commissioners Kuneva and Kallas and asked them to clarify the situation.[28] Both Commissioners brushed away the concerns as unfounded.[29] CEO had also noted that Cox's CV displayed on the Commission's Special Advisers website did not mention his involvement in APCO, nor his work for Pfizer or Microsoft. This was dismissed by Kallas, who argued that "the CVs [...] are not intended to give an exhaustive description of each single activity undertaken by the Special Adviser". But if the purpose is to allow the public to assess the absence of conflicts of interest, shouldn't Cox's employment as a lobbyist for some of the world's largest corporations be disclosed?

The responses are also in stark contrast to the guidelines published by the Commission's Consumer department (DG SANCO), which argue for a far stricter approach,[30] emphasising that "it is essential that external experts are free from financial self-interest when performing their duties as advisors; that they have no parallel loyalty to another organisation; that they are not burdened with competing personal or professional agendas or compromising personal or professional relationships". When confronted with these guidelines, the Commission responded that these conflicts of interest rules do not apply to Special Advisers like Cox.[31] CEO was not convinced and filed a complaint to the European Ombudsman.

The questions about Cox were assessed by Commissioners Kuneva and Kallas, who both belong to the pan-European liberal-party coalition (the Alliance of Liberals and Democrats for Europe) – as does Cox. An independent body is clearly required.

A robust approach is needed

ALTER-EU has warned in recent years against the Commission's soft approach on conflicts of interest and called for clear rules and independent monitoring as a more effective way of discouraging conflicts of interest. The current approach has not prevented conflicts of interest from occurring. An opportunity does exist, however, to strengthen the rules and the way in which they are enforced. The new anti-Fraud Commissioner Algirdas Šemeta promised during his approval hearing in January 2010 to work closely with the Parliament on this, and to make sure that his fellow Commissioners complied with the rules for transparency. Commissioner Maroš Šefčovič

(Administration) promised to review the Commission's staff regulations in order to prevent revolving-door cases.

In addition to an overhaul of the Code of Conduct for Commissioners and the Staff Regulations, the Commission must replace the current voluntary, loophole-ridden lobby register with a comprehensive and effective disclosure system. A quality register including names of lobbyists and issues lobbied on would be an effective tool for detecting potential conflicts of interest. This became very clear in the USA where the Abramoff scandal was discovered as a result of disclosures made under the US Lobbying Disclosure Act. This eventually led to the conviction of Abramoff, two White House officials, a US Representative, and nine other lobbyists and Congress staff. But in the EU capital it is still impossible to 'follow the money' and to uncover scandals in this way.

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1 See also: Olivier Hoedeman, "Lack of screening burnt the Commission", *European Voice*, 28 January 2010. One of the most remarkable aspects of the Jeleva episode is that Commission President Barroso appears to have let Jeleva go into her approval hearing without having thoroughly screened her assets and business connections, particularly her involvement in privatisation consultancy firm Global Consult. While it remains unclear whether Jeleva had any actual conflicts of interest, the declaration she submitted during her term as an MEP was incorrect regarding her role in Global Consult. Jeleva stated that she was involved in this company in 2001–2003 and 2006–2007, but in fact was also active in both 2008 and 2009.

2 European Commission, *Attitudes of Europeans towards corruption*, Eurobarometer, November 2009.

3 The Code of Conduct for Commissioners is online at the European Commission website.

4 European Commission, *Political guidelines for the next Commission* (Brussels: September 2009).

5 European Parliament, Directorate-General for Internal Policies, *The Code of Conduct for Commissioners – improving effectiveness and efficiency* (Brussels: 2009).

6 OECD, *Guidelines for Managing Conflicts of Interest in the Public Service* (Paris: 2003), para. 10.

7 The document is dated 25 December 2005. In summer 2008, UK newspapers had criticised Commissioner Mandelson for his holiday near Corfu on board a luxury yacht owned by Deripaska.

8 "Lord Mandelson in conflict of interest row over oligarch", *Independent*, 29 November 2009.

9 The usual screening by an ad-hoc ethics committee was bypassed. In November 2004, the Commission approved Telička's request to become a for-hire lobby consultant on the basis that he did not have his own portfolio in the Prodi Commission (he shared a portfolio with Commissioner Byrne). This interpretation is clearly far too narrow, as there are numerous possible conflicts of interest imaginable even if Telička didn't formally have his own, exclusive portfolio. Telička worked in tandem with Byrne in a powerful role on health and consumer-protection issues and he was fully part of the college of Commissioners. In the Commission's decision it is wrongly stated that the occupation envisaged was not related to the content of his portfolio. Telička promised "for the necessary period of time" not to lobby on issues related to health and consumer protection, but this is very vague and clearly such a promise is not sufficient to prevent conflicts of interest. With his consultancy BXL Consulting (established after leaving the Commission), Telička has lobbied for large corporations like Microsoft (from 2005 onwards). Sources:- Communication de M. le Président, "Application du Code de conduite des commissaires: activités après cessation des fonctions" [SEC(2004) 1456].- Letter from Commissioner Telička to Commission President Prodi, 9 November 2004.

10 Sources:Christoph Prantner and Günther Strobl, "Ferrero-Waldner soll für Nabucco lobbyieren", *Der Standard*, 30 October 2009. Regina Pöll, "Ferrero-Waldner: 'Gewisse Gelassenheit'", Die Presse, 13 November 2009.

11 ALTER-EU, "Preventing Conflicts of Interest of EU Commissioners", open letter to Commission President Barroso, 24 November 2009.

12 European Commission, *Staff Regulations* (Brussels: 1 May 2004).

13 Siim Kallas, "Corruption and conflicts of interest: red lines and grey areas", speech at British–Estonian Chamber of Commerce, Tallinn, 25 May 2007. Kallas' argument that "codes of ethics cannot prescribe actions for every possible case that might arise" seems a weak argument against clearer rules and better enforcement.

14 European Commission, *Communication on Enhancing the Environment for Professional Ethics in the Commission* (Brussels: March 2008).

15 Jonathan Calvert, Claire Newell and Nicola Smith, "Revealed: how Eurocrat leaked trade secrets over lavish dinners", *Sunday Times*, 7 September 2008.

16 European Ombudsman, "Ombudsman achieves friendly solution to complaint about VIP tickets", press release no. 18/2009, 3 November 2009.

17 Kristian Schmidt, Deputy Head of Cabinet of Commissioner Kallas, "Ethics Management in the European Commission", speech, Maastricht, 9–10 June 2008.

18 "Lobbyisten hebben niets te verbergen", De Standaard, 30 September 2009.

19 European Commission, Staff Regulations (Brussels: 1 May 2004), art. 16.

20 Kristian Schmidt, Deputy Head of Cabinet of Commissioner Kallas, "Ethics Management in the European Commission", speech, Maastricht, 9-10 June 2008.

21 Email response from DG Admin, 17 July 2009. In total 476 Commission officials went on sabbatical in 2008, 457 to take up 'external activities'; 45 per cent went into national administration, 10 per cent joined international organisations, and 33 per cent became involved in 'commercial activities'. The number of officials signalling an external activity during their sabbatical rose from 318 in 2006 to 381 in 2007, with 39 per cent and 40 per cent taking up 'commercial activities'.

22 When CEO requested access to a list of Commission staff requesting permission to go on sabbatical leave in the last two years, the response was that no such list exists. "The administrative burden of drafting a list which contains several hundred sets of data would seriously encroach on the smooth functioning of the competent services of the Commission." CEO appealed this decision, arguing that disclosure of the information is in the public interest. The Commission, however, interprets 'public interest' in a highly peculiar manner, claiming that CEO "has not been vested with a mission of public interest by a public authority or the legislator as required by this condition".

23 Interel, "Interel hires former Kroes aid", press release, 19 November 2009.

24 Like other law firms involved in lobby consultancy, these three boycott the Commission's voluntary lobby-disclosure register. This secrecy makes it impossible to judge the exact degree of conflicts of interests in these revolving-door cases.

25 Documents on file at Corporate Europe Observatory. Klotz was asked to abstain from (lobby) contacts with DG Competition in the first six months after starting work at Hunton & Williams. The Commission was a little stricter with Kjolbye (working with Howrey), who was instructed not to have "contacts of a professional nature" with his former unit for one year. He was also told not deal at any point of time with cases of which he had knowledge during his time at DG Competition. For Michel Petite, authorisation was granted on the condition of "no contacts of professional nature with any former colleagues and notably those that used to be his inferiors for one year". He was also instructed not to intervene in cases or dossiers involving the Commission's Legal Services.

26 Group of States against Corruption (GRECO), *Rules and guidelines regarding revolving doors/pantouflage* [Greco (2007) 23E] (Strasbourg: 25 March 2007).

27 Regarding the rules on external activities, these are currently in the Commission's internal consultative process. They are rather technical implementing rules, simply explaining the principles already contained in the Staff Regulations. Thus adoption is an internal matter for the Commission only." Email reply from Commissioner Kallas' Cabinet, 14 September 2009.

28 Corporate Europe Observatory, *Concerns about potential conflicts of interest of Special Adviser Pat Cox* (Brussels: 29 May 2009).

29 Commissioner Kuneva stated that she "was fully aware of Mr Cox's activities" when she examined possible conflicts of interest. [...] "I do not consider these activities to be incompatible with his tasks at the Commission. Consequently, I will continue to resort to the invaluable advice of Mr Cox.Commissioner Kuneva, letter to Corporate Europe Observatory, 23 June 2009."Taking account of Mr. Cox's activities and the other information provided (and also of the fact that he was asked to give advice regarding political communication on consumer issues, and not regarding policy definition), it was fully justified to state the absence of conflicts of interest. I cannot see any element that might put this conclusion into question". Commissioner Kallas, letter to Corporate Europe Observatory, 23 June 2009.

30 DG SANCO, "Managing conflict of interest in SANCO", November 2008.

31 The Commission argued that "Special Advisers [...] is a very specific group of persons" for which the general conflict of interest rules do not apply, "making it possible for the Commission to have the benefit of the services of an exceptionally qualified person". Bernhard Jansen (DG Admin), response to Yiorgos Vassalos (Corporate Europe Observatory), 21 September 2009.

10

public or private? the problem with industry secondments

Nina Katzemich, LobbyControl

A scandal exposing private-sector employees working inside the European Commission – and inside the German government – highlighted how vulnerable the current system is to abuse. Nina Katzemich recounts what took place and explains why the measures supposedly introduced to prevent a recurrence of such things provide no guarantees.

In March 2008 it was revealed that more than 30 lobbyists, many on the payroll of private firms, were working inside the European Commission as 'seconded national experts'. That is to say, they were not involved in traditional lobbying from the outside, but were influencing European policy from the inside. Industry lobbyists were allowed to shape EU legislation and policies by working as Commission officials.

To show what has been going on, take the example of Markus Malangerie[1], a manager at German chemical company, BASF, who had expertise in testing procedures for toxic chemicals. Malangerie has been employed by BASF throughout his career, but his desk has often been based elsewhere.[2]

Malangerie became an external expert for the European Commission's Directorate-General (DG) for Enterprise and Industry in 2001, where he was involved in an internal working group on the Registration, Evaluation and Authorization of Chemicals (REACH) directive (see Chapter 2). Intended to provide protection from toxic chemicals contained in everyday goods, the directive required the industry to provide evidence of the safety of chemicals they used. This was seen by the industry as increasing their costs.

The chemical industry is a powerful player in the EU, led by German transnational giants such as Bayer and BASF. So, while their well-organised

pressure groups (headed by leading BASF managers) started lobbying heavily against REACH, Malangerie became a member of the REACH working group at the Commission. He was still employed by BASF – but working inside the Commission. This constituted a serious conflict of interest, but hardly anybody knew about it and nobody seems to have raised questions. Malangerie even contributed as an EU official to symposia on REACH (but without divulging his background).

When discussions on the directive migrated to the member states, the BASF manager packed his suitcase and moved his desk from the Commission to the German Federal Ministry of Economics, which was responsible for the directive. While he was there, the Ministry took up the position of the German chemical industry. Malangerie acted as the Ministry's official representative, informing MEPs about its position on REACH. It goes without saying that he was particularly informative about the industry view.

So a BASF employee was able to exert influence on the inside at each stage of the process in favour of his private employer from industry. How could this lobbyist's dream have come to pass?

Private-sector employees sow the seeds for new laws in German ministries

In 1998, the new governing coalition in Germany, made up of Social Democrats and the Greens, decided to set up a special exchange programme. Members of private companies would take temporary posts in government ministries, and civil servants would move to the private sector. The aim was to ensure a better exchange of knowledge and experience on both sides, helping to develop the government's resources. The idea came from the Minister of the Interior, Otto Schily, together with Tessen von Heydebreck, a member of the Deutsche Bank managing board. The project, called Mission Changeover, was adopted enthusiastically, especially by German trade associations and industry. BASF, Siemens, SAP, Lufthansa, ABB, DaimlerChrysler, and Volkswagen all opted to take part, and almost all the federal ministries got involved.

Eight years later, in October 2006, the German investigative television programme, Monitor, revealed that hundreds of private-sector employees had been working in German ministries (mostly federal), sometimes for many years. It was not clear how many of them were part of Mission Changeover or whether they had arrived before this. Not only had these private-sector

employees worked quietly inside the government for a considerable length of time, the documentary also revealed that many of them had actively contributed to legislation directly affecting the industries they were employed by. In the Ministry of Finance, for example, investment bankers contributed to laws designed to deregulate the capital market. In the Ministry of Transport, a senior executive from the Daimler Corporation was present as a 'trainee' during the tendering process for the contract for the toll system on German highways (worth millions of Euros) for which Daimler was one of the bidders. Daimler won the tender.

So, at the heart of government, where public welfare should be the most important issue, salaried employees from private firms were acting in the interest of the private sector. Groups representing other social sectors were hardly even represented.[3] What is more, major companies not only had the advantage of influencing policies, but could also gain inside knowledge, establish new contacts, and so gain still further advantage over other interests.

For the government's human-resource development the programme can't have been very advantageous as only about 10 ministry officials went to private companies in return. But these companies had not only taken up seats in the German ministries.

Seconded national experts on the payroll of private companies

Despite perceptions that the European Commission is a huge bureaucracy, the so-called motor of the EU does not have a large staff, with just 24,000 employees working on laws and directives affecting 500 million citizens. This might explain why the Commission looks outside for expert knowledge, appointing expert groups, special advisers, and temporary external specialists. 'Seconded National Experts' (SNEs) usually come from Member States' administrations at a national, regional or local level. Experts from international organisations, universities, and other public-sector bodies can also apply. They are paid by their own national administration while working at the Commission.

None of the temporary staff programmes is designed for employees from the private sector – but Markus Malangerie from BASF was employed in such a capacity. And when the two journalists who had revealed the lobbyists inside German ministries expanded their investigation, they found that he wasn't the only one.

At least 34 SNEs were on the payroll of private enterprises, according to their findings. Most of these lobbyists were working in the Commission's departments for Research, Energy and Transport, and Enterprise and Industry. The list of companies involved included Ruhrkohle AG, KPMG, Edison Gas S.p.A, Audi, and Deutsche Telekom.

The manager of the German arm of tax consultants KPMG, for example, was working in the Commission on the company-taxation directive. She was involved in specifying taxation rates – useful information for KPMG. Coal mining company Ruhrkohle AG had seconded an employee who (co)-authored a policy paper on the future use of coal, emphasising the important contribution it could make to a safe future energy supply and promising financial support for the exploration and implementation of new CO_2-reduction technologies. These examples clearly show the conflicts of interest of these experts and how their work benefited the companies involved.

One former external expert agreed to give an anonymous account of his time at the Commission. Having applied as an SNE, he had been sent to the Commission by the German Ministry of Transport. He was authorised to draft directives and ordinances, as though he were an EU official, and had close contact with senior EU officials. The EU, he said, benefited from his expertise – but his employer also benefited significantly from the contacts and knowledge gained from his work, particularly because he had been working on an issue of great interest to his firm.

What were the consequences?

When the whole practice was finally brought to light, Brussels and Berlin reacted differently. In Brussels, Commissioner Siim Kallas, responsible for Administrative Affairs, Audit and Anti-Fraud, seemed shocked by the revelations. He tried to find out exactly what had been going on – and took firm action to prevent SNEs being accepted from the private sector in future.

Partly voluntarily, partly prompted by parliamentary initiatives, above all from German Green deputy Hiltrud Breyer, , Commissioner Kallas uncovered bit by bit 34 cases of SNEs from private enterprises working in the Commission.

Who exactly initiated the practice of sending private-sector representatives as SNEs to the Commission was not discovered. In a conversation with Breyer, Kallas implied that the idea had originally come from Germany. Fourteen of

the 34 private business representatives revealed were German – and in Germany, this practice already existed. But Günter Verheugen, the German Commissioner responsible for Enterprise and Industry, stated that he would never have tolerated members of staff paid by the private sector in his division. Maybe he didn't know that there were three in his own DG, including Malangerie. He also announced through his press officer that the BASF manager was not at any time involved in the preparations for the draft REACH directive, although there are several clear indications that he had been.

As consequence of these disclosures, Commissioner Kallas instructed DG Administration to ensure that no new SNEs from the private sector were allowed to be seconded to the Commission and that no private-sector SNEs were allowed to work in the Commission as from January 2009. A phasing-out exercise was set up to end the secondment of all private-sector SNEs by the end of 2008, accompanied by new rules which clarify that SNEs must be sent to the Commission solely by the state, that is by the central, federal, or local administrative services of an EU (or EFTA) country, or by an intergovernmental organisation (IGO). Exemptions may be authorised by DG Administration on a case-by-case basis, and independent universities or non-profit research organisations, and public-sector organisations are also permitted. Public-sector employers have to be attached to a public administration, resources must come mostly from public financing, and they must comply with other criteria.

These rules restrict the work of lobbyists inside the Commission, but their enforcement depends on the Commission's commitment. There is scope to ignore them, with a clause stating that: "Exceptionally, and where justified by the interest of the service, the Member of the Commission responsible for personnel matters may authorise the secondment of an employee that does not meet one or more of the above criteria".[4] It depends on the interpretation of the member of the Commission responsible for personnel matters, although she or he does have to report regularly to the Commission if this procedure is being used.

An SNE can spend up to six years in the Commission. The tasks seconded experts are allowed to perform are clearly restricted – they may not perform middle or senior management duties and can take part in missions or external meetings only as part of a delegation. The Commission department must also ensure that there is no conflict of interest in relation to the SNE's duties. But the question remains: who enforces these rules?

In Germany, the government first tried to deny what was going on, and then to downplay it. There was considerable public outrage and among members of parliament – who did not seem to have known what was going on in the ministries. The Greens, the Liberal Democrats, and also the Left as well as civil society put the government under pressure, and following more revelations, the German federal audit office started to examine the issue. Officials were sent to all the ministries and compiled a special dossier revealing even more cases. It turned out that more than 20 per cent of the external experts were involved in drafting legislation relevant to their employers. The German federal audit office severely criticised this practice and the government was advised to either end the programme or revise it.[5]

Finally, the federal government drafted a new administrative rule,[6] which was so weak that it resulted in broad protest, including a successful campaign to strengthen it organised by LobbyControl together with the online network Campact.[7] But the practice of sending experts from the private sector to ministries has not been abolished. External experts are not, however, allowed to (co-)author laws or other legal drafts and cannot be employed in areas that concern the business interests of their employers. They are also no longer allowed to hold leading positions and as a general rule should not remain inside a ministry for more than six months. The government has to report all cases of external experts to the budget committee at least once a year.

Never again?

What happened in German ministries and the Commission was a disaster for democracy and pluralism. Where the state sets out rules and drafts bills, it must pursue the public interest – not for the best solution only for certain economic interests. Experts from the private sector and associations with privileged access to ministries were able to monopolise the decision-making process. The right place to present their views is during the parliamentary consultation process, not on the ministry drawing board.

Will the new rules effectively prevent private enterprises and governments from entering such dubious alliances again? In Brussels expert lobbyists seem to be banned, now that all secondments for private-sector SNEs have ended. In Germany, it appears that the new rules are reducing the number of external experts, especially those from private enterprises and business associations. But in both Germany and in Brussels, there are loopholes to be found if the will is there.

In Brussels, Commissioner Kallas instigated strict rules, but they seem to depend very much on the Commissioner for personnel matters, and in particular on how she or he frames and enforces the rules in practice. The Commissioners are responsible for implementing their own rules, with no external control by the European Parliament. What, for example, if a majority of the Commissioners agree that external experts from the private sector are helpful and that their selection shouldn't be monitored too carefully?

In Germany, the rules are less strict: lobbyists from private enterprise are still welcome in ministries, albeit with restrictions. There is some external control via parliament, with reports to the budget committee. But the reporting is incomplete, with several missing cases, as revealed by LobbyControl. Unfortunately, the parliamentarians have not really exercised their right to scrutinise the issue, simply nodding the reports through. So, the rules will not necessarily be enforced in Germany either. And clear loopholes remain. LobbyControl has called for further improvements or – even better – a complete ban on lobbyists working inside the ministries.

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1 Not his real name.

2 The story of Malangerie and other examples were uncovered through the investigative work of the German journalists Sascha Adamek and Kim Otto. See: Sascha Adamek and Kim Otto, *Der gekaufte Staat – wie Konzernvertreter in deutschen Ministerien sich ihre Gesetze selbst schreiben*, (Koln: Kiepenheure & Witsch, 2008).

3 See LobbyControl's online database of lobbyists in German Ministries.

4 European Commission, "Decision relative au régime applicable aux experts nationaux detaché et aux experts nationaux en formation professionelle auprès des services de la commission", 12 November 2008.

5 Bundesrechnungshof (German federal audit office), "Bericht an den Haushaltsausschuss des Deutschen Bundestages nach §88 Abs. 2 BHO über die Mitarbeit von Beschäftigten aus Verbänden und Unternehmen in obersten Bundesbehörden", 25 March 2008.

6 Deutsche Bundesregierung (German Federal Government), "Allgemeine Verwaltungsvorschrift zum Einsatz von außerhalb des öffentlichen Dienstes Beschäftigten (externen Personen) in der Bundesverwaltung" (Berlin: 17 July 2008).

7 For more about the LobbyControl campaign, see http://www.keine-lobbyisten-in-ministerien.de (in German).

Part 3

bursting the bubble

11

obama and k street: lobbying reform in the USA

Craig Holman, Public Citizen

The USA is often held up as an example of lobbying transparency, but this has not always been the case. Craig Holman looks at how transparency was achieved, what remains to be done, and what Brussels could learn from the US experience.

The Obama Administration has followed up the election pledge to curb the influence of lobbyists with a series of initiatives that are causing a stir in the US lobbying fraternity. Democratic systems of government rest on several principles of political legitimacy, including government accountability, the informed consent of citizens, and political participation. The profession of lobbying affects each of these principles. Lobbying serves as an invaluable tool in opening up dialogue between citizens and government officials – as such, it is a necessary instrument for democracy. But lobbying can also become an exclusive and elite pursuit, serving well-financed special interests behind closed doors to the detriment of the public interest. As such, it can undermine the political legitimacy of government.

It is the task of any democracy to nurture legitimate dialogue between citizens and government officials and to discourage lobbying from becoming an exclusive 'insider's game' that undermines the public's confidence in government. Transparency is the single most effective tool to ensure that lobbying is not just back-room deal-making for the wealthy.

But achieving transparency in lobbying can be difficult. The most obvious obstacle is the lack of political will within government to force open the books of the well-financed lobbying profession (in the USA this lobbying sector is referred to as 'K Street', a reference to the street where many of the highest paid lobbying consultancies are housed). Another obstacle to transparency is

defining precisely what is meant by 'lobbying', i.e. what it is that is subject to disclosure and regulation. Ambiguities in definitions provide a crack in the transparency regime for those who want to hide in the shadows.

These obstacles to transparency are in no way insurmountable. In the USA, even the lobbying profession itself has come to accept the value of transparency. And with a little vigilance, we can overcome new obstacles as they arise.

The legacy of loopholes

Recent US history reveals how an ambiguous definition can lead to unintended consequences. Despite the fact that the US Congress sought to set up a mandatory registry of lobbyists at the federal level as early as 1946, an ambiguous definition of 'lobbying' left the decision to register a subjective, voluntary choice for lobbyists for nearly 50 years.

Congress approved the nation's first comprehensive disclosure law for domestic lobbyists: the Federal Regulation of Lobbying Act of 1946 immediately after World War II. The primary objective of this Act was to establish a mandatory system of lobbyist registration and disclosure. The Act made no effort to regulate the conduct of lobbying or the financial activity of lobbyists.

According to the sponsors of the Act, it would provide the public with information on the political pressures influencing legislation, recognising that "full realization of the American ideal of government by elected representatives depends to no small extent on [members' of Congress] ability to properly evaluate" the political pressures to which they are regularly subjected.[1] Without this public information: "the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal".[2]

The 1946 Act required anyone whose "principal purpose" was to influence the passage or defeat of legislation in Congress to register with the Clerk of the House and the Secretary of the Senate and to file quarterly financial reports. The greatest problem with the early law was that it relied upon a subjective threshold for determining who had to register and provided an ambiguous definition of what information they had to declare.

A 1991 study by the US General Accounting Office (GAO) found that about 10,000 of the 13,500 individuals and organisations listed as key influence pedlars on Capitol Hill in the Directory of Washington Representatives, were not registered as lobbyists.[3] The GAO study also concluded that lobbyist disclosure reports were woefully incomplete: 60 per cent of registered lobbyists reported no financial activity; 90 per cent reported no expenditures for salaries, wages, fees, or commissions; 95 per cent reported no public relations or advertising expenditures; and only 32 per cent of filers reported a specific title or bill number of legislation lobbied.

In every respect, the early efforts to impose transparency on US lobbying failed miserably. Though intended to be mandatory, ambiguous definitions left registration and reporting a voluntary choice – and few lobbyists chose to register.

The Lobbying Disclosure Act

This situation was corrected in 1995 with the passage of the new Lobbying Disclosure Act (LDA). This replaced the subjective definitions of 'lobbyist' and reportable 'lobbying activity' with more precise, objective definitions, and the 'principal purpose' threshold was quantified.

'Lobbyist' was defined to mean any individual (1) who is either employed or retained by a client for financial or other compensation; (2) receives income of at least US$5,000 for an individual or lobbying firm, or makes expenditures of at least US$20,000 for a lobbying organisation within six months; (3) whose services include more than one lobbying contact with government officials; and (4) whose lobbying activities constitute 20 per cent or more of his or her services' time on behalf of that client during any three-month period.

Reportable 'lobbying activity' was defined as any lobbying contact with government officials or efforts in support of such contact, including preparation or planning activities, research, and other background work that is intended, at the time of its preparation, for use in contacts and coordination with the lobbying activities of others.[4]

The more empirical, objective definitions set out in the LDA immediately boosted the number of lobbyist registrants up to 10,798 – much more in line with the actual number.

Though the 1995 LDA finally made lobbyist registration and disclosure mandatory, it had some serious shortcomings. First, it did not adequately clarify that lobbyist reports must be filed electronically and posted on the internet. As a result, lobbyists filed paper reports. It was only because of the diligence of the Secretary of the Senate, which uploaded those paper reports as pdf documents on its website, that the reports could be viewed electronically. But it took time for the reports to become available online and they could not be searched, sorted, or downloaded.

Second, the six month period in which to file reports prevented them from being timely. Many legislative issues had already been lobbied to death or passed into law before the lobby reports became available.

The 1995 LDA also made no effort to regulate the behaviour of lobbyists or lawmakers. It concerned only disclosure. So lobbyists remained free to wine and dine lawmakers, fly them on all-expense paid trips, and offer lucrative future private-sector employment when the lawmakers decided to retire from public service (known as the 'revolving door').

The scandals associated with former lobbyist Jack Abramoff changed all that. Abramoff exploited the weaknesses of LDA, showering lawmakers and their staff with gifts, box seats at sporting events, luxurious dinners, free travel, and promises of future lucrative employment in exchange for official favours. The delayed lobbyist reporting deadlines and the unsearchable web-based disclosure system helped Abramoff conceal his wheeling-and-dealing for several years, but eventually the paper record of his lobbying income and expenditures brought down his house of cards. The scandal forced Congress once again to strengthen the US lobbying law in 2007, mandating electronic reporting of all lobbyist reports every three months and regulating the behaviour of lobbyists and lawmakers.

Honest Leadership and Open Government Act

The Honest Leadership and Open Government Act of 2007 (HLOGA) substantially enhanced the disclosure requirements and, for the first time, imposed ethical restrictions on lobbyists and lawmakers. Some of the more important changes in the law include:

- **Real-time, online reporting and disclosure.** All lobbyists are now required to file their registration and disclosure reports electronically, and these

reports must be filed every three months. The Clerk of the House and Secretary of the Senate – the officers of Congress in charge of administering congressional rules and implementing the lobbying law – are also required to post these filings on the internet in a "searchable, sortable and downloadable" fashion, which is easily done within days or even hours of the reporting deadlines. Requiring that reports be filed quarterly rather than twice a year also meant that HLOGA cut in half the financial thresholds triggering registration. Now when a lobbying organisation spends US$10,000 in a three-month period, or an individual lobbyist receives, US $2,500 compensation in a three-month period, registration is mandatory.

- **Lobbyists and campaign money to be an open book.** The single most powerful way for lobbyists to buy influence is to fundraise for lawmakers, most of which had been previously undisclosed to the public. Under the new law, lobbyist fundraising for lawmakers, including the dollar amount of direct and bundled campaign contributions, and the names of lobbyists and organisations that employ lobbyists who host fundraising events and the amounts they raise, must be posted online.
- **Travel junkets grounded.** Travel junkets were another popular tactic lobbyists deployed to gain access to lawmakers. Now, lobbying organisations may sponsor only one-day trips, just long enough to fly someone to a conference to give a speech. Corporate jets for such travel are effectively prohibited, and lobbyists, skilled at high-altitude schmoozing, can no longer tag along.
- **Gifts banned.** Lobbyists and organisations that employ lobbyists are effectively banned from providing personal gifts to lawmakers. In the House, lobbyists may not even buy a lawmaker a cup of coffee. In the Senate, gifts from lobbyists must be of no more than de minimis value, such as a baseball cap. Lobbying organisations may still host receptions and conferences which lawmakers can attend, but these events must be widely attended and no special gifts or meals can be provided to lawmakers that are not provided to all other attendees.
- **Special spending projects disclosed.** The names of the sponsors and recipients of earmarks – special spending measures often secretly inserted into bills by members of Congress – now must be posted on the internet 48 hours before final approval of appropriations and tax bills.

Some flaws remain

HLOGA is a major improvement in the US lobbying and ethics law. But some critical improvements were left on the cutting-room floor as Congress debated and revised the legislation. Most importantly, there is still no central authority responsible for implementing and enforcing the law. The responsibilities are divided among several different agencies. Lobbyists file in duplicate to both the Clerk of the House and the Secretary of the Senate, neither of which has enforcement authority. The Clerk or Secretary may contact lobbyists regarding incomplete filings, but enforcement for violations of the disclosure law is ultimately the responsibility of the Department of Justice. The ethics rules are primarily enforced by two separate congressional ethics committees, one for the House and one for the Senate, staffed by members of Congress themselves. Once again the Department of Justice may step in to enforce in cases of bribery or other egregious violations. This decentralisation of enforcement authority creates wasteful redundancy and hinders zealous monitoring and enforcement efforts.

HLOGA also fails to adequately deal with revolving-door abuses. The House and Senate passed two different versions of restrictions on the revolving door. The House opted to stay with the existing inadequate restriction under which former lawmakers must wait a year before they can make a 'lobbying contact' with Congress. The Senate expanded this 'cooling-off period' to two years for former senators. But both chambers allow former lawmakers immediately to assume 'lobbying activities' – strategising and running a lobbying campaign – provided they do not pick up the telephone and personally contact their former colleagues. As such, the revolving door still spins out of control, with more than 40 per cent of former members of Congress pulling in multi-million dollar salaries as they join wealthy lobbying firms upon leaving Congress.

Throughout the congressional debate on HLOGA, the then Senator Barack Obama helped lead the way for stronger reforms. Obama advocated creating an independent ethics enforcement agency. He advocated strengthening the revolving-door restrictions to include a ban on both lobbying contacts and lobbying activity during a two-year cooling-off period. And, of course, Obama supported passage of the final bill, even without the ethics agency and the stronger revolving-door restrictions, as the best available for the time being.

Tough start

On day one of stepping into the White House, President Obama issued an Executive Order containing groundbreaking revolving-door provisions for the executive branch of the federal government (executive orders have no jurisdiction over the legislative branch). These are designed to prevent potential conflicts of interest for incoming executive branch officials involving their former employers or clients ('reverse revolving door'), and improper trading on government service for personal gain by outgoing executive branch officials.

The Executive Order contains the first-ever 'reverse revolving door' provisions for incoming government officials, designed to prevent the capture of regulatory agencies by those the agencies oversee. The Executive Order requires all appointees to disqualify themselves from matters that significantly affect their former employers or clients within the last two years prior to joining the Administration. If such disqualifications are expected to be frequent – such as when the potential appointee was employed by a behemoth company in the regulatory field – then that could make the person ineligible for appointment. In addition, former lobbyists who actively lobbied a specific agency in the last two years are generally precluded from receiving a presidential appointment to that agency. When such conflicts do occur, a waiver may be granted on rare occasions, if the Administration deems the appointment necessary.

These provisions also prohibit presidential appointees from coming back to lobby any senior executive branch officials for the full length of the Obama presidency. This could be an eight-year prohibition on lobbying contacts, if Obama is re-elected for a second term. These are the toughest revolving-door provisions ever established, though as an Executive Order they do not apply to the legislative branch of government.

The Executive Order further prohibits all presidential appointees from accepting any gifts from lobbyists or lobbying organisation, other than token gifts of de minimis value, and instructs the Office of Government Ethics to develop a similar gift ban for all executive branch employees.

Under the Executive Order, all presidential appointees are required to sign a binding 'ethics pledge' to abide by the revolving-door restrictions, disqualification arrangements, and gift ban, and the Office of Government Ethics is required to report on the effectiveness of the Order and how it might be modified to enhance its purpose.

K Street and the billions

This sweeping revolving-door policy was followed by a second Executive Order on 20 March 2009. Obama pleaded with Congress to approve his US$787 billion economic stimulus package and not to add any special-interest spending projects that might benefit major campaign donors or influential constituents (known as 'earmarks') that would otherwise divert stimulus funds. Congress reluctantly agreed but K Street had no such intention. Several of the wealthy lobbying firms began expanding their lobbying staff and bringing in former executive branch staffers with close connections to their former colleagues to seek lucrative earmarks for their paying clients from the executive officials charged with doling out the money. This prompted an order from Obama to all executive officials to avoid any oral contacts with registered lobbyists seeking special-interest earmarks in the stimulus package. Any such requests may be made, but exclusively in writing and then the requests must be posted on the internet within three days.

K Street was up in arms as it saw its golden goose slipping away, demanding that the policy be rescinded and threatening legal action. Other lobbyists mocked the policy, claiming that it merely changed their roles from representing paying clients to teaching them how to represent themselves and chauffeuring them back and forth to meetings with executive officials.

The White House agreed to modify the lobbyist-stimulus policy on 29 May 2009. The revised order extended the ban on oral requests for earmarks to all persons, not just registered lobbyists. The White House also narrowed the order by applying this rule against oral contacts only to competitive bid projects, rather than non-competitive projects, the latter involving mostly state and local government spending projects. But all requests for earmarks under the revised rule – spending projects requested in competitive as well as non-competitive bids – must still be posted on the internet before the funds may be allocated for the project.

Lessons for Europe?

Both the US Congress and the Obama Administration have taken several dramatic steps to rein in influence-peddling in federal government. This is a long-term struggle, and some of the most important challenges still lie ahead. But of all the shortcomings of US lobbying regulations, transparency is not one. All individuals who accept significant payments or make substantial

expenditure to influence legislation or regulatory actions must register as lobbyists. They must then file lobbyist activity reports four times a year, as well as reports on campaign contributions and events they host to 'honour' government officials, and these reports are immediately posted on the internet in a searchable, sortable, and downloadable format.

Though one model of lobbying regulation may not fit all, some of the US experiences offer inescapable lessons for Europe. Foremost among these is that transparency cannot be optional. Whether a lobbyist registry is voluntary by design, or ambiguities in the terms make the registry functionally voluntary, it is clear that many – if not most – of those involved in the influence-peddling industry will not register. Yet, it is precisely those lobbyists who want to hide in the shadows that the public most needs to know about.

Furthermore, transparency – in order to counter undue influence-peddling – must follow the money. The ultimate objective of any meaningful lobbyist disclosure system is to inform lawmakers and the public who is paying whom, how much, to lobby on what.

Only when the financial books are wide open, and the public can see that decisions on government policies and contracts are being deliberated rather than bought, can a democratic government earn political legitimacy in the eyes of its citizens.

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1 United States v. Harriss, 347 U.S. 612 (1954) at 625.

2 Ibid.

3 General Accounting Office, *Federal Lobbying: Federal Regulation of Lobbying Act of 1946 is Ineffective* (Washington D.C.: July 1991). In the study, GAO interviewed a sample of those identified in Washington Representatives and found that 75 per cent had contacted both members of Congress and their staffs, dealt with federal legislation, and sought to influence Congress or the Executive Branch.

4 Several exceptions to the definition of reportable "lobbying activity" are specified under LDA, such as testimony offered in formal congressional hearings, research produced at the request of a government official, news produced and disseminated by a bona fide media organisation, and so forth.

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beyond satire – the worst EU lobbying awards 2005–2008

Frank van Schaik

Exposing the lobby culture at the heart of Brussels can sometimes seem like an uphill struggle. Endless research and detailed evidence of corporate lobbying activities are not always enough to draw attention to the issue or generate a media story, let alone change practice. But creative campaign techniques can help put lobbyists and lobbying in the spotlight, as the organisers of the Worst EU Lobbying Awards have found. Frank van Schaik looks back at the history of the awards and analyses the potential of taking a light-hearted approach.

The Worst EU Lobbying Awards

In 2005, four members of the ALTER-EU coalition (Corporate Europe Observatory, Friends of the Earth Europe, LobbyControl, and Spinwatch) decided to organise an award ceremony to highlight the cases of bad lobbying they had encountered through their research.

Ten cases were chosen from among the think tanks, PR firms, and front groups working behind the scenes in Brussels and were nominated for the Worst EU Lobbying Award 2005.[1] Members of the public were invited to vote for the 'worst' candidate. The winner was announced at a ceremony held in the Cinema Nova in Brussels in December 2005.

Members of the public, the press, and the nominees were invited to the ceremony where the Campaign for Creativity (C4C) – a front group set up by a London-based public-affairs firm lobbying for software patents – became the first recipient of a Worst EU Lobbying Award.

The awards have now been made four times, with winners chosen on the basis of a public vote. As well as the awards for Worst EU Lobbying, special

categories have been introduced to highlight particular aspects of lobbying.

So in 2005 a Black Box Award was given to the lobbyists' lobbies, the public-affairs industry bodies that were campaigning behind the scenes against improved lobbying transparency in the EU.

In 2006 an award was given for Privileged Access in recognition of the open door offered by some EU institutions and officials to certain sectoral interests. Three EU Commissioners – Peter Mandelson (now Lord Mandelson), Günther Verheugen, and Vladimír Spidla were nominated – revealing a culture that goes right to the top of the EU system. The winner was the Commission's DG Internal Market for manipulating a stakeholder consultation on European patents so that only certain industry voices were heard.[2]

In 2007 a special award was given for Worst EU Greenwash in recognition of the number of companies that seemed to win political and public favour by appearing to be green. The winner was the German Atomic Forum for an advertising campaign promoting the low-carbon environmental benefits of nuclear power.[3]

In 2008 an award was given for the Worst Conflict of Interest, with candidates including MEPs and a number of officials in the Commission who seemed to have spent their time at work promoting often lucrative outside interests. The winner was the Finnish MEP Piia-Noora Kauppi, who having secured a job with the Federation of Finnish Financial Services, used her role as an MEP to encourage 'light touch' regulation for the banking sector.[4]

In the glare of the spotlight

Lobbyists are not always used to being the centre of attention, which is perhaps why none of the winners has ever accepted their invitation to attend the ceremony. But few have remained oblivious to this public censure of their work, not least because each year's Awards have generated a certain amount of media coverage.

The 2005 winner was the C4C, which had claimed to be a grassroots group representing artists, musicians, designers, engineers, and software developers, but which was in fact run by Simon Gentry of Campbell Gentry public affairs, with funding from big software companies such as Microsoft and SAP. The Campaign closed down within two weeks of winning the award.

The Worst EU Lobbying Award in 2006 went to ExxonMobil for continuing to pay climate sceptics to manipulate the EU climate debate. Using think tanks and front groups including the Centre for the New Europe, TCSDaily.com (formerly known as Tech Central Station), and the International Council for Capital Formation to put forward their views, Exxon's activities in Europe were far less apparent than in the USA, where funding sources have to be revealed – and their exposure helped in moving the debate forward on climate change.

In 2008, one of the nominees was so alarmed to discover his activities highlighted that he took legal action to try to have his name removed from the nomination list. Commission official Fritz-Harald Wenig, who was nominated for offering information in exchange for dinner and future payment, as exposed in a newspaper sting, went to the Court of First Instance in Brussels just days before the Awards ceremony was due to take place. The court ruled that freedom of speech was more important in this case and the award ceremony was allowed to go ahead. Wenig did not win, but his case received a special mention at the ceremony.

Another 2008 Worst Conflict of Interest nominee, the European Business and Parliament Scheme (EBPS), also found the public scrutiny hard to bear. The group, which claimed to be a 'neutral liaison organisation' facilitating contact between the European Parliament and big EU-based companies such as BP, Unilever, Telefónica, and Suez, was providing companies with easy access to MEPs. The group had benefited for years from a rent-free room inside the European Parliament buildings, including their own European Parliament email address – and arranged trips for MEPs to discover what it was like for member companies in different parts of the world. All activities were supposedly registered on their website, but in fact only seven mentions of contact were recorded between 1999 and 2009. Following publicity about the nomination, their board members started to ask questions and before the winners were even announced, EBPS's office in the Parliament had been dismantled, their website de-activated, and the board had resigned.

Sometimes, of course, the spotlight provided by the awards is too late to prevent the lobbyists from achieving their goals. In 2007 German car manufacturers BMW, Daimler, and Porsche were the joint recipients of the Worst EU Lobbying Award as a result of their lobbying campaign to water down the Commission's proposals for mandatory CO_2 emission-reduction targets. The car manufacturers were named and shamed, but the damage had already been done, with the new targets weakened and their implementation delayed.

And in 2008 the award went to a group of agrofuel lobbyists who had been pushing for a 10 per cent agrofuel target for EU transport fuel. Despite clear evidence of the environmental damage caused by agrofuel monocultures replacing rainforest and traditional farmland, the EU had agreed a 10 per cent target for renewable fuels. When the award was announced, the lobbyists had already completed their work.

Reaching a wider public

In the small world of the Brussels EU Quarter, the annual awards ceremony is something of an event, with refreshments, comedians, and music helping pull in the crowds on the night. Many of those working in Brussels are all too aware of the lobbying activities going on around them – but it doesn't do any harm to remind them of what really happens in the corridors of power.

But the Worst EU Lobby Awards also reach a wider audience, with nominations publicised online and through the media, attracting thousands of people from across the EU to take part in the online vote.

Short video clips about the winners – including visits to present the awards – and highlights from the ceremony have been posted online, again attracting thousands of viewers from around the world. And media coverage of the awards helps extend the exposure – with the 2008 awards ceremony covered in 12 EU countries as well as in Brazil and Colombia. Media coverage in Brussels and in the national media in the winner's home country creates much needed exposure for their Brussels activities.

All this has helped raise awareness and increase the pressure for improved transparency and ethics rules on lobbying in the EU. Commissioner Siim Kallas's transparency initiative and the Commission's register for lobbyists are discussed in the media and those in the public-affairs and PR industries have been forced to defend themselves and their little-known activities in public.

An award for good lobbying?

The lobbyists themselves have also reacted to the Worst EU Lobbying Awards. Indeed some lobbyists – who had not been nominated – turned up to the awards ceremony in 2008. A free drink is a free drink, even if it does require you to laugh at the underhand tactics employed by your competitors.

But the awards have also attracted a counter-event, with the European Public Affairs Awards taking place for the first time in Brussels in November 2008. Organised by

the Parliament Magazine, these awards "celebrate excellence in European Public Affairs". One of the winners even went out of their way to make the point that lobbying for big business is not necessarily against the interests of the general public.

The European Public Affairs Awards have taken an inclusive approach. There is an award for the best NGO campaign – and in 2008 one of the organisers of the Worst EU Lobbying Award, Friends of the Earth Europe, was nominated for its campaign against agrofuels. Indeed it won. The award organisers may like to think that we are all in the same business – but the levels of transparency involved suggest that this is far from the case.

There is of course good and bad practice in lobbying – and there is lobbying in the interests of citizens and lobbying in the interests of your corporate paymasters. The Worst EU Lobbying Awards are intended to highlight the worst of the worst.

Conclusion

Designed as a way to highlight the problems of lobbying to a wider audience, the Worst EU Lobbying Awards have without a doubt proved a useful campaign tool. By exposing examples of excessive and misleading lobbying activities, they have attracted the attention of the public, the media, and the lobbyists themselves.

In so doing, they have also helped draw attention to the ongoing debate on lobbying transparency in the EU and to raise questions about the legitimacy and the ethics of some of the activities that have been allowed to go on behind closed doors. If lobbyists are allowed to practise without scrutiny, there is no one to judge whether their activities are reasonable and permissible. If lobby disclosure is voluntary, it is only to be expected that examples of misleading and dishonest lobbying activities will not see the light of day.

By using satire to expose the flaws, the Worst EU Lobbying Awards make light of the problem – but after the ceremony is over, the cracks in the democratic system are there for all to see.

Frank van Schaik was Master of Ceremonies for the Worst EU Lobbying Awards 2005 - 2008.

1 See also the Worst EU Lobbying Award website: http://www.worstlobby.eu/2005/intro.html

2 For more information, see the website of the Worst EU Lobby Awards 2006: http://www.worstlobby.eu/2006/winners.html

3 For more about the winners and runners-up, see the website of the Worst EU Lobby Awards 2007: http://www.worstlobby.eu/2007/winners_en

4 More information about the Worst EU Lobby Awards 2008 is online at http://www.worstlobby.eu/2008/home_en

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the battle for lobbying transparency

William Dinan, Spinwatch

The European Commission's announcement of the European Transparency Initiative (ETI) pushed the debate on lobbying transparency in Brussels up the agenda. Here, Will Dinan looks at the main protagonists in the lobbying debate, including the roles played by ALTER-EU and by the lobbying industry.

In March 2005, the European Commission, somewhat unexpectedly, launched the European Transparency Initiative (ETI), kick-starting what is arguably the first comprehensive debate on the role of lobbying and transparency in decision making in the European Union. The ETI presented an ideal opportunity to push for greater transparency and accountability within the EU and in April 2005 the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU) was born.

The origins of ALTER-EU can be traced back to late 2004 when a number of civil society organisations sent an open letter to the European Commission calling for reform of its practice of granting privileged access and influence to corporate lobbies.[1] This was the result of a shared realisation that big business was enjoying disproportionate influence within the Commission to the detriment of other stakeholders, particularly those representing social and environmental causes.

While the open letter to Commission President José Manuel Barroso was destined to have no impact on EU policy, it highlighted a shared critique and experience of the Commission's dealings with outside interests. A workshop on lobbying reform early in 2005 brought together many of the key organisations that would help to develop the ALTER-EU coalition. More than 30 civil society groups took part, emerging with a strong sense of shared purpose that lobbying reform was necessary, desirable, and achievable. All

those involved understood that this would be a long campaign and that the prevailing orthodoxy regarding the legitimacy of secretive lobbying practices would not easily be reversed. The name adopted by the coalition was carefully chosen to reflect the need for change. But it also reflected a shared belief in the European ideal and a collective determination to secure a more democratic and accountable EU.

Key to this campaign was a credible lobbying-disclosure system which participants agreed had to be mandatory, must include detailed financial reporting, and which could be easily accessed and searched by members of the public. This remains ALTER-EU's position and the experience of the Commission's lobby-transparency register to date has reinforced this belief.

Enter Commissioner Kallas...

The debate on lobbying reform was thrown into sharp relief following a landmark speech in 2005 by Commissioner Siim Kallas, responsible for Administrative Affairs, Audit and Anti-Fraud. For the first time on record a serving Commissioner acknowledged some of the serious problems related to EU lobbying:

> At the moment there are about 15,000 lobbyists established in Brussels, while around 2,600 interest groups have a permanent office in the capital of Europe. [...] But transparency is lacking. There is no mandatory regulation on reporting or registering lobby activities. Registers provided by lobbyists' organisations in the EU are voluntary and incomprehensive and do not provide much information on the specific interests represented or how it is financed. Self imposed codes of conduct have few signatories and have so far lacked serious sanctions. **Lobbyists can have considerable influence on legislation, in particular on proposals of a technical nature. Their lobby is mainly directed to the Commission and the Parliament. But their transparency is too deficient in comparison to the impact of their activities.** (Emphasis added)[2]

This speech provoked a furious reaction among the lobbying fraternity in Brussels. Clearly many Brussels insiders had not seen this policy coming. Indeed, some Commissioners appeared equally taken aback by what was said.

This created a political opportunity for ALTER-EU. The coalition was formally launched in July 2005 and Kallas attended the inaugural event. He even appeared receptive to some of the arguments put forward by the coalition about the weaknesses of voluntary measures. But he was non-committal in terms of how the ETI might progress, suggesting the Commissioner might be stepping back from his bold opening gambit.

There was indeed something of a backlash against the proposals. Commercial lobbyists sensed a real threat to business as usual and mounted an attack on those supporting transparency and disclosure, including ALTER-EU. John Houston, then chair of the European Public Affairs Consultancies' Association (EPACA) and chief executive of Houston Consulting, repeatedly accused ALTER-EU of having an anti-business agenda and not being transparent about its funding. Such allegations were unfounded, but were designed precisely not to engage with the substance of the transparency debate.

In the face of mounting criticism from the 'usual suspects' in Brussels, particularly on the question of whether any lobbying register should be voluntary or mandatory, Kallas began to shift ground. Statements from his office appeared to be designed to appease the lobbyists. Progress on lobbying reform seemed to hinge on getting the professional consultants to engage, and the Commission tried to ensure their cooperation by offering significant concessions. While the lobbying trade associations, the Society of European Affairs Professionals (SEAP) and EPACA, were denying that the lobby industry had anything to hide, others made no such pretence. Lobbying veteran Daniel Guéguen predicted that: "in the future [...] we will tend to adopt ever tougher lobbying strategies [...] that will probably involve practices such as manipulation, destabilisation or disinformation", neatly exposing why mandatory transparency and disclosure were required.[3]

As the Commission was launching a consultation (following a Green Paper in May 2006) on the ETI, Washington was experiencing a major scandal over the lobbyist Jack Abramoff and his connections, particularly within the Republican Party. Kallas used this triumph for the US lobby disclosure system (without which Abramoff would never have been exposed or convicted) to argue that mandatory disclosure was no guarantee of ethical behavior. This bizarre logic illustrated the pains the Commissioner was prepared to go to in order to keep the Brussels insiders onside with the ETI. It was clear that Kallas had either been reined in or had caved in on the issue of a mandatory and robust register.

What emerged from the consultation responses was a rather mixed picture that failed to deliver a clear mandate for the Commission. There was little agreement among the responses, with many submissions reflecting the interests of the respondents. Everyone of course wanted more transparency – but there were diverging views on how best to achieve this.

The consultation did elicit widespread support for a reporting system that would apply to the Commission, Parliament, and Council and be easily accessed online by the public. There was also support for an independent watchdog to oversee this system, though many also wanted the Commission and Parliament to take responsibility for this. Interestingly, there was much greater support for a mandatory register than one might have anticipated from reading the Brussels lobbying trade press.

Lobbying for lobbyists

The lobbyists' lobbies made up of SEAP and EPACA – who led the charge for a voluntary system – continued to protest. In an attempt to beef up self-regulation, EPACA introduced an expert advisory panel, drawn from senior public-affairs figures, to provide external scrutiny of the organisation's code of conduct and investigatory procedures. This idea was borrowed from the UK, where the lobbyist organisation APPC had created a similar set-up in response to political pressure and public criticism. But this simply underlined the limited transparency and accountability provided by such a model. Indeed EPACA's advisory panel has only dealt with two complaints, with both rejected as unfounded.[4]

While the Commission analysed the consultation replies, a rather surprising split emerged in the lobbying community as EPACA suddenly endorsed a mandatory register in principle, while arguing for limited disclosure within such a framework. In effect the terms of the debate in Brussels had shifted from initial scorn and dismissal of the ETI and lobbying disclosure, to widespread (at the time apparently implacable) resistance to any binding proposals, to a situation where many interested parties were either in favour of a mandatory system, or willing to work within such parameters.

During this period the lobbying industry was working to shape the next phase of the ETI. Kallas heard representations from a number of bodies, including the UK lobbyists' trade association in London. They were concerned by financial disclosure, and the possibility that a lobbying register in Brussels

would lead to similar measures being implemented throughout Europe.[5] EPACA was also keen to influence the Commission's thinking on whether lobbyists should disclose their fees and financial information related to lobbying activities. Houston, the chair of EPACA, tried to position his organisation as being transparent and supporting registration of all lobbyists, but fiercely resisted mandatory publication of "commercially sensitive or confidential financial information".[6]

This issue came to dominate deliberations on how to implement a lobbying register. EPACA lobbied hard for weak financial disclosure and this – as would later become clear – resulted in major concessions from the Commission.

The ETI communication was published in March 2007 with the Commission announcing that a voluntary lobbying register would be launched in 2008, including requirements for financial disclosure. It is clear that the Commission's softly-softly approach had secured the support of key factions of the Brussels lobbying industry. The question remains, at what cost? While the Commission register launched in June 2008 probably signalled the beginning of the end for self-regulation for Brussels lobbyists (including lobbying consultancies, corporate lobby groups, think tanks, law firms, and NGOs), the voluntary nature of the scheme and the limited reporting requirements meant the register could not deliver proper transparency, making scrutiny all but impossible.

Kallas said: "All these groups or bodies are invited to register publicly whom they represent and what their objectives are... to declare funding sources and major clients. This ensures the Commission as well as the public can identify and assess the driving forces behind positions taken and interests presented".[7] The confident announcement belied widespread doubts about how effective this scheme could be. Kallas remained "100 per cent confident" that the register would succeed. But political 'wriggle room' was retained as the Commission pointedly refused to say what precisely the criteria were for judging the success of the voluntary approach.

The requirements for financial disclosure proposed by the Commission were nevertheless objectionable to many lobbyists, some likening transparency to voyeurism. Kallas retorted that "facts on funds invested in lobbying [are a] meaningful indicator of the importance of the issues at stake... Nobody would pay real money for lobby services without expecting something in return – and that 'something' is influence".[8] As discontent among lobbyists continued,

Kallas drew a line in the sand: "There is no point in lobbying against a decision already taken... the profession therefore has two options – the first... is to work against the initiative, in which case self-regulation will prove a failure, leading us towards mandatory registration, for which there is probably sufficient support in both the European Parliament and in the broader public".[9]

According to internal Commission notes from a meeting held on 13 December 2007, the Commission had already guaranteed to commercial lobbyists that the requirements for financial disclosure would not be expanded. According to the minutes of the meeting with EPACA, "Vice-president Kallas tried to reassure his visitors by underlining that the Commission had no interest at toughening its approach".[10]

The possibility of more meaningful disclosure increased when in May 2008 the European Parliament voted for a mandatory lobbying register with full financial transparency and including the names of lobbyists. How to reconcile the positions of the Commission and Parliament on this issue still remains an open question and suggests that the shape and scope of an agreed common lobbying register is not yet fully decided.

On a roll? How the lobbyist register has registered

The launch of the Register of Interest Representatives in June 2008 was greeted with mixed reactions. While ALTER-EU remained critical of the voluntary nature of the system, the limited requirements for financial reporting, and the fact that the register excluded the names of lobbyists (memorably likened to a telephone book without any names), the coalition urged all its members to comply with the register. ALTER-EU encouraged full declaration of lobbying expenditures and identification of the people involved in lobbying on behalf of member groups. This was done to demonstrate to the Commission that a more complete lobbying declaration was quite feasible, and give the lie to some of the spurious claims put forward by commercial lobbyists about the bureaucratic burden of such compliance. Many of the lobbying companies complaining about the difficulties of registering detailed financial and personnel information in Brussels had managed to do so in the USA, where such disclosure is mandatory.

Some of the early entries on the Commission's register provoked dismay. Seasoned lobbyists scoffed at the naïvety of registrants disclosing more information than was required under the scheme. Many Brussels lobbyists

adopted a wait-and-see approach. It soon became clear that the Commission was more concerned with the numbers signing up to the register than with issues of the quality or accuracy of the filings. What emerged was a rather predictable scenario of low compliance and low-quality data. It was also clear that Kallas and his team were committed to calling the register a success and the evaluation was de facto a *fait accompli*.

The Commission could not, however, risk the register falling into disrepute and ridicule. The registrations of fake Italian bankers and Irish cheerleaders, for example, caused some amusement for observers but more serious questions about the reach and reliability of the register also started to emerge. The entry by one of the largest lobbyists in Brussels, CEFIC, the chemical industry trade association, suggested that CEFIC devoted less than €50,000 to lobbying. This was an absurdly low figure and a subsequent complaint (by an ALTER EU member group) was upheld by the Commission. CEFIC was temporarily suspended from the register, but other suspect registrations (like those of BusinessEurope and BAT) were approved by the Commission.

Another cause for concern during the pilot phase of the voluntary register was a de facto boycott by think tanks and law firms. Something of a war of words broke out between Commissioner Kallas and Giles Merritt, secretary general of the Friends of Europe think tank, on whether or not they should be considered as lobbyists (see also Chapter 4).[11] Law firms quietly eschewed the register arguing that they had a privileged status and their clients had a right to confidentiality – even though the work in question was not of a 'legal' nature. In effect, this means that secrecy continued to surround this important dimension of public affairs in Brussels. Indeed a perverse effect of the Commission's transparency drive is that in practice any interest wishing to avoid scrutiny or publicity can simply retain a law firm as a lobbyist, safe in the knowledge that this relationship will not be made public under the current disclosure system.

ALTER-EU closely monitored the pilot phase of the lobby register, hosting an expert workshop on lobbying transparency and publishing a detailed analysis of the register. Sheila Krumholz, executive director of the US Center for Responsive Politics (publishers of the respected opensecrets.org website) remarked that "the biggest problem with the EU register was that it was voluntary and that there are problems with the comparability of data". Krumholz argued that the current EU system gave the public "false confidence" that there was proper transparency and oversight.[12] In June 2009

ALTER-EU published its study of the first year of the register, concluding that less than one in four lobbyists had voluntarily joined the scheme. It found:

> The reliability and comparability of the data is fundamentally undermined by the arbitrariness of how lobby expenditure is being calculated. There appears to be significant under-reporting, and mis-reporting. In addition to underestimating in-house lobby expenditure, the register contains a wide range of loopholes that prevents real visibility around the size and nature of the lobbying activities of large firms. Not many registrations offer anything approaching full disclosure of the kind that should reasonably be expected of companies and industry groups engaging in lobbying in Brussels.[13]

Conclusions: transparency delayed

Despite the evident flaws in the trial phase of the lobby register it came as no surprise that the Commission pronounced in October 2009 that the voluntary approach had been a success and would be continued. The Commission offered a few minor sops to its critics, including adjustments to the banding of financial reporting to close some loopholes (but probably opening new ones) and a new category for think tanks. The Commission also pledged to pursue the question of how law firms engaged in lobbying could be brought into the register, and to work with the Parliament on finalising a joint register for both institutions.[14]

It is evident that the Commission's satisfaction with the voluntary register is not universally shared. Some stakeholders and MEPs have criticised the Commission for not sufficiently strengthening the register. A caucus of pro-transparency MEPs was formed in the new parliament elected in June 2009 – although how effective this group can be in shaping the common register remains to be seen. What is clear is that some of the design flaws in the current register are likely to be revealed as unsustainable in the long term.

In reviewing the near five-year debate on lobbying disclosure it is striking that not one decent principled argument has been offered against mandatory registration and disclosure. While there has been plenty of rhetoric about the desirability of voluntary approaches, no one has yet answered the key problem with this approach: what to do about those who do not register – who are most likely to be those with most to conceal? This remains a fundamental weakness

of the system in place. It is also unfortunately the case that the register is not comprehensive, it is not properly audited and checked (so data must be treated with some caution), leaving a weak form of transparency and arguably misplaced confidence that there is now sufficient oversight of lobbying.

It has been a long and often frustrating battle to get even the current disclosure regime in place. Industry opposition is deep-rooted and this clearly had an impact on the ambition of the ETI and the design of the register. There remains a risk that the debate on lobbying disclosure could now drift and even stall – even though the issues surrounding transparency, accountability, and influence in the policy process in Brussels remain. The Commission is convinced that a culture change is underway. Time will tell. Rather than the beginning of the end of lobbying secrecy it is more likely that we are witnessing the end of the beginning of this process. Lobbying in Brussels remains politically significant and is not transparent. As long as a voluntary approach is pursued this will allow lobbyists to choose not to disclose information about their activities. The need for a strong campaign to promote disclosure and accountability is as pressing as ever. ALTER-EU will continue to champion this cause in the hope that transparency delayed does not necessarily mean transparency denied.

William Dinan is a founder member of Spinwatch and a Lecturer at the University of Strathclyde.

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2 Commissioner Siim Kallas, "The Need for a European Transparency Initiative", speech given to The European Foundation for Management, Nottingham Business School, Nottingham, 3 March 2005.

3 "PA veteran calls for professional body to scrutinise Brussels lobbyists", Euractiv.com, 3 May 2005.

4 See "Complaints & rulings" on the EPACA website.

5 According to minutes released on the APPC website. See also: David Gow, "Auto ice man puts the freeze on rivals", Guardian, 21 February 2007.

6 Ibid.

7 Commissioner Kallas, speech to the Federation of European and International Associations Established in Belgium (FAIB), Brussels, 18 June 2007.

8 Ibid.

9 "Kallas urges lobbyists to co-operate on EU register", EurActiv.com, 19 June 2007.

10 European Commission internal report from meeting between Commissioner Kallas and representatives of EPACA, 13 December 2007. Document on file with Corporate Europe Observatory (CEO).

11 Friends of Europe press release, 20 April 2009. "Think tanks should join the EU lobby register, Kallas insists", EurActiv.com, 27 April 2009.

12 "EU voluntary lobby register failing to increase transparency", *The Parliament Magazine* (website), 27 January 2009.

13 ALTER-EU, The Commission's Lobby Register One Year On: Success or Failure? (Brussels: 2009), p. 31.

14 European Commission, "Commission's lobby register improved following one year review", press release, 28 October 2009.

14

access denied – freedom of information under threat

Tony Bunyan, Statewatch

The battle to get access to EU documents has been going on since 1993 and although the Amsterdam Treaty promised to 'enshrine' the right to such access, this has still not become a reality. What is more, the post-Lisbon revision of the EU Regulation on access could see even more restrictions introduced.

Sixteen years ago the *Guardian's* Brussels correspondent, John Carvel, made one of the first requests using the Council of the European Union's newly adopted code of access to documents (December 1993). This code gave members of the public the right to see official EU documents, including agendas and minutes from meetings held behind closed doors.

Carvel's request, which was for copies of the documents from the first meeting of the new Justice and Home Affairs Council, was refused by the Council, so he took a case to the European Court of Justice (ECJ). He won the case in November 1995 and received a package of documents from the Council. But it contained just eight documents and a press release.

I had been at the November 1993 meeting of the Justice and Home Affairs Council in Brussels and just about the only document I'd got hold of was the agenda.[1] This revealed that 49 documents had been tabled at the meeting, plus the minutes and a press release. It took the threat of a further court case and almost two-and-a-half more years before all the documents were handed over in May 1996.

The right of citizens to know what is being discussed is fundamental to a democracy. Access to EU documents is simply a means to an end, namely, to find out what measures are planned, which forces (i.e. Member States, industry, lobbyists) are pushing certain points of view, and what are the implications for peoples' rights and freedoms.

Access to EU documents is the life-blood of a healthy democratic system, allowing people and civil society to find out about proposals, to debate and discuss them, and to make their views known – whether through reports, letters, petitions, or protests.

But one of the fundamental issues from the early days is back on the table again today, with the European Commission putting forward proposals to redefine what can be considered as a 'document'. Regardless of outcome, the Commission's attempt to limit access via the definition of what constitutes a document shows that the battle for transparency is not yet over.

The right to know and its limits

At the heart of access to documents, a basic democratic standard, is the right of citizens, parliaments, and public-interest groups to know what is being discussed – what are the options on the table, which ideas are accepted or rejected, and why?

And just as fundamental in a democracy is the principle that we know what is being discussed before a decision is taken and the measure adopted, so that there can be a public debate and people can make their views known. It is so obvious it should not even be in question.

Imagine what would happen if a national government did not publish draft legislation, or then discussed and adopted it in secret sessions or without any of the documents being available. There would be an outcry. Of course not all EU documents are withheld from public view but many of the most crucial ones are. The Council currently gives direct access to around 70 per cent of the documents listed on its public register of documents. This might sound high, but the problem is with the remaining 30 per cent. These are mainly documents where measures are still under discussion, precisely the ones that the public needs to see to know what is going on.[2]

Yet in 2000 the Council refused Statewatch access to a proposed Regulation on access to documents because it could embarrass "the Council's partners" and "fuel public discussion on the subject".

Access to documents is the life-blood of a healthy, vibrant, democracy and this means that every document produced and received by EU institutions must be classed as a document.

The definition of the 'documents' to be placed on the public register is set out

in Article 3.a of EU Regulation 1049/2001 on public access to documents:

> 'document' shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility.
>
> Every document must also be listed on a public register and the full text should be accessible. Any exceptions to giving full access to the text of a document should be restricted and not extend to documents 'under discussion' (Article 4.2) or documents from EU Member States (governments, Article 4.5) and certainly not documents from 'third parties' (especially those involving the USA, Article 4.4).

Yet in 2004, the Commission's Report on the Implementation of the Regulations appeared to create a further exemption for organisations that monitor specific areas of EU activity – like Statewatch, which monitors Justice and Home Affairs. The report said:

> Some systematic and repetitive applications can constitute unfair use of the Regulation. For instance applications that are obviously being used on a regular basis **to fuel campaigns that are systematically hostile to Community policies** (emphasis added)

Since 1996 Statewatch has taken 10 complaints concerning the EU Regulation on public access to documents (1049/2001) against the Council of the European Union and the European Commission to the European Ombudsman. All 10 have been 'won' – creating greater rights for all.

Complaint against the Commission

In October 2006 Statewatch registered a complaint with the European Ombudsman over the European Commission's failure to maintain a proper public register of documents under Article 11.1 of the Regulation, which states that "each institution shall provide public access to a register of documents. Access to the register should be provided in electronic form. References to documents shall be recorded in the register without delay".

Statewatch argued that the Commission's register of documents did not fulfil the requirements of Regulation 1049/2001 because it contained only a fraction of the documents produced and received by the Commission in the course of its activities.

The complaint was forwarded to the Commission and its President José Barroso, who responded on 22 May 2007 with the comment that a "fully comprehensive register requires a precise definition of what is a 'document' that has to be included in the register".

It was hard to see how much clearer Article 3.a (quoted above) had to be.

The Commission also argued that Article 11 "does not stipulate that public registers should include references to all documents". Again Article 11 could not be clearer: "References to documents shall be recorded in the register without delay".

The response repeated the Commission's long-stated position that it "will continue to **gradually** extend the scope of its public registers and other information tools available to the public" (emphasis added).

Statewatch responded on 27 June 2007, asserting the clarity of the definition of a 'document' and of the intended content of public registers of documents in the Regulation.

Indeed, if other institutions took a similar stance, access to EU documents would become piecemeal with each institution able to pick and choose what it revealed.

The Commission's response

The Ombudsman's Draft Recommendation of 7 April 2008 was unequivocal, demanding that the Commission should, as soon as possible, include references to all the documents that are in its possession in the register, as laid out under the regulations.

On 30 April 2008 the Commission put forward proposals to amend the Regulation by changing the definition of a 'document'.

Ombudsman on our side

The Commission continued to reject the definition of a 'document' in its official response to the Ombudsman (August 2008), saying that:

> it regrets that it is unable to accept the Ombudsman's draft recommendation as it is formulated since it suggests that the register has to contain the references to all documents as defined in Article 3(a) of the Regulation.

Indeed, it was: "logically impossible to combine a wide and imprecise definition of documents with a fully comprehensive public register".

The Ombudsman found this was an instance of maladministration by the Commission (December 2008) and issued 'critical remarks', saying:

> The Ombudsman remains unconvinced that it would be impossible, or logically impossible, to maintain a register of all documents that are in possession.

A European Parliament resolution in January 2009 urged the Commission to follow the European Ombudsman's recommendation following the complaint.

Re-writing the rules

The Commission's proposals to amend the Regulation by changing the definition of a 'document' came from out of the blue. This had had been defined in the Code on access to documents adopted by the Council of the European Union and the Commission in December 1993, following the implementation of the Maastricht Treaty. This stated that 'document' means "any written text, whatever its medium".

The definition did not change under the Amsterdam Treaty and following a consultation on the Regulation in April 2007, the Commission noted that there was a "general feeling [...] that the current wide definition should be maintained".

As Professor Steve Peers observed in a European Parliamentary hearing in June 2008: "It seems that the Commission has proposed changes to the rules in order to avoid complying with a pending ruling of the Ombudsman against them".

What the Commission proposed was to amend the regulation by limiting the definition of what is considered as a 'document' by adding a requirement that it must be "formally transmitted to one or more recipients or otherwise registered, or received by an institution".

At a stroke a 'document' would not be a 'document' until "formally transmitted". This would allow the Commission to deny access to any internal working documents or drafts.

What had changed between January and April 2008? Quite simply, the European Ombudsman had made his Recommendation saying all documents held had to be listed on the Commission's register of documents. The Commission had lost the argument so it sought to change the law.

The fight for freedom of information

At the time of writing[3], the outcome of the proposals to amend the 2001 EU Regulation remains unclear. But each of the three EU institutions has an entirely different position.

No doubt a 'compromise' deal will eventually be worked out in secret trilogue meetings between the Council, Commission, and the European Parliament.

Access all areas

There is sometimes a debate about whether a system of having to make Freedom of Information requests on a specific subject is better or worse than the EU system of public registers of documents and the right of access to them. This is an unnecessary debate because both are clearly needed to ensure the greatest possible public access to EU information/documents.

Think of going into a public library. Under Freedom of Information you go to the front desk and ask for books on the topic you are interested in and the librarian goes away to find them for you. Under the public register of documents system you go into the library yourself and wander around the shelves to find what you are looking for – often making unexpected discoveries and connections. Both systems have their strengths, and that is why they are complementary.

If EU public registers do not contain, as they are meant to, references to all documents how are we to find out what is going on?

Conclusion

In 1997 the Amsterdam Treaty promised a new era of openness but with the EU Regulation on access to EU documents of 2001 we only got 'half the cake'. Under the current review it is not clear whether we will end up with a bit more than 'half a cake' – or quite a lot less.

Tony Bunyan is Director of Statewatch

1 Later Statewatch would have to take a successful complaint to the European Ombudsman to stop the Council's practice of destroying Agendas after one year.

2 Under Art 4.3 of the Regulation (1049/2001) the Council and Commission can refuse access to a document where "the decision has not been taken" and if disclosure would "seriously undermine the institution's decision-making process".

3 January 2010.

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holding corporations to account – the struggle for regulation

Paul de Clerck, Friends of the Earth Europe

The ongoing battle to hold corporations accountable for their social and environmental impacts – like the battle for lobbying transparency – has faced stubborn resistance from policy makers on the issue of regulation. Voluntary measures have been promoted as the way forward, but now, after an uphill struggle, there have been signs that mandatory measures may be back on the agenda. Paul de Clerk looks at the story of the European Coalition for Corporate Justice campaign and asks what lessons can be learned.

Multinational companies are becoming increasingly powerful. Through mergers, take-overs, and expansion, they are getting bigger and bigger. More than 50 per cent of the biggest economic players in the world are no longer countries but multinational companies. Their turnover is often much larger than the GDP of some countries. Companies use this power to influence governments in their search for the most profitable legislative and financial advantages, often pushing for lower social and environmental standards.

The result is that in many parts of the world, individuals and the environment have little protection from corporate abuse. One solution would be the introduction of binding rules on corporations. In 2005 the European Coalition for Corporate Justice (ECCJ) was formed bringing together movements and NGOs to call for such a solution, and though we're not there yet, we've come a long way.

The power of the corporations

Companies operate across ever-increasing territories as countries, eager to bring in investment, open up access to new markets and (natural) resources.

Through trade agreements, the EU and other economic power blocs ensure that their companies get good deals with developing countries. The Global Europe agenda and the EU's Raw Materials Initiative are clear examples of recent EU policies designed to facilitate European business operations and secure access to resources such as minerals, water, timber, and agricultural products in developing countries.

Governments are also inviting companies to play a prominent role in tackling global problems such as poverty, climate change, and deforestation, through global initiatives like the Millennium Development Goals and the Global Compact, without acknowledging that these companies are often at the source of these problems.

And of course big corporations wield enormous influence over national and international government policies. Their lobby power is immense. There are tens of thousands of corporate lobbyists in Washington and Brussels whose main purpose is to ensure that new policies and legislation do not harm their interests or – better still – that they create an environment that is favourable for them. And they are extremely successful, as we saw in December 2008 when the European Commission and Member States significantly weakened their plans to tackle climate change after lobbying by big polluters from the oil, car, and coal producers.

So while the global reach of multinationals is becoming more pervasive, so too are their negative impacts. Obviously there are the environmental impacts of the extractive industries. Nigeria is the perfect example of how 50 years of oil and gas exploration by mainly Western companies has destroyed the environment and people's livelihoods and health. The Congo provides shocking examples of human rights violations, environmental abuse, and armed conflicts resulting from the race for minerals by and for multinational corporations. The impacts of the garment industry in many countries in the South are also well documented, with evidence of child labour, extremely poor labour conditions, and breaches of basic social and human rights. And what about the privatisation of public services, such as water, where companies cut off supplies to the poor? Companies use their economic power to bribe officials or negotiate deals with governments that are extremely profitable for themselves, at the expense of people and of the environment. I could list many more, including examples of tax evasion, corruption, violations of the rights of indigenous peoples, and the destruction of biodiversity.

Bridging the gap

What all these examples have in common is that they reveal systemic failings in the legal and governance system that should ensure that multinationals are not violating social, environmental, and human rights and that citizens, communities, and the environment are protected against such violations. Since the 1948 Universal Declaration of Human Rights there have been several international treaties referring to evolving standards for human rights and environmental protection. These treaties are binding on states, but not on companies. There is currently no binding mechanism at the international level to ensure that multinationals are held accountable for the violations they commit, or in which they are complicit.

In order to address this gap, in 2005 more than 250 civil society groups (NGOs, trade unions, consumer organisations, and academic institutions) from more than 16 European countries set up the European Coalition for Corporate Justice (ECCJ). All of these organisations had been campaigning on corporate abuses for many years, and continue to do so. But they realised that there is only so much that can be achieved in this way. While they might stop a specific investment, push some companies to develop environmental or human rights policies, and support affected communities, they can only target a small number of companies, some of which might not even respond. What is more, any improvements are based on voluntary commitments that can be reversed at any time. And most importantly, this work does not challenge the fundamental principle that companies are often not legally accountable for the negative impacts of their business operations. Therefore, ECCJ decided to campaign for an international legal framework on corporate accountability.[1]

Civil society groups, lawyers, and affected communities have been pointing out this accountability gap for many years. About a decade ago, the UN drafted a set of 'Norms on the Responsibilities of Transnational Corporations'.[2] These norms were intended to develop into internationally binding human rights standards for corporations. However, fierce lobbying by business and European and US governments effectively killed off this initiative. The UN then launched its Global Compact,[3] with a set of voluntary principles that businesses are invited to adhere to. Businesses were all too eager to adopt and take part – being part of a UN initiative enhanced their image. And as the Global Compact was completely voluntary and the UN did not have any

intention of monitoring performance, let alone enforcing the principles, it meant that businesses got a free ride while pretending that they were serious about addressing the negative impacts of their performance.

A voluntary solution?

This example explains in a nutshell the approach of business and European governments to environmental and human rights abuses by European companies outside the EU. While most acknowledge that there is an issue, they have firmly opted for self-regulation and voluntary business initiatives as the way to address it. Companies are able to counter any criticism by developing environmental and human rights policies and producing sustainability reports. At the same time, they fiercely lobby against any national or international binding standards for the corporate sector.

Civil society sidelined

How does this play out at the EU level? In 2002 the European Commission organised a two-year multi-stakeholder dialogue on Corporate Social Responsibility (CSR). Many NGOs took part, but were frustrated by the Commission and business focus on ineffective voluntary schemes. After a silence of two years, in March 2006 the Commission unexpectedly came out with a Communication on Corporate Social Responsibility.[4] NGOs and trade unions had been completely sidelined during the drafting of this Communication, with the Commission holding exclusive meetings with the business sector (UNICE – now BusinessEurope – and CSR Europe). It was no surprise that the recommendations and proposals put forward by civil society organisations were ignored. Instead, the Commission launched an alliance with industry to promote CSR, which was defined as a purely voluntary instrument.

The Communication was in fact a step backwards. The central issue in the debate was no longer on how to improve the performance of European business in relation to social, environmental, and human rights issues, but how to stimulate growth and EU competitiveness. CSR was promoted as a way "to help SME (small and medium sized enterprises) to flourish and grow". The Communication did not include:

- any mechanism to make companies accountable to their stakeholders

- any public policy measures (e.g. public procurement or subsidies) to stimulate responsible behaviour
- business implementation of internationally agreed standards and principles
- any form of independent monitoring/verification of companies' performance.

The Commission had completely given in to the business lobby, as a letter from UNICE made clear.[5] Sent to its members shortly before the launch of the Communication, it said: "Our informal comments have also been considered to a large extent," and "The communication establishes a strong, but carefully nuanced link between CSR and the jobs and growth strategy. **A few passages must be interpreted as verbal concessions to other stakeholders, which will however have no real impact"** (emphasis added).

In Autumn 2006 the Commission announced a follow-up meeting for the multi-stakeholder forum on CSR. However, as it was clear that the focus would only be on voluntary initiatives, and given the experience of the previous forum, NGOs opted not to waste time on a process that was being dictated by the business sector and which would not therefore lead to any meaningful outcome. They decided to withdraw from the multi-stakeholder process.

ECCJ shifts the debate

The ECCJ concluded that it had to change its strategy. There was no point in directly lobbying the Commission or taking part in meetings that involved companies that were totally unwilling to discuss legal proposals for corporate accountability. The Coalition decided to follow three main strategies. First, we needed to mobilise support to put pressure on the Commission. Second, we had to break the business–Commission consensus that self-regulation and voluntary measures were the best way to address these problems. And third, we needed to be much clearer and more precise about the measures we were advocating.

To build support, we started working closely with prominent members of the European Parliament, such as the MEP leading work on CSR, Richard Howitt. This led to a strong European Parliament Resolution on CSR in March 2007, urging the Commission to extend legal obligations on some key aspects of corporate accountability, such as directors' duties, foreign direct liability, and mandatory disclosure for lobbyists. MEPs also called for directors to take

personal responsibility for company behaviour; for European corporations to be liable in the EU for damage caused abroad; and for lobbyists to be obliged to disclose information about their clients and budgets. The resolution, which was passed with a large majority, made it clear that the Commission must re-think its position on CSR and involve all stakeholders in the process. The European Parliament has remained a strong ally for the ECCJ, putting continuous pressure on the Commission over its failed CSR policy.

The ECCJ also started to collect evidence to show that – while in some individual cases the voluntary approach might have resulted in improvements – it was completely inadequate for addressing the problem of corporate abuses at the global level. None of the voluntary schemes, such as the Global Compact, the OECD guidelines,[6] individual companies' codes of conduct, or the Equator Principles (a set of voluntary standards on assessing environmental and social risk, adopted by some financial institutions),[7] provides those affected by corporate abuses with legally enforceable rights. None of these measures has any mechanism for monitoring or verifying corporate abuses. Nor are there any effective sanction mechanisms in case of violations.

While I would say that the evidence for our case was overwhelming, we were still not getting our point across to the Commission or to Member State governments. This was not only because they were under strong pressure from industry, but because their approach was part of an ideology which claims that free markets and self-regulation are the answers to all problems. The European Commission under the presidency of José Manuel Barroso has made this ideology a cornerstone of its policies. And there is nothing more difficult than changing an ideological belief.

But then the financial crisis hit. Banks, which are mainly multinational corporations when it comes down to it, had wrecked the economy through a mix of extremely risky investments, a lack of oversight and regulation, a perverse bonus system, the complete lack of transparency, and no accountability for the negative impacts of investments. The financial sector had been a showcase for self-regulation and light-touch government control. Now that this system has collapsed and many banks have been nationalised, the belief in self-regulation has largely evaporated.

Legislative proposals

That brings us to the third strategy. What exactly does the ECCJ want? Over the last two years, the ECCJ has developed a number of detailed legal proposals[8], which were presented at a public hearing in the European Parliament in May 2007. All of these proposals imply changing existing legislation or introducing new laws and policies at the EU level. They make companies based or operating in the EU accountable and liable for the negative impacts they cause outside the EU, increasing the legal responsibilities of parent companies and improving transparency and accountability through the reporting process.

All these proposals would also enable NGOs, affected communities, victims of corporate abuses, and other relevant stakeholders to take companies based or operating in the EU to a European court for any violation of these standards taking place outside the EU.

Time for reaping the rewards

So far, our strategies seemed to be achieving results. Ever since the ECCJ, Friends of the Earth, and other NGOs pulled out of the multi-stakeholder process, the Commission has been very eager to get them back on board. The complete lack of NGO participation, combined with the European Parliament's criticism of stakeholder involvement, has become an embarrassment for the Commission.

The launch of the ECCJ proposals in the European Parliament also provided a turning point. At a meeting in July 2008, the ECCJ presented its legal proposals to the Commissioners responsible for CSR. The Commission announced that it would establish an inter-departmental working group (including all relevant DGs) to study and discuss the proposals with the ECCJ. They also promised that the ECCJ's proposals would have a prominent place at the 2009 multi-stakeholder forum, encouraging the ECCJ to return to the table. The event proved to be worthwhile, with some businesses even expressing support for mandatory reporting and other legal instruments. Günter Verheugen, the then Commissioner for Enterprise and Industry, announced that the Commission would look at the gaps in the legal framework on human rights and environmental issues which could be applied to European companies operating outside the EU.

Similar steps are also being taken within Member States. The Dutch government will start research into legal options for holding Dutch companies liable for problems they have caused outside the EU and into how victims can get better access to justice. The UK Parliament is to investigate whether the existing legal system provides sufficient protection against human rights violation by companies.

We are far from there yet and business is still fighting hard to block progress. But we have opened a window of opportunity and will keep pushing for more.

Paul de Clerck is head of Friends of the Earth Europe's Economic Justice Programme. He is also a founder and steering group member of the ECCJ.

1 Information on the ECCJ can be found at http://www.corporatejustice.org.

2 *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003).

3 See also the UN Global Compact website: http://www.unglobalcompact.org.

4 European Commission, *Implementing the partnership for growth and jobs: making Europe a pole of excellence on corporate social responsibility* [COM(2006) 136] (Brussels: 22 March 2006).

5 Natascha Waltke, Senior Adviser UNICE, letter to UNICE's CSR/Social Clauses Working Group, 13 March 2006.

6 OECD, *OECD Guidelines for Multinational Enterprises*, rev. June 2000 (Paris: 2008).

7 *The Equator Principles* are available at http://www.equator-principles.com/principles.shtml.

8 ECCJ, *Fair Law: Legal Proposals to Improve Corporate Accountability for Environmental and Human Rights Abuses* (Brussels: May 2008).

16

an act for parliament

Claude Turmes and Fred Thoma, Greens/EFA Group

The rapid increase in lobbying of the European Parliament in the recent years has created a number of problems that call for stronger transparency and ethics rules. A Resolution passed in May 2008 included important commitments to greater lobbying transparency, but implementation has been very slow. A far more ambitious approach is needed.

The European Council and the European Parliament are jointly responsible for deciding key EU issues. The Parliament makes judgements on the EU budget and on policy and legislation in fields such as environment, consumer protection, education, employment, social affairs, health, energy, research, transport, and the internal market. In the last legislative period a long list of important pieces of legislation were decided under the 'co-decision' process – the main legislative process for the EU institutions – including the 'climate package' (covering directives on renewable energy, the greenhouse gas emission trading scheme, and obligations for national emission reductions), REACH (the new regulation for registration and assessment of chemical substances), the IPPC Directive (integrated pollution-prevention control, which regulates emissions from large-scale industrial and agricultural activities), the Working Time Directive, liberalisation packages for the postal and the telecom markets, cross-border health care, and many others. Most have a significant impact on the quality of the environment, the social rights of citizens and their quality of life, but also on the direct interests of the business sector.

The European Parliament, like the Council, is fundamentally different from the European Commission – it is not supposed to be a 'neutral' player. The Commission is meant to act in the general interest and as a defender of the Treaties, and its proposals should reflect those obligations. The Parliament,

on the other hand, is a political institution defined by the majorities in place – in other words, by the representatives elected by Europe's citizens.

While many national governments still mistakenly regard the Parliament as a junior player in the European decision-making process, and the mainstream media largely follow this line in their reporting, lobbyists have clearly understood how much power this institution has gained over the years, as well as the fertile ground it offers.

Progress on transparency

Lobbying is not a dirty word in the European Parliament. And the Parliament is lobbied massively. All stakeholders have the opportunity to bring their views to decision makers in the Parliament, which is actually an important way for Members of the European Parliament (MEPs) to get relevant information – be it on the technical aspects of an issue or on the range of impacts which may arise as a result of how they vote.

In the end political responsibility for decisions lies with the MEPs themselves. They should know what they are voting for and also be accountable for their votes to their electorate. But this is only the theory – the reality does not necessarily follow.

The problem – and this is true for the Parliament as well as for the entire Brussels decision-making circus – is not lobbying as an activity in its own right, but rather the way in which it takes place and the fact that the European institutions fail to deal with it appropriately.

There are a number of fundamentals in the debate on lobby transparency that are wrongly framed and which need urgent redress in the European institutions.

General interest or private interest?

The official line from the EU institutions to date has been that "all lobbyists are the same". No formal distinction is made between lobbying in the general (public) interest and lobbying in the (short-term) private interest. Siim Kallas, the former Commissioner in charge of transparency issues, avoided this question in his 'European Transparency Initiative' (ETI), and threw all lobbyists into the same pot calling them 'interest representatives'. Alexander Stubb, the MEP who drafted the report that was supposed to represent the Parliament's views on this issue, successfully prevented the Parliament from revising this.

In his initial draft report Stubb wanted to go even further and equate individual citizens' requests to MEPs – a basic democratic right – with the demands of any kind of pressure group. This strategic move – which would have effectively prevented the establishment of any meaningful rules or a register because of the level of bureaucracy required – was defeated from the start.

The consequence of this failure to distinguish between general and private interests is not only of a moral and ethical order, but also has serious implications. For one thing, it enables institutions to turn a blind eye to the disproportionate number and financial power of the private-interest lobby compared to the rather modest means employed on the side of the broader public interest. Estimates suggest that there are roughly five private-interest lobbyists for every one who is acting in the public interest. There is as yet no instrument in place even to get an approximate idea of the budgets involved, but we know they must be considerable. Human capacity and financial means do matter – at least in the current unregulated situation – and to pretend otherwise is either naïve or hypocritical.

Privileged access to decision makers

Outside the main entrance of the European Parliament buildings are two strong symbols. Just beside the entrance there is a statue of a woman inspired by the US Statue of Liberty, holding in her hand the symbol of the Euro currency. Visitors might wonder about the message. Less prominent is another message provided by a tree, planted near the entrance. It is sponsored by the Society of European Affairs Professionals (SEAP) – one of the two main umbrella organisations for professional lobbyists at the European level. While according to the SEAP website, members come from various sectors including NGOs, the members' list shows employees from multinational corporations such as Kraft, Unilever, Procter&Gamble, McDonalds, Suez, Gaz de France, Electrabel, E.ON, Toyota , and VISA , as well as umbrella organisations like the European Chemical Industry Council (CEFIC) and the American Chamber of Commerce (AMCHAM). A number of law firms and independent consultancies are also members – almost exclusively lobbyists from the private-interest sector.

Privileged access to decision makers is one of the grey zones that can seriously affect democracy inside the European Parliament. Again the institutional blind eye means that the problem is not properly addressed and measures to regulate it more effectively are not taken.

As an example, in April 2008 the Greens put the spotlight on the European Business and Parliament Scheme (EBPS)[1], a lobby platform for a number of influential multinationals that was officially operating inside the Parliament. Established in 1999, the EBPS had initially "operated for senior officials in the EP" expanding to MEPs in 2006. It defined itself as a non-partisan educational resource that "provides its services to 732 MEPs and its officials" and as "a new resource for the EP and EU businesses, which aims to strengthen the dialogue and mutual understanding between parliamentarians and industry representatives". In April 2007, member companies included corporations such as BP, British American Tobacco, Endesa, Suez, and Unilever. The scheme ran under the patronage of European Parliament's President Hans-Gert Pöttering, was chaired by the Spanish conservative MEP and European Parliament Vice-President Alejo Vidal Quadras, and included a number of prominent MEPs on its board. Its position inside the European Parliament meant not only rent-free offices, communication facilities, and services – all paid for by the taxpayer money – but also real-time access to all the information available on the Parliament's intranet as well as contact registers and a parliament email account for its staff. The Greens made a formal protest against the unjustifiable privileged access being given to EBPS[2] and pressure from civil society forced the entire board to finally withdraw. President Pöttering was obliged to bring the scheme to a formal end with effect from 31 December 2008, "at least for the remainder of the parliamentary term".

Another example of largely unregulated initiatives that provide privileged access for lobbyists are 'intergroups' and 'MEP–industry fora'. These are informal bodies of MEPs from different political groups set up around a particular issue of interest. While some are very specific, e.g. on Tibet or on Roma rights, others are much more cross-cutting, such as the liberal Kangaroo group, which aims to "remove any remaining barriers to the four freedoms (free movement of goods, persons, services and capital)"[3], and the European Parliamentary Financial Services Forum (EPFSF). The latter includes many of the large insurance companies and banks among its members and was created in May 2000 "to foster a dialogue between the European Parliament and the financial services industry. It provides a forum for an open and informal discussion of the policy issues affecting financial services".[4]

In reaction to the rapid explosion in the number of these intergroups – all requesting European Parliament support with rooms and interpretation services – the Parliament introduced rules in 1999 to provide some degree of

regulation. As a consequence there are now about 25 'officially registered' intergroups. Many more exist but are not officially registered. Many of these groups and other industry–MEP fora are organised without the involvement of the administration, and so do not comply with any rules regarding transparency – such as publishing details of any financial support given to the MEP chairing them. Nor do they have to publish information on their agenda, membership, or activities.

The total number of those initiatives is estimated at around 80, but since there is no requirement to register it is difficult to know precisely how many there are and what issues they cover. Some of them lobby openly. The European Energy Forum,[5] for example, run by the European energy companies and which has a whole range of MEPs as members, defends the energy giants' interests inside the European Parliament.

Conflicts of interest and revolving doors

The reason for a corporate-friendly line may well be political conviction – but in a number of cases the driving factor is rather a conflicting outside interest (see Chapter 8). Here again the institution turns a blind eye and the Parliament's Praesidium seems reluctant to make progress on this issue, preventing any really effective measures from being introduced. As long as it remains possible for MEPs to have paid side jobs such as board membership of corporations or partnership in a law firm, conflicts of interest are likely to occur.

The current requirements for MEPs to declare their financial interests do not reflect the responsibility of the position, the requirements of the 21st century, or of contemporary society and are hardly more than a pro-forma exercise.

The same is true for the issue of 'revolving doors'. The European Parliament is just as affected by this phenomenon as are the other institutions. For example, the former MEP and Parliament President Pat Cox became a lobbying consultant after he left office, working for a number of clients including the APCO consultancy and corporations such as Microsoft, Pfizer, and Michelin.[6] In March 2009 the lobby consultancy EPPA partners, which advertises itself as "building workable compromises between the European public interest and the commercial interests of its clients", nominated the former European Parliament Secretary General Sir Julian Priestley as its new Chair of the Board of Directors.[7] He had served the European Parliament in its highest administration position for more than 10 years and now advises clients including Bayer Cropscience and

Syngenta. Such cases are certainly not isolated and damage the public image of the European institutions. They should certainly trigger a discussion on the kind of regulations needed to prevent this from happening.

The European Parliament as a progressive player for change?

Between May 2007 and May 2008 the European Parliament prepared a report on lobby transparency to input into the Commission's Proposals under the European Transparency Initiative (ETI).[8] The Parliament's Environment Committee, one of the most heavily lobbied committees, unanimously adopted an opinion in November 2007 demanding, in straightforward language, not only a mandatory register for all lobbyists and financial disclosure but also further measures by the Commission and the Parliament to swiftly address the problems created by conflicts of interest and revolving doors. They were followed by some of the other Committees, setting the tone for the debate within the whole assembly.[9]

The final text, adopted in May 2008[10] by the entire Parliament, maintained most of the strong demands. A mandatory register for lobbyists was agreed, including the disclosure of the names of individual lobbyists as well as information on finances, as well as a common code of conduct that should be linked to mechanisms for monitoring, and sanctions in case of non-compliance.

The text also called for action specifically inside the European Parliament, including a demand "to draw up a plan to further improve the implementation and monitoring of Parliament's rules under which a Member must declare any support which he receives, whether financial or in terms of staff and materials." Further, action was demanded to cast more light on the activities of intergroups, with existing initiatives published on the European Parliament's website with a "full declaration of outside support for the activities of the intergroups".

While many MEPs across the spectrum of political groups used the report to portray themselves as pro-transparency champions, the great shopping list of demands disappeared into a drawer as soon as the media spotlight shifted to the next issue.

Unfortunately, the team of MEPs who had been mandated to negotiate the common register and code of conduct with the Commission – Diana Wallis (Liberal group), the Parliament's Vice President for transparency; Jo Leinen

(Socialist group), chair of the constitutional affairs committee; and Ingo Friedrich (Conservative group) – and missed the opportunity to secure any meaningful progress on the EP's demands in the first year after their adoption.[11]

Lobbying is not just like any other business. It is about paying for work to influence policy and legislation, including decisions on the allocation of EU budget and funds, grants, infringements, fines, recoveries and waivers, and competition law cases. To let this ever-growing sector of activity continue without any meaningful regulation is simply indefensible. A watered-down solution, compromised to fit the demands of a lobby sector with a direct commercial interest, is politically and democratically irresponsible.

It is hoped that the current legislature will engender more ambition from the European Parliament to tackle this process and regain citizens' confidence in the European institutions. Civil society, the media, and dedicated MEPs have to make sure that Parliament's demands from May 2008 continue to be developed and implemented without further delay.

Claude Turmes has been a Member of the European Parliament since 1999 (Luxembourg), was Vice President of the Greens-EFA in the European Parliament (2004–2009), and was the draftsman for the European Parliament's ENVI Committee Opinion on lobby transparency in 2007.

Frederic Thoma has been a political adviser to Claude Turmes since 2004.

1 According to the association's website http://www.iabp.org "the International Association of Business and Parliament (IABP) is an international professional network of up to 20 national Business and Parliament chapters, which fosters mutual understanding; transparent and effective relationships between businesses and parliamentarians with the ultimate objective of informing economic policy and legislation for the benefit of the whole national economy. A Business and Parliament Chapter is a nationally owned, neutral, cross-party and non-sectoral parliamentary resource which operates in the domain of a Parliament and serves the needs of legislators."

2 Greens/EFA Group in the European Parliament, "Lobbying: Greens question Pöttering about stealth lobbyists in parliament", press release, 15 April 2008.

3 The Kangaroo Group's website is: http://www.kangaroogroup.org.

4 The website of the European Parliamentary Financial Services Forum is: http://www.epfsf.org.

5 For more information on the European Energy Forum visit http://www.europeanenergyforum.eu.

6 Yiorgos Vassalos, "Former Parliament President among the least transparent lobbyists", Brussels Sunshine weblog, 2 June 2009.

7 EPPA, *EPPA nominates new Chairman*, press release, 6 March 2009.

8 Legislative Observatory page on the "Development of the framework for the activities of interest representatives (lobbyists) in the European institutions" (INI/2007/2115), European Parliament report approved 8 May 2008.

9 *OPINION of the Committee on the Environment, Public Health and Food Safety* (29.11.2007) for the Committee on Constitutional Affairs on the development of the framework for the activities of interest representatives (lobbyists) in the European institutions (2007/2115(INI)).

10 *European Parliament resolution of 8 May 2008 on the development of the framework for the activities of interest representatives (lobbyists) in the European institutions* (2007/2115(INI)).

11 Greens/EFA Group in the European Parliament, "Lobbying: Commission and major political groups attempt stitch-up on lobby register", press release, 22 April 2009.

17

cash cow –
– digging the dirt on farm subsidies

Brigitte Alfter, Nils Mulvad, and Jack Thurston, farmsubsidy.org

The EU pays out billions of Euros in agricultural subsidies each year. Here three investigative journalists explain how they took on the system to uncover who actually receives the cash – and look at how the same methods could yield results elsewhere.

In October 2006, an editorial in the French newspaper *La Tribune* said that information about who gets what from the European Union's Common Agricultural Policy (CAP) in France was a state secret, second only to the government's nuclear weapon codes. Thanks to the work of a Europe-wide network of pro-transparency researchers, journalists, and NGO activists, in May 2009 this information was made public. But the network started out as three very separate initiatives.

Starting in Denmark

For Nils Mulvad it all began in January 2003 with the 40th birthday celebrations of a family member. He found himself discussing the secrecy surrounding farm subsidies in Denmark with an investigative environmental journalist, Kjeld Hansen. Mulvad was at that time the chief executive of the Danish Institute of Computer-Assisted Reporting and had a track record of fighting for access to electronic data.

Under the influence of a few drinks, the pair decided that they would set out to get hold of these data in Denmark. They agreed it was worth taking the case all the way through the system in the hope of success, or at least to see what they might find.

The authorities weren't cooperative. They denied the data existed in electronic form. The Danish Ombudsman refused three times to look into the case and after countless emails and requests Kjeld Hansen and Nils Mulvad came close to giving up.

But in the end their persistence paid off. Their strategy was to focus on a file that they knew had been transferred from the Danish farm-subsidy payment agency to the Danish tax authority. They argued that this document was used for administration and was therefore covered by the Freedom of Information law.

In April 2004 the information was finally released. It revealed that four Danish ministers were receiving farm subsidies and the Danish–Swedish dairy company Arla received far more than anyone else – around €100 million a year.[1]

The Danish Minister of Agriculture at that time was Mariann Fischer Boel, who later became the European Commissioner for Agriculture. She had to stand up in the Danish Parliament and say she was sorry not to have told the truth about the farm subsidy data administration to Parliament or the Ombudsman.

Quick result in United Kingdom

Jack Thurston, based in London, was a political adviser to the then UK Minister of Agriculture back in 2000. As such, if he wanted to find out who got what from the Common Agricultural Policy, he had only to look over his boss's shoulder to see the single sheet of paper prepared by Ministry officials listing the top 20 recipients of EU farm subsidies in the UK. He knew that if the public knew about the six and seven-figure annual payouts to rich landowners like the Queen, the Duke of Westminster, and the Earl of Buccleuch and to big food companies like Nestlé and Tate & Lyle, they would never see the CAP in the same way again.

Most Europeans think the CAP is all about money to help out small family farmers who are struggling to get by. The reality is that these farmers barely get a look in: 85 per cent of EU farm subsidies go to the top 18 per cent of recipients.[2] Economists knew the broad distribution but it was only with the names and the exact amounts that the issue would really hit the headlines.

Thurston proposed publication of the data when he was working in the Ministry but officials said this was against the law as it would be an invasion of privacy. At the time there was no Freedom of Information law in the UK.

In 2005 when the UK's law on Freedom of Information finally came into effect, Thurston was no longer working in the government but as a freelance policy analyst. He teamed up with two reporters at the UK's *Guardian* newspaper to make a request for data on farm subsidy payments. The first victory came in March 2005 when basic data for England were published. Gradually more and more data from Scotland, Wales, and Northern Ireland followed, culminating in a decision by the Information Commissioner in November 2008 that the UK Government should release all the details. These have provided journalists with countless stories, while think tanks and researchers have used the data to analyse the effect and distribution of farm subsidies in the UK.[3]

A daring EU-wide approach

According to Brigitte Alfter, a Danish-German journalist, a good story always provides inspiration to discover more. The stories based on the Danish farm-subsidy data released in 2004 had been very good, so, mused Alfter, how good a story would it be if she could obtain all the data on who received farm subsidies across the whole of the EU.

Alfter was based in Copenhagen at the time but about to leave for a position as correspondent in Brussels. She had been covering European affairs for years, and was eager to do the story on farm subsidies, the largest chunk of money in the EU budget at around €50 billion a year. Schooled in the Scandinavian tradition of government transparency, the obvious thing for her was to make use of the new EU regulation on access to documents. She started by asking the Commission for access to reports provided by national administrations on farm-subsidy payments and fishery-subsidy programmes.

The application was filed in July 2004, with the European Commission's agriculture department finally rejecting the request three months later in September. The main argument was that even though the data were contained in a Commission database, they could not be extracted. Alfter filed a complaint with the European Ombudsman, hoping to overturn the Commission's response. She was surprised to learn that by doing so, she had made herself noteworthy as an unusually persistent journalist in Brussels circles, simply for filing what she considered a perfectly normal access to information request – and pursuing it.

Principles on access to databases

The Commission's argument in 2005 for rejecting access to data on farm subsidies was contradictory and in fact a very dangerous argument for future transparency in the European Union.

The core of the argument related to the administrative burden of extracting the information held in the database. The text of the access to documents law defines accessible documents as "any content whatever its medium". The Commission argued that information held in a database was to be considered as a document only if the data requested could be extracted "by routine operations". This, they claimed, was not the case. Yet, nowhere in the law is the notion of "routine operation" even mentioned.[4]

Secrecy is the standard in Germany

After the rejection of her EU-wide data request by the Commission, Alfter decided to try to access the data using the minimal freedom of information legislation in Germany. Access to information is not part of the German political culture and the specificities of German administrative traditions have to be taken into account and understood.

In 2005, just four out of 16 German provinces (*Länder*) had access to information laws. The first federal law came into force in 2006. Alfter chose two of the four *Länder* to pursue the information and followed the case all the way to the courts.

She asked for information simply about the recipients of subsidies above €50,000 per year – trying to pre-empt the German tradition for protecting the privacy of individuals (with arguments like "you just want to spy on the poor farmer's private life"). Yet the officials still based their opposition on privacy concerns.

The administrative court building in Düsseldorf has heavy, enormous walls, wide stairs, and tall windows. It leaves individuals feeling small. Particularly when it's your first time in a court. An experienced lawyer is useful in such a situation, but even the experienced lawyer looked worried when just three minutes before the case due was to begin, an official from the Ministry asked whether Alfter wanted the data for all businesses, and why she had not asked for that. Such an offer had never been explicitly made before. Once offered – and noted during the court proceeding – the Ministry had to partially release the lists, deleting the names of anyone that might be an individual but

granting access to names of legal persons. Although the victory was partial, it represented an immense breakthrough in Germany, where secrecy – *Amtsgeheimnis* – is the standard and transparency sounds far too modern and unfamiliar to many ears.

Maybe the offer outside the court room was an attempt at a deal, an attempt to achieve an agreement in court rather than having the case go on to a higher level. If so, this was not made clear. And the case has indeed gone on to a higher level to decide whether all names have to be released.

But there were still stories to be written from partially released data. Just as in the UK, a number of old German nobility were among the top recipients of the subsidies. "New money for old names" was one headline that appeared as a result, published in current affairs magazine *Stern*.

Founding farmsubsidy.org

We (Nils Mulvad, Kjeld Hansen, Jack Thurston, and Brigitte Alfter) first met in Brussels in May 2005 along with a handful of other journalists, NGO activists, MEP staff, and analysts from think tanks who all shared an interest in bringing greater transparency to the CAP. At the meeting we decided to cooperate in a loose network to obtain more data and to publish what we obtained online at www.farmsubsidy.org. Our aim was to get the data out so that everyone could use them for their own purposes. There was never any particular agenda advanced on the merits or otherwise of the CAP, just unity on the need for transparency.

At the time just two countries – Denmark and the UK – had released any kind of farm-subsidy payment data but we were optimistic about our chances in Sweden and made a great contact with a dynamic researcher at a small Dutch international development NGO.

The push for transparency on EU farm subsidies follows a road that has already been travelled in the USA. In the 1990s the *Washington Post* won a Supreme Court ruling on access to farm-subsidy data allowing the US NGO Environmental Working Group to launch a web database in 2002 that made the data available to anyone with an internet connection.

By December 2005 more countries in the EU had released data and www.farmsubsidy.org was able to launch its own database in the EU.

Indeed in The Netherlands farm subsidies had become major news after research revealed that the Dutch Minister of Agriculture was claiming six-figure farm subsidies for four farms in France which had not been declared as required under Dutch law.

Since then farmsubsidy.org has provided the public with access to all the data we have obtained on farm subsidies – which in April 2009 was close to €100 billion in nearly 20 million payments in 23 different countries. During that time more than 3.5 million user searches have been recorded and newspapers, television, and radio have covered our revelations about the scale of payments to some of Europe's wealthiest citizens and largest companies as well as the more curious airlines, golf courses, pony clubs, water companies, and oil rigs which have received farm subsidies.

The enduring theme of our revelations is that the benefits of farm subsidies flow overwhelmingly to the largest farms with the most fertile land – the farms that are best equipped to do well in the market without state support. Small farms get very little in comparison.

For the most part, the members of the farmsubsidy.org network have contributed their time and effort as part of their existing work. But the core costs of data extraction and analysis, maintaining the online database, and the costs of building the network's capacity for making successful requests for data and engaging in cross-border collaboration have been supported financially thanks to three years of grant funding from the William and Flora Hewlett Foundation, funding from the German Marshall Fund of the United States, the European Social Fund, the Open Society Institute, and others who have sponsored specific pieces of work.

New access to budget data

A well-worn adage among investigative journalists is that the best way to understand a story is to 'follow the money'. Understanding the EU by following its budget can be very difficult because of the complexity of budgets in general and the EU budget in particular, which sees money pass through a multi-layered patchwork of jurisdictions, agencies, and programmes that vary greatly in their levels of transparency and accountability. Budget transparency at the level of the final beneficiary has been our basic demand, and in December 2006 it was finally adopted into EU law.[5]

This is because our work in pushing for greater budget transparency has coincided with the European Transparency Initiative (ETI), which has been driven forward by Commission Vice-President Siim Kallas since 2005. This initiative has at a Commission level and in Member States spread acceptance of the principles of budget transparency, and resulted in new rules for publication of all beneficiaries of EU funds. The final deadline for the publication of 2008 farm subsidies was 30 April 2009. In places like France and Germany, it is this EU initiative that has finally opened the door to transparency.

The same kinds of searching questions that the farmsubsidy.org network asks about farm payments can – and should – be asked of each area of the EU budget: structural funds, cohesion funds, fisheries subsidies, external action, and development aid. The availability of detailed data on the EU budget allows European civil society to perform new and potentially powerful oversight functions.

Transparency and an informed civil society can reach the parts of the EU budget that the Court of Auditors cannot reach.

Despite the obvious benefits of transparency, Member States and the Commission alike have fought costly legal battles to keep their citizens in the dark. Even though at the end of 2006 the principle of budget transparency was enshrined in the legal text of the EU Financial Regulation, implementation of the new rules has been characterised by delay and backsliding. The lesson is that a high-level pledge on budget transparency does not always guarantee that it will be followed through in practice. Public officials find it hard to conceive of a pressing reason for putting government data into the public domain. They see only potential trouble in doing so. So they take the path of least resistance and keep data to themselves, unless challenged.

In practical terms, the European Parliament has endorsed our view that the Commission should "accept political responsibility for publishing information on beneficiaries of EU funding under all modes of management".[6] To date, the Commission has resisted this with regard to funds under shared management (around 80 per cent of the budget) and has sought to pass the buck to the Member States, a strategy which has created more work for the latter and resulted in the further fragmentation of data sources.

While there is room for improvement, we have come a long way in a relatively short time. A cultural change on transparency is underway. But the pace of that change depends on national norms and practices. The readiness of

different EU countries to embrace transparency varies considerably. EU institutions have the chance to lead by example and to show that it can be done. If budget transparency becomes a reality for the EU, it will not be long before European citizens demand transparency from their national, regional, and local governments too.

Conclusion

Based on our experiences, the outlook is promising. You can change the way things work and get what you want. Just start, be professional, be persistent and polite, use all kinds of tools at your disposal: freedom of information requests, leaks, searching government websites etc. Document your work, share it, and make it easy to use on the web. Be prepared that it will not be easy, and if you are up against bureaucrats who oppose what you are trying to do, remember that though it may seem they have an almost infinite capacity to delay and obstruct, you can overcome. You'll run into all kinds of troubles along the way, but it can be done. Of course, there's a lot you won't solve or succeed with. In farmsubsidy.org we could have gone further on certain stories, we could have got more data out and more people involved. We still need to keep up the pressure. This is not just one battle and then out. This is a long struggle. A never-ending story – or almost.

Brigitte Alfter, Nils Mulvad, and Jack Thurston are the co-founders of farmsubsidy.org

1 See http://www.farmsubsidy.org.

2 See for instance: JackThurston, "Le Monde debates the CAP", capreform.eu, 1 February 2010.

3 See also: farm subsidy website of the UK government: http://cap-payments.defra.gov.uk.

4 Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to documents.

5 Financial Regulation approved 13 December 2006. For more information about the state of transparency on who receives money from the EU budget, see the online register on the European Commission website.

6 European Parliament resolution (INI/2007/2141), 19 February 2008.

18

responsible lobbying – urging companies to behave better

Christian Humborg, Transparency International Germany

Alongside legal requirements for transparency and ethical codes of conduct on lobbying, Christian Humborg argues that common standards can support responsible corporate behaviour.

The disproportionate influence of corporate lobbying is a major concern. Companies with a turnover that is higher than some countries' gross national product (GNP) are difficult to compete with when it comes to political visibility and persuasion. Undue corporate influence has to be kept in check, not least by imposing legal requirements on companies. But companies themselves must realise that a responsible approach to lobbying is a prerequisite for a healthy democracy and start developing and supporting transparency and ethical initiatives.

Corporate responsibility activities are based on a recognition that the responsibility of companies extends beyond delivering financial returns to shareholders. Corporate responsibility includes the legitimacy of the company's impact on people and the environment. This is influenced by government and policy decisions which, again, might have been influenced by a company's lobbyists.

Transparency International looked at these issues in its *Global Corruption Report 2009*, in which it concluded that "corporations have arguably been slow to recognise that transparency and fairness in lobbying are core features of twenty-first-century corporate citizenship".[1] Companies "are uniquely positioned to account and take responsibility for all their lobbying activities, however, but are rarely taken to task to disclose such information". As a result, the overwhelming majority of corporate actors "engage in public policy-making without sufficient consultation, accountability and robust checks on whether the lobbying is consistent with shareholders' long-term goals and interests".[2]

Lobbying should reinforce commitments to Corporate Social Responsiblity

Civil society clearly differentiates between 'corporate social responsibility' and 'corporate accountability'. Whereas corporate social responsibility describes voluntary activities, from philanthropy and corporate volunteering to CSR reporting, corporate accountability includes binding regulations and guidelines on corporate behaviour. To make companies truly accountable requires taking a wide range of issues into account. These include activities designed to reduce the impacts of climate change, and to respect basic labour rights and a democratic approach to labour relations, responsible and transparent advertising and marketing, inclusion of the social and economic costs in price calculations, honest taxpaying, and responsible lobbying. The lobbying dimension of accountable corporate behaviour in particular has long been ignored. It is time that companies producing CSR reports and trying to behave as good 'corporate citizens' recognise the importance of their lobbying behaviour. As Kofi Annan said: "Business must restrain itself from taking away, by its lobbying activities, what it offers through corporate responsibility and philanthropy."[3]

Company shareholders have also been known to demand ethical, transparent behaviour, particularly in the USA, where shareholder activists have put public pressure on company directors. Shareholder resolutions on lobbying behaviour have been tabled at both General Electric[4] and Microsoft[5] meetings in the past. Ford shareholders blamed the management for missing the train in 2005 by actively lobbying against increases in national fuel-economy standards while competitors were investing in developing more energy-efficient cars.[6]

Two major instruments that can be used to introduce common standards are certification and reporting. In the case of certification, a neutral institution assesses whether the company complies with the relevant framework. For this to be credible, certification must be independent and informed, with the certifying body possessing the necessary expertise. With reporting, the company publishes its activities using some accepted framework for measuring impacts. This approach benefits from the growing importance of companies' reputational value. Any gap between claims in the report and the company's actual behaviour undermines the company's credibility and therefore its reputation.

Company codes of conduct – missing best practice

It is fair to point out that some companies do have codes of conduct that cover lobbying. But these examples show the need for common standards. Codes of conduct that cover lobbying focus mostly on political donations. For example, the Siemens Business Conduct Guidelines 2009 stipulate: "Siemens does not make political contributions (donations to politicians, political parties or political organizations)."[7] This restriction does not stop the Bavarian Association of Metal and Electrical Industries (VBM) – Siemens being one of its largest members – donating huge amounts to German political parties.

Even fewer companies report on their lobbying activities. The Dutch insurance company AEGON reveals in its Corporate Responsibility Report 2008 that its "Public Policy & Regulatory Affairs department continues to work alongside policymakers in Washington, Brussels and London and, notably, has taken an active part in recent discussions on European pension legislation".[8] Deutsche Telekom even has a full page on regulation and policy making in its 2008 Corporate Social Responsibility Report[9], including the statement that: "Our opinions are firmly based on facts, and unequivocally represent the company's views. [...] It is of paramount concern to Deutsche Telekom that its relationships with political decision-makers should be characterized by transparency and trust." Unfortunately, the 2009 edition does not include this section.[10]

These examples underline that waiting for individual companies to report on their responsible lobbying activities is not an effective strategy. What is needed is a general industry standard of accountable lobbying behaviour for companies to follow.

No global standards – only small beginnings

There is no comprehensive code or framework in place for responsible lobbying which might function as a guideline. Several codes have picked up on the subject, but usually only on a few of the relevant points. The oldest standard to shed light on lobbying activities is that set out in the OECD *Guidelines for Multinational Enterprises*.[11] These guidelines are currently under review, but the latest version (2000) states that enterprises should abstain from any improper involvement in local political activities. The guidelines are not a substitute for national law and regulation, but rather represent supplementary principles and standards of behaviour, particularly concerning companies' international operations. In October 2009 Greenpeace filed a

complaint against the Swedish company Vattenfall in Germany based on the above-mentioned principle, among others, that there should be no improper intervention in German politics.[12] The word 'improper' is the key term upon which a violation of the principle is judged, but it is no surprise that there is no clear definition of what 'improper involvement' is.

When AccountAbility published a report on responsible lobbying in close collaboration with the UN Global Compact in 2005[13], companies were urged to "walk the talk" when making high-profile commitments to sustainable development or the Millennium Development Goals. Unfortunately the report's recommendations are very vague.

One of the most common voluntary standards applied by multinationals is the G3 guidelines which form part of in the Global Reporting Initiative (GRI), and which are offered as a free public good. The Amsterdam-based non-profit organisation, GRI, is funded by businesses, governments, civil society, and foundations. The G3-guidelines are used by a growing number of multinationals as a framework for their reporting on sustainability issues.[14] The guidelines define principles and indicators to measure and report economic, environmental, and social performance. For lobbying activities, the indicators SO5 and SO6 are the most relevant. Under SO5 companies are encouraged to report on how far their public policy positions are in line with formal sustainability policies and objectives. The indicator also requires companies to be transparent about lobbying activities to reflect the integrity of their practices and potential impacts on stakeholders. SO6 focuses on contributions to politicians, political parties, and related institutions. Looking at company reports that have been given an A+ mark for GRI-compliance, after having been checked by a third party, shows that the current requirements are inadequate. The indicators require significant improvements. For example, the indicator on 'Society' (SO) could potentially be split into two, one indicator for society and one for politics.

The International Organization for Standardization (ISO) is currently developing a new standard, the ISO 26000 for corporate responsibility, expected to be published in 2010. Chapter 6.6 of the draft document includes responsible political involvement. The strongest requirement in the paragraph is for transparency regarding lobbying activities. But it remains to be seen how such a requirement would be certified in practice.[15]

Principles for responsible lobbying long overdue

A mandatory, comprehensive, well-defined, and sanctioned code of conduct is essential to improve lobbying transparency. In April 2009[16] Transparency International Germany published 12 principles of responsible lobbying in the case of Germany, which if adapted for the wider European context could serve as a starting point for the necessary debate:

1. We register in all lobby registers, including those which are voluntary.

2. We allow our law firms and other lobbying service providers to publish our name as a client and the financial details of their lobbying engagement.

3. We do not hire Commissioners or civil servants for a period of three years after they leave office if they have dealt with issues they would deal with working for us.

4. We do not employ parliamentarians, directly or through a consultancy contract.

5. We do not send our employees to work in the European institutions while employed by us.

6. We only offer hospitality and travel, if it has a clear information character; we offer only reasonable food and drinks and document these occasions.

7. We do not try to covertly influence public opinion.

8. We do not contract journalists as hosts or in other functions if they report about our company or our market.

9. We publish all policy papers or positions which are sent or given to European institutions or individuals working with the European institutions including expert groups on our website.

10. We publish all legal opinions, surveys and reports by independent institutions which were commissioned to influence public policy and opinion and make our funding transparent.

11. We include detailed information on our lobbying activities in our annual reporting, including all lobby register entries, all our lobbying service providers, all our lobbying expenses, all our employees who primarily conduct lobbying activities, all legislative procedures that we have sought to influence, and all events and journeys hosted.

12. We only contract lobbying service providers who also adhere to these principles.

No time to waste

As for fully-fledged regulation, the vast majority of companies will probably not play a leading role. But that is no reason for individual companies not to start advocating responsible and accountable principles. Nor does it stop them from introducing principles of responsible lobbying today.

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1 Transparency International, *Global Corruption Report 2009; Corruption and the private sector* (Cambridge: Cambridge University Press, 2009).

2 Ibid.

3 UN Global Compact, *Addressing Business Leaders at Global Compact Summit, Secretary-General says Experience shows that Voluntary Initiatives 'can and do work'*, press release, 24 June 2006.

4 Tri-State Coalition for Responsible Investment, *Religious Shareholders Force Disclosure by GE That Company Spent Tens of Millions To Delay Clean-Up of Hudson River, Other PCB Site Discharges*, press release, 10 January 2006.

5 John Lettice, "MS asked to disclose political contributions; And not use child labour or union-bust in China", *The Register*, 9 November 2000.

6 U.S. PIRG, "Shareholders Target Ford's Lobbying; 7.1% percent of Ford shareholders question lobbying against fuel economy increases", press release, 11 May 2006;
United for a Fair Economy, "Shareholders Want Disclosure of GE's Political Spending; Battles to be waged inside and outside GE's annual meeting", press release, 24 April 2000.

7 Siemens (Corporate Compliance Office), *Siemens Business Conduct Guidelines 2009* (München: January 2009).

8 AEGON, *"Building for the future; creating a sustainable business in an uncertain world"*, Corporate Sustainability Report 2008 (The Hague: 2008).

9 Deutsche Telekom, C*onnected life and work. Bringing people together. Embracing responsibility. Finding solutions.*, The 2008 Corporate Responsibility Report (Bonn: 2008).

10 Deutsche Telekom, *We take responsibility*, The 2009 Corporate Responsibility Report (Bonn: 2009).

11 OECD, *OECD Guidelines for Multinational Enterprises*, rev. June 2000 (Paris: 2008).

12 OECD Watch, "Greenpeace Germany vs Vattenfall", 29 October 2009.

13 Alex MacGillivray, Peter Raynard, and Simon Zadek, with Cris Oliveira, Vicky Murray and Maya Forstater, *Towards Responsible Lobbying; Leadership and Public Policy* (London: AccountAbility and The Global Compact, June 2005).

14 See the section on the G3 Guidelines on www.globalreporting.org.

15 International Standards Organisation, *Guidance on social responsibility*, Draft international standard ISO/DIS 26000, [ISO/TMB/WG SR N 172] (Geneva: 2009).

16 Transparency International Deutschland, *Verhaltenskatalog für verantwortliche Interessenvertretung* (Berlin: April 2009).

Part 4

unfinished business

19

a way forward

by the ALTER-EU steering committee[1]

Drawing on the insights presented in this book, this chapter summarises the key challenges ahead in reversing the corporate capture of EU decision making. Achieving this will require wide-ranging reforms at various levels.

As the first section of this book shows, lobbying plays a dominant role in EU decision making. Brussels has the world's second largest concentration of lobbyists after Washington with an estimated 15,000 or more trying to influence EU regulations and policies. A large majority of these lobbyists work in the lobby offices of major multinationals, industry associations and coalitions, in and commercial consultancy firms that promote corporate interests. Both the European Commission and European Parliament rely heavily on lobbyists. While professional lobbyists do have a role, they cannot legitimately substitute or displace citizen involvement in EU decision-making processes, even if that involvement is currently very limited.

The dominance of lobbyists who represent commercial interests creates a number of problems. First, corporate lobbyists outnumber and have the financial resources to outspend public-interest groups on almost every issue. While NGO lobbyists may benefit from the positive reputation of their organisations and their staff commitment, they are generally fighting uphill battles. The imbalance between those lobbying for commercial interests versus the defenders of public interest is further tilted by the privileged access to decision makers enjoyed by big business lobbyists. These combined factors result in a growing number of EU directives, regulations, and other policy initiatives that are weakened or distorted by industry's lobbying power.

These tendencies were thrown into sharp relief when the EU set out to develop rules on chemical safety (REACH), which resulted in one of the longest

and most intensive lobbying battles in its history. As shown in Chapter 2, industry lobby groups chose a confrontational approach, shifting the focus from environment and health to concerns about employment and competitiveness. In a coordinated pan-European attack, the chemical industry lobby group CEFIC and others created scare stories about job losses, using flawed studies tailor-made for them by consultancy firms. With the Commission in retreat, industry mobilised the German government and German MEPs to further weaken REACH. In the final stages of this lobby campaign the chemical industry has tried to sabotage the implementation of REACH.

REACH sparked one of the largest-ever industry lobby offensives, but a similar pattern has emerged in many other fields, including the review of the EU's emissions-trading scheme, legislation on CO_2 standards for cars, animal testing, waste incinerators – the list continues to grow.

The role of think tanks in Brussels is often seen as benign, but they too play a key role in policy debates in the EU Quarter, hosting conferences, mixing with influential individuals, and publishing reports. As we see in Chapter 4, many of the leading think tanks depend largely on corporate funding. For large corporations, sponsoring such activities is yet another way to influence EU opinion – in other words, to lobby. ExxonMobil, for example, has invested heavily in think tanks that question the need to act against climate change. More recently, some corporate-funded think tanks have shifted to other strategies to undermine effective environmental regulation, for instance promoting tradable carbon-emission rights as a miracle cure for climate change. Commissioner Siim Kallas' insistence that think tanks should join the lobbying transparency register was a welcome improvement as it would require them to disclose their funding sources. Only a tiny minority of Brussels-based think tanks had done so by spring 2009, however. The rest are free to 'opt out' as the register is voluntary. Without measures to make transparency mandatory, the register is very unlikely to resolve secrecy among think tanks about their funding sources and lobbying activities.

The lack of transparency is also an issue for the media. Journalist Marc Gruber (Chapter 3) identifies the dearth of high-quality, critical reporting of EU policy making, and highlights the fact that a lack of investment in investigative journalism results in coverage which increasingly just repeats the official line of the EU institutions and "the comments of an army of spokespersons ever ready to deliver made-to-measure quotes". Some of the media also seem

willing to peddle the 'corporate line'. The European Commission's habit of outsourcing media events to PR and lobby consultancies, which have on occasion abused these contracts in order to promote multinational corporations on their client list, simply reinforces the impression of a closed and cosy relationship among the media, lobbyists, and the Commission. For the media, lobbying transparency would enable journalists to see who lobbies on particular issues and with what budgets. This is the kind of basic information that is required to hold decision makers to account. The lack of such data impedes full scrutiny of the policy process.

Privileged access, undue influence

In the second section of the book, the focus shifts to the problems created by privileged access and conflicts of interest at the European Commission.

The ideological predisposition of the Commission is an important factor, creating a culture which not only allows, but actively encourages, corporate involvement. The EU's Global Europe strategy on international trade is a clear example, as shown in Chapter 5. Premised on the belief that what's good for big business is good for Europe – and for the rest of the world – Global Europe has been a gift for lobbyists. Experience of previous free-trade agreements (FTAs) based on the same simplistic ideology is sobering. Instead of rethinking its approach, however, the Commission has remained determined to use trade talks to promote the interests of large EU-based multinationals. Lobby groups including BusinessEurope and the European Services Forum have played a prominent role in preparing new FTA talks with India, the ASEAN countries, and Latin America. This privileged access to EU negotiators has continued throughout the talks. Civil society, meanwhile, is kept at arm's length from formal dialogue meetings. The result is a democratic vacuum and a set of trade policies that prioritise narrow corporate interests over other issues including the reduction of poverty and environmental protection.

The political influence of corporations is clearly not merely restricted to external lobby groups seeking to impose their agenda on decision-making processes. Big business is also allowed to influence almost every stage of the EU's legislative process. Expert groups, set up by the EU Commission, allow extensive industry input into the crucial first phase of law making. There are more than 1,000 of these advisory groups, with an estimated 40,000 members meeting behind closed doors.

While some of these groups are made up of government officials, many are dominated by business representatives. The heavy reliance on expert groups to prepare new regulations and policies reflects the fact that the Commission is seriously under-staffed, in relation to its remit and responsibilities. Dependency on outside expertise does not, however, either justify or explain the corporate capture of advisory groups. ALTER-EU has for several years campaigned both for the transparency of expert groups and for safeguards against corporate capture of such groups. While transparency regarding the membership has gradually improved since the Commission launched a register of expert groups, undue corporate influence persists. By allowing corporate capture of expert groups, the Commission both violates its own rules on consultation with stakeholders and ignores calls from the European Parliament to secure a balanced composition of such groups. The Commission could draw inspiration from the determined approach taken by the Obama Administration to end the widespread corporate capture of federal advisory bodies that intensified during the Bush years.

The consequences of this level of influence are reflected in the analysis of the expert groups advising the Commission on financial issues. Expert groups on banking regulation, hedge funds, credit rating agencies, and accountancy rules, all significantly dominated by industry experts, advised against tighter regulation in the financial sector. The inadequate regulation of financial markets is seen as one of the key reasons for the financial and economic crisis that is now causing massive job losses and cuts in public spending on education, health, and social protections across the continent.

Advisory groups dominated by lobbyists who represent commercial interests cannot be expected to produce high-quality policy advice that is in the public interest. The large number of corporate-dominated expert groups, however, also reflects a more general problem: the poorly developed rules against conflicts of interest both in Commission and Parliament.

An analysis of the Commission's approach to preventing conflicts of interest shows that clearer definitions, rules, and restrictions are needed. This is an issue that affects European Commissioners and their 24,000 staff. A 2009 report by the European Parliament warned that the Code of Conduct for European Commissioners lacked teeth and foresaw a "significant risk of future scandals". In fact, these scandals are already happening, and not only in relation to the generous gifts and luxurious hospitality offered to Commissioners. A number of Commissioners have gone through the revolving door to become for-profit

lobbyists. Pavel Telička, the former EU Commissioner for health and consumer affairs, co-founded lobby firm BXL Consulting almost immediately after leaving the Commission in 2004. He now lobbies for corporate clients such as Microsoft, energy giant RWE, and OKD Doprava, a Czech coal producer. In this case, the Commission seems to have simply ignored the one-year cooling-off period introduced after the fall of the Santer Commission in 1999. Clearer rules are needed for assessing potential conflicts of interest among Commissioners designate. In the case of staff, the Commission's ad hoc approach lacks consistency and is generally far too lenient.

Commissioner Kallas took a number of important initiatives to discourage conflicts of interest, but in most cases he stopped short of effective solutions. When it was revealed in early 2008 that 33 lobbyists, many on the payroll of private firms, were working in the Commission, as "seconded national experts" (see Chapter 10), Kallas intervened and ordered this practice should be phased out. In spring 2007, Kallas ensured that the Commission took the unprecedented step of releasing a list of the 55 'Special Advisers' working for Commissioners at the time. He terminated the contract of Rolf Linkohr, a Special Adviser to the then Energy Commissioner Andris Piebalgs who also ran a Brussels-based lobby consultancy firm working for large energy firms. However, he refused to intervene in the case of Etienne Davignon, vice-president of the water and energy giant Suez, who was advising then Development Commissioner Louis Michel on African development issues, including infrastructure development. He also blankly refused to see any conflicts of interest in the case of Pat Cox, Special Adviser to Consumer Commissioner Meglena Kuneva, while working as a lobbyist for large corporations including Microsoft, Pfizer, and Michelin, all of which have a significant interest in influencing EU consumer policies. These cases demonstrate that a clear and unambiguous definition of conflicts of interest is needed and that the assessment of specific cases should be made by an independent body, not by the Commissioners themselves.

Brussels-based lobbying consultancy firms and law firms which offer lobbying services often headhunt Commission officials, sometimes to work on the same issues they were responsible for when in the Commission. Between 2005 and 2008, 273 Commission officials asked for permission for new jobs and only three were refused. An even larger number of Commission officials take open-ended sabbaticals, reserving the right to return to a Commission job at a later stage. In 2008, 457 Commission officials went on sabbatical leave, 33 per cent

of these in the private sector. The conditions imposed on such secondments are worryingly lax and unlikely to prevent conflicts of interest.

The European Parliament has even fewer safeguards in this respect, as shown in Chapter 8. MEPs receive gifts, salaries, and hospitality from industries seeking to influence legislation. Parliamentarians are allowed to hold financial interests in the same areas in which they are developing laws and regulations, and MEPs also spin through the revolving door to become industry lobbyists themselves. This raises a serious problem for the Parliament's credibility. Introducing basic rules to prevent conflicts of interest, and strictly enforced guidelines on parliamentarians' future employment on leaving the public sector, should be a major priority for the current Parliament.

Successes so far

The final section of the book assesses what has been achieved by the campaigns to end corporate privileges and secrecy over the last five years. Advances have been made towards improving transparency, ethics, and democratic accountability – and there is stronger momentum for positive change than ever before. At the same time, vested interests – including corporate lobbyists and some parts of the Commission bureaucracy – are using their power to cling to the status quo. The lessons learned so far suggest the next phase will be a lengthy and protracted struggle to secure transparency, accountability, and a more participative political culture in Europe.

The battle over lobbying transparency has revealed a number of disturbing truths about the systemic influence of corporate lobbyists in Brussels politics and the Commission's unwillingness to confront these powerful players, as argued in Chapter 13. As a result, the Commission has settled for voluntary lobby disclosure instead of making transparency obligatory for all lobbyists. The voluntary approach has allowed corporate lobbyists to blackmail the Commission into accepting a whole range of loopholes that fundamentally undermine the value of the register. While Commissioner Kallas successfully kick-started the debate on lobbying transparency, his initiative has suffered from the lack of support, and even resistance, from those in the Commission who cling to the status quo.

ALTER-EU's assessment of the trial phase of the Commission's register clearly illustrates the flaws of the voluntary approach. Fewer than half of the Brussels-based lobbying entities have bothered to register and hardly any law firms

have joined. What is more, the Commission has revealed that it does not audit or verify the information in the register, thereby throwing the reliability of the data into question. The poor quality and lack of detailed information mean that the register has not resulted in transparency. Put simply, it is impossible on the basis of what is in the register to tell who is lobbying on any particular issue or piece of legislation, how much they are spending, and who is actually doing the lobbying. Yet despite the fact that centrepiece of the drive for lobbying transparency is not actually delivering this in any meaningful way, the Commission has pronounced the voluntary approach a success that will be continued. This appears to be based on misguided optimism at best, and is driven by the political need to demonstrate that the European Transparency Initiative (ETI) has delivered real progress. The current EU disclosure system offers a false sense of oversight and misplaced confidence that lobbying is being made transparent in Brussels.

One cause for optimism is the support given by the European Parliament for lobbying transparency, as detailed by Claude Turmes and Fred Thoma (Chapter 16). The Parliament has been vocal in demanding a mandatory register, with names of lobbyists and meaningful financial data included. Unfortunately, negotiations in 2008–2009 between a small group of MEPs and representatives of the Commission on a joint lobbying transparency register failed to take these demands forward effectively. Turmes argues that:

> Lobbying is not just like any other business. It is about paying for work to influence policy and legislation, including decisions on the allocation of EU budget and funds, grants, infringements, fines, recoveries and waivers, and competition law cases. To let this ever-growing sector of activity continue without any meaningful regulation is simply indefensible. A watered-down solution, compromised to fit the demands of a lobby sector with a direct commercial interest, is politically and democratically irresponsible.

In the European Parliament elections in June 2009, 75 of the MEPs returned to office had signed a pledge to promote a high-quality mandatory EU lobbying register. This level of commitment gives hope for the future.

The Worst EU Lobbying Awards has proved an effective way to raise awareness about EU lobbying scandals. In Chapter 12 van Schaik describes how these

awards combine humour with online technology to reach a wider audience. Each year, nominations for these worst cases were publicised online, attracting voters from across the EU. The awards have generated widespread media coverage, with the 2008 awards ceremony covered in 12 EU countries. It remains a key challenge for civil society groups to popularise the importance of transparency and lobbying regulation, among their own networks, and through any other means to reach the public at large. If the debate about lobbying is conducted in conventional terms then the influence of the 'lobbycrats' in Brussels will be difficult to challenge. However, if citizens' movements across Europe prioritise this issue, and mobilise their supporters and sympathisers, then progress becomes difficult to resist. At the intellectual and evidential level the case for transparency has been well made – what is now needed is a concerted political push.

Chapter 11 covers the history of lobby disclosure and ethics rules in USA over the last 50 years. The main lesson that can be drawn from this analysis is that the voluntary approach simply does not work. Holman corrects a widespread misconception in Europe that the problem in the USA concerns electoral donations. While corporate donations to election campaigns are a serious problem, industry spends far more on day-to-day lobbying than on campaign donations. The purpose of US lobbying laws was – from the beginning – to prevent the capture of lawmaking by special interests. Holman shows how civil society campaigners and progressive lawmakers have fought a continuous battle to improve the rules and close loopholes in order to secure real transparency and prevent the dominance of money in politics. The EU has much to learn from the lengthy and concerted fight to rescue politics from dominance by corporate interests.

The last three chapters in this section of the book focus on civil society campaigns on transparency and accountability issues. Each of these battles provides momentum to the ALTER-EU coalition as well as lessons for future campaigning.

One example is the European Coalition for Corporate Justice (ECCJ), which has since 2005 made substantial progress in promoting a legal framework for corporate accountability, holding companies legally accountable for the negative impacts of their business operations whether in the EU or in other countries.

The story of how the campaign to obtain data on the EU's agricultural subsidies, led by a pan-European network of investigative journalists, civil society campaigners, and researchers, is a lesson in determination, ingenuity,

and perseverance. This information had previously been treated as something of a state secret – perhaps unsurprisingly, given that once published it showed that a disturbingly large share of public funds (i.e. subsidies) had gone to some of Europe's largest farmers and agribusinesses. Creatively using a wide range of research and campaign tools – from access-to-document requests, law suits, data-crunching using new open-source software and savvy media outreach – this campaign is an impressive example of pan-European cooperation in the public interest. The approach is now being replicated for other areas of EU funding, such as fishing subsidies.

Another crucial struggle has been taking place to prevent the Commission from undermining citizens' rights of access to EU documents. The Commission reviewed the rules on access to documents in 2008 and shocked many by proposing a major step back in transparency. It announced its intention to redefine what is classed as a 'document', dramatically reducing the number of documents accessible to European citizens. Transparency campaigners have argued vigorously against this, with the backing of many MEPs. The outcome remains uncertain. A clear lesson is that the struggle for transparency is a continuous battle, where achievements of the past might suddenly be reversed.

Chapter 18 sets out how industry can play its role by acting responsibly and adopting common standards on lobbying conduct. While such standards cannot provide an adequate substitute for legal requirements, Christian Humborg argues that any company that wants to be taken seriously in terms of its corporate social responsibility (CSR) must adopt ethical standards in its lobbying work, and that work must reflect the values it advocates through CSR.

The way forward

ALTER-EU was launched in 2005 by a broad coalition of civil society groups concerned by the excessive influence of big business lobbies on EU decision making, and the absence of even the most basic transparency and ethics rules for lobbying. Since then a serious debate about these issues has finally begun, and a number of significant political initiatives have been launched. While these have focused mainly on the issue of transparency, there has been far less – if any – willingness to address privileged access, conflicts of interest, and other key dimensions of the lobbying power of big business: even on the basic issue of lobbying transparency there has not been enough political will to drive serious change.

The European Commission seems to believe that symbolic gestures are sufficient to dispel public concerns about these issues, but this is a dangerous assumption. Public trust in the EU institutions is at an all-time low. The 2009 European Parliament elections showed a very serious level of disengagement. Breaking with corporate capture and ending lobbying secrecy is a first, indispensable step towards regaining the trust of Europe's citizens. Without meaningful democratic reforms the legitimacy of the European Parliament and other European institutions will remain in doubt, and EU citizens will remain disengaged. An ambitious, comprehensive, and determined reform programme is needed to achieve this.

Such change is needed because the current situation undermines the democratic credibility of the EU institutions. Expensive public relations efforts to polish the image of the Commission are not the answer and are no substitute for long overdue democratic reform. The Commission, we would argue, does not deserve public trust unless it breaks with undemocratic habits developed in the past.

Change is needed not only for reasons of democratic legitimacy. Corporate dominance undermines the quality of EU decision making. It is an obstacle for making decisions in the long-term interest of people and the planet. This book includes numerous examples of how corporate lobbies hold EU policy making hostage, at the expense of the EU's ability to establish policies and regulations that are in the public interest.

It is encouraging that so many MEPs in the new European Parliament are willing to act on this agenda. A group of 75 MEPs signed a pledge which says that: "The European public is concerned about the influence of lobbyists over EU decision-making [...] measures to secure transparency around EU lobbying and to prevent corporate capture of decision-making are urgently needed." That these issues are of concern to MEPs from across the political spectrum is an indication that positive change is possible. But it will require dedicated effort and coalition building across political parties, issue networks, and civil society groups to bring to bear the pressure that will secure such change.

ALTER-EU has developed a list of 10 priority reform demands for the Commission and Parliament for the coming years that are both pragmatic and achievable. The reforms are in three key areas:

- High-quality lobbying transparency to help enable citizens, journalists, and MEPs to scrutinise the influence of lobbyists.

- Closing down channels of undue influence, such as corporate dominance in advisory groups, privileged access, and unregulated conflicts of interest.
- Reforms to prevent the current patterns of excessive industry lobbying influence, including democratisation to engage citizens more directly to protect the public interest in EU decision making.

These measures are the minimum needed to begin to redress the excessive power of the industry lobby over the EU institutions. They should be part of far wider reforms, most of which fall outside of the scope of the ALTER-EU coalition. These wider reforms include far-reaching measures to tackle the democratic deficit of the EU institutions, in particular the lack of democratic control over the European Commission.

Key ALTER-EU demands to the European Commission and European Parliament 2010–2014

Ten steps towards ending corporate lobbying privileges and secrecy

1. **A high-quality, mandatory lobbying transparency register.** The Commission's weak and voluntary register must be replaced with a mandatory lobby transparency system that enables EU citizens to see who is influencing EU decision making, on which issues, on whose behalf, and with what budgets. A mandatory register covering all EU institutions can be achieved by the end of this Commission term in 2014. In the short term, the Commission and Parliament must act with determination to make registration a de facto obligation for all actors involved in EU lobbying (including law firms and think tanks) and to improve the reliability of the information disclosed.
2. **Full transparency and safeguards against corporate capture of Commission advisory groups.** The Commission must deliver full transparency regarding the membership of its Expert Groups and introduce effective safeguards against corporate capture of these and other Commission advisory groups. Similar reforms are needed for the Commission's Technology Platforms (advising on spending of EU research funding) and the EU's agencies, including those for food safety and medicines.
3. **Closing the revolving door between the European Commission and industry lobbies.** Clear and effective limits must be introduced to avoid conflicts of interest when Commissioners and Commission officials move into new jobs, including posts that may involve some lobbying. A cooling-

off period of at least two years is needed for Commissioners and for high-level officials (i.e. those officials with policy-making responsibilities) moving into industry jobs that involve potential conflicts of interest. Equally, strict 'reverse revolving door' rules are needed to prevent the appointment of Commission officials who may have conflicts of interest.

4. **Effective conflicts of interest rules for Commissioners and Commission officials.** In addition to stricter 'post-employment' rules, the Commission needs clearer and stricter rules to prevent a wider range of possible conflicts of interest, particularly regarding gifts and hospitality offered by lobbyists. As with the revolving-door rules, this will require an ambitious overhaul of both the Code of Conduct for Commissioners and the Commission's Staff Regulations.

5. **Effective conflict of interest rules for Commission Special Advisers.** Those appointed to act as Special Advisers to European Commissioners must be free of conflicts of interest. In particular Special Advisers must not be permitted to advise on issues where they have a financial self-interest or in other ways represent commercial interests that undermine their independence.

6. **Independent monitoring and enforcement.** To secure credible enforcement, independent assessment is needed, for instance by an independent ethics committee for each of the EU institutions (which could be combined into a single ethics body for all institutions at a later stage). Such committees should be given the mandate to investigate and report publicly on conflicts of interest in a timely fashion.

7. **Upgrading European Parliament transparency and ethics rules to prevent conflicts of interest.** The European Parliament needs stronger transparency and ethics rules, for instance to ensure that MEPs do not receive money, gifts, or hospitality from industries they are regulating. MEPs should put their shares in a blind trust if they are related to their work in the Parliament and Rapporteurs on parliamentary reports should not have a financial interest in the industry affected by the legislation at stake. Effective transparency and ethics rules are needed for Intergroups and other cross-party groups involving MEPs and lobbyists.

8. **Pro-active transparency by Commission and Parliament.** In addition to the transparency register through which lobbyists report on their activities, the European Commission should pro-actively report on who has been

consulted in preparing legislative proposals. This should include legislative footprint reports that are appended to legislative proposals and also when a rapporteur presents a draft resolution, including a list of all the stakeholders with whom they have met or corresponded. The Commission should move away from the often far too narrow interpretation of access-to-documents legislation and provide online transparency about meetings and correspondence between Commission officials and lobbyists.

9. **Enforceable ethics rules for lobbyists.** Both the European Commission and the European Parliament need far stricter ethics rules on the issue of lobbying, together with external oversight and effective sanctions. The current codes of conduct are entirely voluntary, far too weak, and lack an independent complaints mechanism and sanctions, thereby making them utterly ineffective in preventing unethical lobbying. New rules should prevent lobbyists from exercising undue influence via offering money, gifts, or inappropriate hospitality to decision makers. Sanctions should be introduced, for instance, for serious cases of false reporting and for lobbyists who encourage decision makers to break the ethics rules of the EU institutions.

10. **Citizens' democracy versus corporate capture.** In order to adequately fulfil its obligation to act in the general interest (outlined in the EU Treaty), the European Commission must introduce major changes in its decision-making practices in order to prevent privileged access and policy capture by industry lobby groups. Also, a far more active commitment by decision makers, including MEPs, is needed to defend public-interest concerns against the constant pressure from numerous, well-resourced commercial lobbyists. Rolling back undue industry influence requires a broader democratisation that empowers the engagement of EU citizens' groups in decision making.

1 At the time of writing (March 2010) the steering committee consists of Paul de Clerck (Friends of the Earth Europe); William Dinan (Strathclyde University & Spinwatch); Marc Gruber (European Federation of Journalists); Ulrich Müller (LobbyControl); Jorgo Riss (Greenpeace European Unit); Erik Wesselius (Corporate Europe Observatory); and Yveline Nicolas (Adequations).

annexes

ALTER-EU statement

Alliance for Lobbying Transparency and Ethics Regulation in the EU

Ending corporate privileges and secrecy around lobbying in the European Union

The undersigned organisations are deeply concerned about the growing influence of corporate lobby groups on European Union decision-making. Over 15,000 professional lobbyists now operate in Brussels, a large majority representing business interests. Yet, ethics and transparency rules around lobbying are virtually non-existent. Beyond the problem of business spending ever increasing amounts to influence the political process, the European Commission has developed a tradition of awarding privileged access to corporate interests. The enormous influence of corporate lobbyists undermines democracy and all too frequently results in postponing, weakening or blocking urgently needed progress in EU social, environmental and consumer protections. As the first steps in addressing these problems, the Commission should take determined action to improve transparency around lobbying and ensure that no business groups are given privileged access and influence on EU policy-making.

We welcome the 'European Transparency Initiative' (ETI), launched in March 2005 by European Commissioner Siim Kallas, in particular, the objective to address the current lack of mandatory regulation and reporting of lobbying activities. A mandatory system for lobbying disclosure is urgently needed and must be shaped in a way that optimally enables democratic scrutiny of inputs into EU policy-making.

The undersigned organisations demand the following:

1. **EU lobbying disclosure legislation**, which must include:

- A mandatory system of electronic registration and reporting for all lobbyists with a significant annual lobbying budget. The reports must be made available in a fully searchable, sortable and downloadable online database;

- Enforceable ethics rules for lobbyists (for instance prohibiting employment of officials or their relatives for lobbying purposes).

2. **An improved code of conduct for European Commission officials,** including:

- Recording of formal and informal meetings between Commission officials and lobbyists and logging of correspondence (to be made available in a fully searchable online database);
- An extended 'cooling off' period before Commissioners and senior officials can start working for lobby groups or lobbying advisory firms;
- The European Commission should encourage the other EU institutions, particularly the European Parliament and the European Council, to develop similar rules.

3. **The Commission must terminate cases of privileged access and undue influence granted to corporate lobbyists,** for instance:

- Joint taskforces in which corporate interests are represented while public interest NGOs are not (such as Cars 21 which consists of Commission officials, CEOs and lobbyists from the automobile industry, but no environmental NGOs);
- The privileged status accorded to business lobby groups like the European Services Forum and the Trans-Atlantic Business Dialogue. These are minimum requirements if the 'European Transparency Initiative' is to achieve meaningful democratic progress. Vested interests are defending secrecy and privileged access by advocating "self-regulation", voluntary codes of conduct and other pseudo-solutions that do nothing to increase democratic scrutiny of the role of lobbyists in EU policy-making. If the EU institutions would endorse such proposals instead of introducing mandatory disclosure and ethics rules, it would fundamentally undermine the 'European Transparency Initiative'. We have formed the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU) to prevent the failure of this important initiative.

List of signatories:

1. 11.11.11 - Coalition of the Flemish North-South Movement, Belgium
2. Action Consommation, France
3. Aktive Forbrugere, Denmark
4. Action Aid International
5. Adéquations, France
6. AerztInnen und Aertze fuer eine gesunde Umwelt , Austria
7. Alliance for Social and Ecological Consumer Organizations (ASECO), EU-wide network
8. Amazonia Assemblea de Solidaritat, Spain
9. Afrika Europa Netwerk, The Netherlands
10. ARTICLE 19 (Global Campaign for Free Expression)
11. A SEED Europe, EU-wide network
12. Asociación Pola Defensa da Ría (APDR), Galicia (SPAIN)
13. Association of Farmers, Malta
14. Associazione Consumatori Utenti (ACU), Italy
15. atomstopp_atomkraftfrei leben!, Austria
16. ATTAC Austria
17. ATTAC Denmark
18. ATTAC France
19. ATTAC Germany
20. ATTAC Hungary
21. ATTAC-KonsumNetz, Germany
22. ATTAC Netherlands
23. ATTAC Spain
24. ATTAC Poland
25. ATTAC Sweden
26. ATTAC Vlaanderen, Belgium
27. Both Ends, The Netherlands
28. Breastfeeding Promotion and Protection Association of Latvia
29. BUDS (Foundation for Human and Nature Protection), Hungary
30. BUKO Pharma-Kampagne, Germany
31. CNCD, Belgium
32. Campagna per la Riforma della Banca mondiale (CRBM), Italy
33. Campagne tegen Wapenhandel, The Netherlands
34. Campaign Against Arms Trade, United Kingdom
35. Campaign for Press and Broadcasting Freedom, United Kingdom
36. CEE Bankwatch Network [with member organisations from ten countries in Central and Eastern Europe]
37. Center for Encounter and active Non-Violence, Austria
38. Centre de Recerca i Informacio en Consum (CRIC), Spain
39. CLAT, The Netherlands
40. Clean Air Action Group, Hungary
41. Coalition against BAYER-dangers, Germany
42. Comite pour les droits humains "Daniel Gillard", Belgium
43. Consumer Institute for Medicines and Health (KILEN), Sweden
44. CRIIRAD, France
45. The Corner House, United Kingdom
46. Corporate Europe Observatory (CEO)
47. Corporate Watch, United Kingdom
48. Digicare Foundation; Art for Social Change, The Netherlands
49. Dubnica Environmental Group, Slovakia
50. Ecologistas en Acción, Spain
51. Ecologistas en Acción de Jaén, España
52. Ecumenical Council for Corporate

Responsibility (ECCR), United Kingdom
53. EKPIZO - Consumers' Association "The Quality of Life", Greece
54. Environmental Law Service, Czech Republic
55. EQUIVITA, Spain
56. EU-AG ATTAC Germany
57. Euro Info Centre Network, European-wide network
58. European Centre of the International Council of Women (ECICW-CECIF)
59. European Citizen Action Service (ECAS)
60. European Coalition for Corporate Justice (ECCJ)
61. European Federation of Journalists (EFJ)
62. European Public Health Alliance (EPHA)
63. EPHA Environment Network (EEN)
64. European Federation of Public Services Unions (EPSU)
65. European Forum for Freedom in Education (effe), European-wide network
66. European Network on Debt and Development [Eurodad]
67. FAIR, Italy
68. FairFood, The Netherlands
69. FERN - the EU forest campaign
70. Fondation France Liberté, France
71. Food and Water Watch Europe
72. Food Ethics Council, United Kingdom
73. Forum Voor Vredesactie, Belgium
74. Freedom of Information Project, Privacy International
75. Friends of the Earth Europe
76. Friends of the Earth, Czech Republic
77. Friends of the Earth, Slovakia
78. Friends of the Earth, Flanders (Belgium)
79. German League for the Protection of Nature and Environment, Germany
80. Germanwatch, Germany
81. Global Policy Institute - Glopolis, Czech Republic
82. GMwatch, UK
83. Greenpeace (European Unit)
84. Grup de Defensa del Garraf-Ordal, de la Vall Baixa i Delta del Llobregat (DEFGOL),Catalunya, Spain
85. Health Action International Europe
86. Humane Earth Foundation, France
87. Hungarian Civil Liberties Union, Hungary
88. Hungarian Young Greens, Hungary
89. IBFAN Europe
90. IBFAN Italia, Italy
91. IGLA (Informationsgruppe Lateinamerika), Austria
92. India Committee of the Netherlands
93. InfOGM, France
94. Initiativ Liewensufank asbl, Luxemburg
95. The International Secretariat of Africa-Europe Faith & Justice Network (AEFJN)
96. International Friends of Nature
97. International Gender and Trade Network (IGTN)
98. Kairos Europa
99. KEPKA - Consumers Protection Centre, Greece
100. KWIA vzw Support Group for Indigenous People, Belgium
101. La revue Prescrire, France
102. Les Amis de la Terre, France
103. LobbyControl, Germany
104. Mani Tese, Italy
105. Mehr Demokratie, Germany
106. Mouvement pour les Droits

et le Respect des Générations Futures (MDRGF), France
107. National Group on Homeworking, United Kingdom
108. National Platform EU Research and Information Centre, Ireland
109. Nonviolent Peaceforce, global network
110. Observatorio de la Deuda en la Globalizacion (ODG), Spain
111. Oesterreichische Bergbauern und Bergbaeuerinnen Vereinigung/CPE Austria
112. Paradigm Shift, The Netherlands
113. Paz con Dignidad, Spain,
114. Pesticides Action Network Europe (PAN Europe)
115. Pesticide Action Network, Germany
116. Pesticide Action Network UK
117. Plataforma por la Defensa de los Servicios Publicos-Madrid, Spain
118. Platform Against Nuclear Dangers (PLAGE), Salzburg, Austria
119. Platform, United Kingdom
120. Platform for Consumers interests (BeVaCo), The Netherlands
121. Priatelia Zeme, Slovakia
122. Privacy International
123. Proj'art asbl, Belgium
124. Public Services International (PSI)
125. Quaker Council for European Affairs
126. Quercus (Associacao Nacional de Conservacao da Natureza), Portugal
127. Respire, Belgium
128. Rete Lilliput, Italy
129. Roba dell'Altro Mondo, Italy
130. Roba de''Altro Mondo, Malta
131. Scottish Education and Action for Development (SEAD)
132. Servas Belgium
133. Servas International
134. Sherpa, France
135. Sisyfos, Sweden
136. Social Audit Ltd, United Kingdom
137. SOMO, The Netherlands
138. SOSNA civic association, Slovakia
139. SPEAK, United Kingdom
140. SpinWatch, UK
141. StateWatch, UK
142. Sveriges Konsumenter i Samverkan, Sweden
143. Tartu Students' Nature Protection Circle, Estonia
144. Transnationale & Cie, France
145. Transnational Information Exchange, The Netherlands
146. Transnational Institute (TNI)
147. Transparency International Deutschland e.V., Germany
148. urgewald, Germany
149. Védegylet, Hungary
150. Velt vzw, Belgium
151. Vrede vzw, Belgium
152. War on Want, United Kingdom
153. WEMOS, The Netherlands
154. Wissenschaftsladen Wien, Austria
155. Women's International League for Peace and Freedom Sweden
156. Women in Development Europe (WIDE)
157. Women's Global Network for Reproductive Rights
158. Women in Europe for a Common Future (WECF)
159. Women Working Worldwide (WWW), United Kingdom

160. World Development Movement, United Kingdom
161. World Economy, Ecology & Development (WEED), Germany
162. XminusY Solidarity Fund, The Netherlands
163. Young Researchers of Banja Luka, Bosnia and Herzegovina
164. Za Matku Zem (For Mother Earth), Slovakia

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1. CODECO, European Affairs and Progressive Communication, Brussels
2. EurAFair Consult, Germany
3. ID's - Information Diffusion Europe Associations, Brussels
4. Michael Hindley and Associates, United Kingdom
5. mAster Institute, Netherlands
6. MortenCH Holdings Aps, Denmark
7. Nils Roseman, Human Rights and Development Consultant
8. Pleiades Associates
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1. Asociatia pentru Initiative Civice, Romania
2. Centre for Corporate Policy, United States
3. Center for Investigative Reporting, United States
4. Center for Media and Democracy, United States
5. Centro de Ecologia y Desarrollo, Mexico
6. Consumer Action, United States
7. Edmonds Institute, United States
8. Friends of the Earth US, United States
9. Frontiers, Lebanon
10. Groundwork, South Africa
11. Humanitarian Group For Social Development (HGSD), Lebanon
12. Information for Action, Australia
13. Institute for Agriculture and Trade Policy, United States
14. IATP Trade Information Project, Geneva
15. LARS (Latin America Orientação em Responsabilidade Social), Brazil
16. Public Citizen, United States

(As of April 2010)

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A peculiar form of political life exists in and around the institutions that make up the European Union. An army of corporate lobbyists has set up camp in EU capital Brussels, intent on influencing EU legislation. And they're winning the battle - infiltrating the key decision-making arenas, influencing key politicians and dominating the debate. This is the Brussels Bubble – an elitist world where deals are mainly done away from the public eye.

This collection of articles, written by some of the leading experts on lobbying transparency in Europe, provides an eye-opening insight into decision making within the EU. It exposes the tools of the lobbyists' trade and reveals how lobbyists from the world of big business have successfully embedded themselves inside the European Union's decision-making process, allowing commercial interests to determine the EU's political agenda.

But this book is not just an exposé – it also provides a guide to fighting for greater transparency and accountability in EU decision making, highlighting how campaigners have sought to challenge the corporate capture of EU politics – and setting out a way forward to build a more democratic and accountable European Union. A way to burst the Brussels Bubble.

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