

High time to regulate EU lobbying

Powerful industry lobbying of European Union institutions needs reining in, argues Erik Wesselius of Corporate Europe Observatory

'Lobbying is the practice of private advocacy with the goal of influencing a governing body, in order to ensure that an individual's or organisation's point of view is represented in the government. A lobbyist is a person who is paid to influence legislation.'

Lobbying is in many countries a regulated activity, with limits placed on how it is conducted, in an attempt to prevent political corruption. At the European Union level there is only a voluntary code of conduct for lobbyists, whereas professional lobbyists at the European Parliament have to file their name and organisation in a publicly accessible register.

Apart from 'inside lobbying', which is directly targeting decision-makers, 'outside lobbying' or 'grass-roots lobbying' seeks to affect the decision-making process indirectly, by changing public opinion (or purporting to).'

Definition adapted from the wikipedia entry on lobbying (<http://en.wikipedia.org/wiki/lobbying>)

Lobbying truly got established in Brussels between 1987 and 1994. When, in 1987 the Single European Act was adopted, the European Commission (EC) started drafting new laws for the EU Single Market. Corporate Europe realised that only by getting involved in this process of extensive law-making could it ensure that the new body of European law would reflect corporate needs and priorities as much as possible. Thus, a host of corporate lobbyists set up shop in Brussels, and by 1992 they already numbered 12,000, according to a survey by the EC at that time.

The vast majority – over 70 per cent – of Brussels lobbyists represent corporate interests. They work for a broad range of companies and organisations involved in corporate lobbying: public relations companies, public affairs consultancies, law firms, corporate associations like the European employers' association UNICE or the 'EU Affairs' offices of transnational corporations. According to a report issued by the European Parliament, some 950 business interest groups are represented in Brussels,

ABSTRACT

Some 15,000 lobbyists roam the corridors of the EU institutions in Brussels, and the city can compare to Washington DC when it comes to lobbying. But whereas Washington lobbyists have to comply with the US Lobbying Disclosure Act, their colleagues in Brussels still profit from the absence of binding EU rules on transparency and regulation. This article demonstrates how this situation contributes to the political and democratic deficit of EU decision-making. Urgent action is required.

along with about 300 transnational corporations.

Only 10 per cent of all Brussels lobbyists work for citizens' organisations, including trade unions, public health organisations, consumers' unions and environmental groups, while another 20 per cent represent regions, cities and international institutions.

On the side of the overwhelming corporate majority, there are sectoral lobby groups for almost every industry imaginable, from the tiny office of the European Bottled Watercooler Association to the 140 employees of the chemical industry federation, CEFIC. Public affairs firms like APCO, Burson-Marsteller, Hill & Knowlton, GPC and Weber Shandwick employ over a thousand people in Brussels. These lobbyists-for-hire work for industry groups and companies that can afford them, both lobbying EU officials directly, and providing intelligence or delivering strategic advice.

Lobbying strategies

One such lobbying consultancy is Kimmons & Kimmons, led by a former lobbyist for pharmaceuticals giant GlaxoSmithKline. At a training course on lobbying in Brussels, Chrissie Kimmons outlined a long list of possible lobbying strategies industry uses depending on the circumstances, including:

- 'the gunship' (aggressive lobbying, including threats of relocation if policy proposals are not dropped), to be used only if other tactics do not work;
- 'the Kofi Annan' (also known as 'the Trojan horse') means constructive engagement, offering governments a mutually-acceptable compromise, a strategy very common in Brussels;
- 'good cop, bad cop' is an option if another company or lobby group takes a hardline position – this allows other companies or lobby groups to take centre-stage with what may seem like a constructive compromise solution;
- 'the dentist': if a company or lobby group dislikes proposed legislation, it will try to 'pull out the worst teeth' first and come back for the rest later;
- 'the third party': reaching out to NGOs and unions

- to find a compromise on a disputed issue; and
- ‘the donkey’: a combination of stick-and-carrot strategies in which industry tries to win over decision-makers by understanding their interests and preferences, stopping short of seduction and bribery.

Lobbying the EU institutions

For lobbyists, the EC is the first choice if they want to influence new EU legislation: it has the exclusive power to propose new EU legislation and the mandate to control the implementation of EU regulations. While the Commission largely deserves its image as untransparent and unaccountable, it is remarkably open when approached by lobbying groups. This has to do with logistical constraints within the Commission. Contrary to the popular myth, the EC, with its 17,000 staff in Brussels, is a relatively small bureaucracy – much smaller than most national bureaucracies. When drafting often very technical and complicated EU legislation, Commission staff have to rely heavily on input from organised interests and from technical experts from the member states. The earlier that one can engage in the drafting process, the better the chance to leave some imprints on the final laws, especially when one lobbies discreetly and stays out of the spotlight.

Via the Council of Ministers, EU member state governments have the final say over legislative proposals put forward by the EC. The Council is known as one of the most untransparent EU institutions, with most decisions made behind closed doors. An estimated 90 per cent of Council decisions are taken by the Committee of Permanent Representatives (Coreper), made up of the member states’ ambassadors to the EU, before the ministers have even met. In co-ordinated European lobbying campaigns, the Council of Ministers is mostly targeted via the national level, through national associations and individual firms. When the national ministers or their civil servants arrive in Brussels, they often reveal themselves as powerful lobbyists on behalf of some particular interest in their country that is presented as a ‘national interest’. See ‘The Anti-REACH gunship’, p15, for how the chemical industry campaigned to undermine the EC’s proposal for a new EU regulatory framework for chemicals.

The powers of the once-feeble European Parliament have grown significantly in the last decades. On many issues, it now has powers to approve, block or adapt proposals coming from the EC, comparable to the role of the Council of Ministers. Over the years, the European Parliament has expanded from 142 members from six countries in 1957 to 732 members from 25 countries today. These developments have attracted a growing number of lobbyists to the European Parliament. Currently, over 5,000 registered lobbyists have a one-year pass that

allows them access to the parliament buildings. This amount to more than seven lobbyists for each MEP. In comparison, the Dutch Parliament, which counts 150 parliamentarians, only has around 100 registered lobbyists – fewer than one per MP.

A Parliament full of lobbyists

The increasing numbers of lobbying at the European Parliament is starting to cause practical problems. In March 2004, the Society of European Affairs Professionals (SEAP) wrote to the president of the European Parliament complaining of a lack of seats and headphones. Lobbying has become an integral part of policy-making in the European Parliament to the extent that substantial parts of the resolutions and amendments are drafted by industry lobbyists.

Speaking at a training course for lobbyists, one Liberal Democrat MEP explained: ‘I need lobbyists, I depend on lobbyists’. Due to the work pressure and complexity of issues on the agenda of the European Parliament, he explained, he was eager to receive specific industry amendments to proposed legislation. The MEP submits these amendments for voting in the European Parliament, and many become EU law. With this kind of questionable political culture, it is no surprise that, after their time Parliament, many MEPs go through the revolving door to become professional corporate lobbyists.

A passage from one Conservative MEP’s ‘Letter From Strasbourg’ of November 2002 illustrates the daily lobbying bombardment to which MEPs are exposed: ‘*On Thursday morning I had to fit in a shortened German lesson, a meeting with German aerospace industrialists, [...] a meeting with a chap from Unilever worried about a directive on detergents and another with two ladies from GlaxoSmithKline about the pharmaceuticals review [...] before I dashed for my train back home to England.*’

Quite probably, the ‘chap from Unilever’ was Charles Laroche, Unilever’s lobbyist in Brussels, whose office is conveniently located right in the centre of the EU quarter. And although it seems impossible to find any other traces of Mr. Laroche’s lobbying work in the European Parliament, he will have approached many MEPs in the final months of 2002, as the parliament was to vote on a revision of EU legislation on detergents in early 2003.

It is impossible to reconstruct the details of Charles Laroche’s lobbying work on behalf of Unilever and the detergents industry, but after the vote in parliament, the European Environmental Bureau and Svenska Naturskyddsföreningen commented in a press release that ‘*the main industrial lobby activists – Unilever and Procter & Gamble – pushed MEPs to reject immediate action on phosphates and other issues using regressive arguments, such as relying on end-of-pipe technologies.*’

In a recent *International Herald Tribune* article on

lobbying in Brussels, Unilever lobbyist Charles Laroche said that he represents the needs of consumers: 'Citizens are also consumers. We go into the Parliament and read through draft legislation with them and ask, "What is in this for the consumer?"' In the brave new world of 'lobbyocracy', citizens concerns are best represented by corporate lobbyists!

Disbalances

As noted, there is a huge numerical imbalance between corporate lobbyists and those representing citizens interests (roughly 6:1). This imbalance is aggravated by a structural asymmetry in financial terms. In many cases, companies can expect to 'earn back' their lobbying 'expenses', for example when costly legislation is prevented or when business-friendly regulations are introduced. This can considerably influence production costs. For citizens' organisations, lobbying brings only costs, while the earnings are generally not expressed in financial terms – for example, better protection of consumers, health or the environment.

Transnational corporations are also clearly at an advantage in organisational terms compared with social movements and citizens' organisations. Almost all larger corporations are already organised transnationally in pan-European or even global structures. On the other hand, social movements and

citizens' organisations are strongest at the national level – through a shared language, political culture and history and physical proximity to their membership. Although social movements are increasingly co-operating at a European level, many obstacles remain, and European umbrella organisations tend to be much less grassroots-based (and therefore politically weaker) than their national counterparts.

Finally, there is the problem of privileged access and close ties between the political and economic elites in the EU. There is a lively 'revolving door' in Brussels, with many former EU officials and politicians turning into corporate lobbyists. The EC has a long tradition of using business interest groups as European-minded allies in its power struggles with EU member state governments. In several cases, the EC actually invited business to start a lobby, as in the case of the Transatlantic Business Dialogue (TABD) or the European Services Forum.

Democratic and political deficit

The infamous democratic deficit of the EU is prominent on macro-economic and external trade policies, with the Commission and the Council of Ministers being effectively unaccountable to citizens in many cases. But there is also a political deficit in Brussels: the lack of a vibrant politicised democracy at EU-level. The EU system lacks the basic antago-

The Anti-REACH gunship

As the website of the International Chemical Secretariat proudly says: 'One of the biggest lobbying campaigns in the history of the EU has been instigated by the chemicals industry.' This campaign is targeting the EC's proposal for the Registration, Evaluation and Authorisation of Chemicals (REACH), which would oblige the chemical industry to demonstrate the safety of its products.

Up to 99 per cent of all chemicals sold in the EU have never passed any official environmental or health tests. Among the myriads of untested chemicals in use, many are suspected of causing cancer, allergies, birth defects, reduced fertility and other health problems. The impacts on nature and wildlife are often no less serious.

According to the EC's first proposal (2001), producers should register and provide crucial safety information for tens of thousands of chemicals. 'Very high concern' chemicals, the Commission

proposed, should be substituted by safer alternatives, if available.

The chemical industry strongly disapproved. CEFIC, the association of chemical industries in Europe, has spent millions of euros on a campaign to delay and weaken the proposal. The anti-REACH campaign was supported by the US chemical industry and the Bush administration, with Colin Powell himself pressuring key EU member governments. CEFIC intensified its anti-REACH campaigning in 2002, using the magic word 'competitiveness'. Industry argues that REACH would endanger the EU's 'Lisbon Agenda' goal of becoming the world's most competitive economy by 2010. Industry-funded consultants' studies presented wildly exaggerated estimates of the likely costs for industry and job losses resulting from REACH. The UK, German and French governments soon joined the chorus of REACH-bashers.

The lobbying campaign of the

chemical industry has not been without success: the REACH proposal presented by the Commission on 29 October 2003 was significantly watered down, compared with its May 2003 draft. Testing and licensing requirements were dramatically weakened and many loopholes for toxic chemicals were left in place. Also the substitution principle – a ban on substances of 'very high concern' if a safer, viable alternative is available – was almost fully removed from the revised proposal.

As the REACH proposal is now being discussed in the European Parliament, the corporate lobbying campaign is now shifting its focus to the parliament. It will be instructive to see if the anti-REACH campaign will continue the 'gunship' and 'dentist' strategies or choose another approach in the European Parliament. For citizens' groups it will be a hard battle to avoid that the private interests of the chemical industry will prevail.

nistic dynamics between a government and its parliamentary opposition. Furthermore, there are no truly European media or a European public sphere as a possible forum for a European-wide public debate. The absence of a truly pan-European political debate provides fertile ground for public relations and political affairs consultants, think tanks, and a diverse range of 'political entrepreneurs' who fill this political vacuum.

Political discourse in Brussels tends to be rather technocratic and depoliticised, which creates the impression that there are no real political choices. Again, this environment has proven very suitable for single interest experts, 'helping' EC officials draft new legislation or MEPs write amendment.

Front-group tactics

One common tactic in corporate lobbying is creating a front to hide or obscure the underlying interest. Such tactics are being employed by the world's four largest bromine producers, who have created the Bromine Science and Environmental Forum (BSEF) to support their campaign against an EU ban on several types of bromine-containing flame retardants (BFRs): the so-called polybrominated diphenyl ethers (PBDEs).

PBDEs are used in many products, ranging from electronics or computer casings to textiles and furniture. There are three technical mixtures: penta, octa and deca. Evidence is growing that PBDEs pose a serious risk to human health and the environment, and they are often compared with toxins like DDT and PCBs, both banned in most parts of the world in the 1970s.

When, in the second half of the 1990s, several EU member states began imposing restrictions on the use of several bromine chemicals and an EU-wide ban on all PBDEs was considered, the global bromine industry hired PR firm Burson-Marsteller to run a front group, the BSEF.

The BSEF sponsors scientific studies which tend to conclude that the disputed bromine compounds are in fact good for the environment (see for example the article 'Comparison of the Recyclability of Flame-Retarded Plastics', published in the *Journal of Environment, Science and Technology*, February 2003). Although the article acknowledges the involvement of the BSEF in the study, it doesn't clarify the precise nature of the Forum. Similarly, all press releases issued by the BSEF in 2004 (as posted on the BSEF website) gloss over the 100 per cent corporate nature of the Forum.

But the role of the BSEF goes beyond producing sponsored science. In May 2003 the law firm Harbottle & Lewis sent a letter on behalf of the BSEF to several UK newspapers and television broadcasters, urging them not to cover the warnings against BFRs issued by WWF and other environmental groups.

The letter advised the media to contact the BSEF on issues related to brominated flame retardants and ended with a blunt warning: 'We should state for the record that our clients will be monitoring future press and media coverage on the issue of BFRs and will not hesitate to pursue all remedies available to them should there be any incorrect or inaccurate statements in relation to BFRs that adversely affect our clients' businesses.'

In 2003, an EU directive banning two types of BDE (penta and octa) was approved, but the bromine industry successfully prevented an EU ban on the third type, deca.

Transatlantic alliances

More than just a corporate lobby group, the Transatlantic Business Dialogue (TABD) is a unique hybrid structure where corporate lobbying effectively merges with government policy preparation. Since 1995, some of the largest EU- and US-based corporations have worked closely with the EC and the US government through the TABD to remove 'obstacles to transatlantic trade' and to boost EU-US powers within the World Trade Organisation (WTO). The CEOs of large companies that are active on both sides of the Atlantic play a key role in raising the prestige, access and impact of the TABD.

After several early successes, the TABD's focus increasingly shifted towards identifying proposed EU and US legislation that could cause trade conflicts or otherwise harm corporate earnings. The TABD demanded (and got) an 'early warning system' that alerts business to such new legislative proposals. In many cases the TABD demanded weakening or withdrawal of such proposals, including:

- the Austrian, Danish, and Swiss bans on HFC gases that contribute to global warming;
- EU rules for animal testing for cosmetics; and
- the EU's new chemicals policy overhaul (REACH).

The TABD ran into a crisis a few years ago when CEOs of major corporations became impatient with the decreasing 'implementation rate' of TABD demands as, for instance, EU biotech legislation became increasingly politicised due to citizens' protests. Ironically, the arrival of the Bush administration in the White House dealt another blow to the TABD. Bush's instinctive rejection of anything developed by the Clinton administration further undermined the TABD's momentum. Only in the 2003 did the Bush administration discover that the TABD is entirely in line with its pro-industry leanings. After a long period without effective leadership, the TABD was relaunched during a side-meeting to the World Economic Forum in January 2004. The EC took a very active role in this relaunch, handpicking the new leadership team and sending out invitations for a preparatory meeting in Washington DC in June 2003.

In defence of its sweeping support for the TABD,

the Commission points to parallel transatlantic dialogues for consumers, environmentalists and trade unionists. But these other dialogues were never granted levels of access and influence comparable to the TABD, and the environment and labour dialogues ceased to exist years ago. Only the Transatlantic Consumer Dialogue (TACD) is going strong, trying to defend progressive biotech and chemicals regulations from being undermined by EU-US convergence efforts.

The differences between the TABD and the TACD were exposed at the last EU-US summit, in June 2004: while a heavyweight TABD delegation was invited to present its demands, such as a weakening of the EU's chemical safety review (REACH), to the assembled EU and US leaders, the TACD was refused a chance to address the summit.

Lobbying: good or bad?

Some apologists maintain that lobbying contributes to good democratic process by providing information 'from the ground' to decision-makers. They argue that lobbying is a sort of free competition between policy proposals, and in general the best proposals will win. To some extent they are right, but the problem is that lobbying doesn't happen on a level playing field. Furthermore, the increasingly dominant role of lobbyists further alienates European citizens from the decision-making process in Brussels and undermines the legitimacy of the EU institutions.

Fortunately, despite their numerical and financial preponderance, corporate lobbies are not in control of the EU political processes. Effective and professional counter-campaigns by citizens' organisations often prevent corporate lobby campaigns from a victory. But too frequently, corporate campaigns do succeed in postponing, weakening or even completely blocking progress in EU social, environmental and consumer protections.

EU rules on lobbying are absurdly weak and totally insufficient to address the problematic aspects of lobbying at the EU level. Without a radical improvement of the registration and reporting obligations for lobbyists at the European institutions, there can be no effective democratic scrutiny of corporate influence over EU policy-making.

Europe should learn from the lobbying disclosure legislation in place in the US and Canada, and oblige firms and organisations targeting the EU institutions (with a lobbying budget over a certain threshold) to submit regular reports. At the very minimum, corporations, PR firms and lobby groups (with a lobbying budget over a to-be-defined minimum amount) should be obliged to submit comprehensive reports on the issues they are lobbying on, for whom, and with what budget. These reports should be fully accessible to the public in an online searchable database. While this would be far from sufficient to curb

excessive corporate power, such transparency would enable parliamentarians to know who is lobbying them, help the media to increase their scrutiny of corporate lobbying campaigns, and provide civil society with a potent tool for counter-campaigning.

The potential of such an EU lobbying register can be best illustrated by an example from the existing US register, which is freely accessible on the internet. Browsing through the record for Halliburton, one learns that from 1 January to 30 June 2004, the company spent some \$US250,000 on lobbying activities. Issues that Halliburton lobbied for in this period included the Fairness in Asbestos Injury Resolution Act, the inclusion of energy services in the ongoing WTO services negotiations, and 'contingency contracting related to military operations'. For each of these issues, further details are provided, like the names of Halliburton's lobbyists who handled this issue and the US institutions that were lobbied.

Campaign for EU rules

In October 2004, Corporate Europe Observatory, together with a broad coalition of civil society groups from all over Europe sent an open letter to incoming EC President José Manuel Barroso entitled 'European Commission Must Act to Curb Excessive Corporate Lobbying Power'. The letter asks the President to break with the tradition of secretive corporate influence over EU trade policy while actively supporting the introduction of EU legislation on transparency and ethics for lobbyists at the EU institutions.

Professional lobbyists were quick to react. Only one day after the release of the letter, the Society of European Affairs Professionals (SEAP) issued a statement arguing that its own voluntary Code of Conduct for Lobbyists is sufficient and that there is no need for EU legislation on lobbying transparency and ethics.

But as anyone can see, the SEAP Code of Conduct for European Public Affairs Professionals (opposite) is very limited and does not provide any significant external transparency. In fact, SEAP was created in 1997 with the precise aim of avoiding binding regulation of lobbying at the EU institutions, an issue that was at that time debated in the European Parliament.

Long-time Brussels lobbyist Mr. Christian D. de Fouloy, co-founder of the EUlobby.net website reacted in a similar vein to SEAP. He argued: '*We don't need EU legislation to achieve [transparency]. We don't need a cumbersome bureaucracy to achieve [transparency]. We hold the view that a statutory Register of lobbyists would in all likelihood fail to achieve its purpose.*' Instead he proposed the voluntary and privately-run registration system at the EUlobby web portal as '*a practical step forward toward increased transparency, openness and accountability.*'

Mr. de Fouloy seems to have radically changed his mind on this issue. In June 2002 he wrote to the

The articles of the SEAP Code of Conduct for European Affairs professionals

In their dealings with the EU institutions, European affairs professionals shall:

Article 1 – General Principles

1. Act with honesty and integrity at all times, conducting their business in a fair and professional manner. They shall treat all others – including colleagues and competitors, as well as staff, officials or members of the EU institutions – with respect and civility at all times.
2. European affairs professionals shall not exert improper influence on staff, officials or members of the EU institutions.

Article 2 – Transparency and Openness

1. maintain the highest standards of professionalism in conducting their work with the EU institutions. When dealing with the institutions they shall be open and transparent in declaring their name, organisation or company, and the interest they represent (subject always to the requirements of commercial confidentiality);
2. neither intentionally misrepresent their status nor the nature of their inquiries to the EU institutions nor create any false impression in relation thereto;
3. take all reasonable steps to ensure the truth and accuracy of all statements made or information provided by them to the EU institutions;
4. not disseminate false or misleading information

either knowingly or recklessly, and exercise proper care to avoid doing so inadvertently. They shall not obtain any information from the EU institutions by illicit or dishonest means.

Article 3 – Confidentiality

1. honour confidential information and embargoes and always abide by the rules and conventions for the obtaining, distribution and release of all EU documentation;
2. not sell for profit to third parties copies of documents obtained from the EU institutions.

Article 4 – Conflicts of interest

1. avoid any professional conflicts of interest. Should a conflict of interest arise, the SEAP member must take swift action in order to resolve it.

Article 5 – Employment of EU personnel

1. when employing former staff, officials or members of the EU institutions, take all the necessary measures to comply with the rules and regulations laid down by the EU institutions in that respect, in particular with regard to confidentiality.

Article 6 – Financial inducements

1. not offer to give, either directly or indirectly, any financial inducement to any official, member of staff or members of the EU institutions, except for normal business hospitality.

European Convention preparing a Draft EU Constitution, saying: *'Well, let's face it, self-regulation has not worked and is not working and the Commission clearly needs to adopt measures which will require a radical change of policy.'*

As anyone who visits the EUlobby website can see, this commercial initiative will certainly not do the job. A very limited number of lobbyists, companies and organisations have registered, and the register only provides very basic contact information in some cases complemented by texts like 'Senior consultant with first hand outstanding experience in high level lobbying. Specialised in individual company services.' This is more an Brussels lobbying *Yellow Pages* than a useful tool to improve the EU democratic process.

Only obligatory transparency through a public register would enable citizens to better monitor who is trying to influence whom in Brussels. This would increase the likelihood of citizens actively engaging to counter the current dominance of corporate players.

On 17 November 2004, the EC officially responded to the open letter. The director of the EC's department for 'relations with civil society', Jens Nymand-Christensen, simply defended the status quo and ignored the open letter's proposals for improved transparency, making some general remarks that the Commission 'works in an open

manner' and 'seeks to ensure that relevant parties are heard'. According to this first reaction from the EC, the voluntary codes developed by the interest groups of Brussels-based professional lobbyists suffice to 'maintain good practices, while at the same time guaranteeing openness'.

This very disappointing first reaction from the EC shows that far more political pressure is needed to achieve change. Fortunately, a range of international media have covered the open letter. In 2005, this debate has to be further intensified and taken to the European Parliament.

As a next step in the campaign, Corporate Europe Observatory will forward the open letter to Commissioner Margot Wallstrom (responsible for Institutional Reform). During her hearing in the European Parliament, Mrs. Wallstrom promised to improve transparency and stated that 'true participatory democracy' is her goal. The letter will also be forwarded to Commissioner Siim Kallas, who is responsible for Administrative Affairs, Audit and Anti-Fraud.

As an additional tool to raise awareness about the problematic aspects of lobbying at the EU institutions, Corporate Europe Observatory organises monthly 'guided tours' through the EU quarter in Brussels. These guided tours will be complemented by a virtual tour on the internet. For more information, see www.corporateeurope.org/lobbycracy.html.