



Amendments for free

Corporate Europe Observatory
May 2011

Three MEPs were recently caught red-handed after tabling amendments to EU-legislation in return for money. This was a major scandal. But Corporate Europe Observatory has found that it is still standard practice in the Parliament for lobbyists to draft amendments – as this investigation into the Parliament's work on financial reform reveals.

The European Parliament is currently gearing up for an important vote on financial market regulation on 24 May. As is the army of financial sector lobbyists which has previously proved so effective in rigging votes to serve the interests of the finance industry. And once again lobbyists have succeeded in persuading MEPs to table amendments reflecting the financial industry's interests.

Following the cash for amendments scandal earlier this year, some may have believed that a scandal of that magnitude would discourage MEPs from handing in amendments written by lobbyists. But CEO's enquiry into the upcoming vote on financial regulation shows this is clearly not the case.

The stakes

MEPs are currently considering regulation on derivatives – the speculative instruments that were at least partly to be blamed for the financial crisis in 2008. And since derivatives trading actually makes up most of financial markets worldwide, it's about big money.

Fresh regulation on derivatives is part of a broader EU effort to reform financial markets in the aftermath of the financial crisis. The collapse of insurance giant AIG was caused by trading in derivatives, so some kind of reform was inevitable. To influence the way reform would take, the financial industry in Europe has been proactive, working closely with the Commission to set the agenda for reform. It has been keen to promote 'clearing' as the preferred way of 'regulating' the trade, rather than more far reaching measures, such as banning particularly toxic derivatives.

'Clearing' basically means trading via an intermediary, or a clearing house. The intermediary assumes all rights and obligations of the trade. Reforming trading in this way is supposed to increase stability and make way for more transparency. For financial corporations this kind of reform feels safe: they often own major stakes in the clearing houses that are to be key in the new system.

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Thirty eight identical amendments

From the beginning of the debate on regulation of derivatives trading in 2008, financial corporations have worked closely with the Commission to co-design the basic traits of the legislation. Former Single Market Commissioner Charlie McCreevy established expert groups to help guide the Commission in its work – expert groups whose members were all from the financial industry. The Commissioner then followed the advice of the financial industry and set in motion a drafting process that would result in proposals as recommended by industry, including the proposal which is being voted on now¹.

But, although their fingerprints are all over the text, the financial industry still wants to make sure this new regulation doesn't evolve and become an obstacle to their activities. In fact, the financial industry would prefer for many of its activities to be exempt from regulation. And one way to do that is to work closely with MEPs and get them to table specific industry amendments².

One way of spotting where industry has been at work is to identify where different MEPs have made proposals for amendments with the exact same wording, or with parts of the texts phrased in exactly the same way. Normally, if two or more MEPs were in complete agreement on a text, they would simply table it collectively; if they do it separately it's likely that the amendment was written by some outside third party.

Going through the amendments for the derivatives report, CEO found 38 amendments had been tabled by more than one MEP – in some cases by two or three MEPs. Given the total of amendments – 977 – the number may not seem impressive, but some amendments from outside parties may also have been tabled by a single MEP, and these will not be identified by this simple method.³

A complete investigation would require going through all amendments and checking them against the language and position of all the lobby organisations in the field⁴. From CEO's evidence, the 38 amendments that were most likely written by some third-party indicate the involvement of lobbyists, the full extent of which is unknown.

Fifteen MEPs, a variety of customers

Fifteen MEPs, 12 of whom are among the 48 full members of the ECON Committee, tabled amendments that were identical. CEO contacted these MEPs to ask whether a helpful outside party had drafted these amendments, or whether there was some other explanation. CEO received eight written replies, some of which, including the replies from Peter Skinner (S&D, UK) and Sylvie Goulard (ALDE, France) were uninformative about the source of their proposals. Others were straight to the point.

Markus Ferber (EPP, Germany), who has tabled amendments proposing a "carve-out" of insurance contracts, replied briefly that he "held a round table event with banks and insurance companies" from his constituency. The proposal is similar to one tabled by Sari Essayah MEP (EPP, Finland)⁵. Her assistant replied that help was most probably received from Assured

Guaranty, a major Bermuda-based holding company involved in a wide range of activities on financial markets.

The assistant also said that another proposal for a 'carve-out' on transactions between parent companies and subsidiaries was authored by leading Finnish financial services group OP-Pohjola⁶. This particular amendment was tabled also by Herbert Dorfmann (EPP, Italy) who did not respond to CEO's enquiry.

Marianne Thyssen (EPP, Belgium) has her name on an amendment that will relieve clearing houses of an obligation to use central bank money and not loans on the private market. She disclosed the source, replying: "I have tabled this amendment after a meeting with a Belgian stakeholder: Euroclear Belgium". Euroclear is a clearing house, founded by US investment bank JP Morgan⁷.

Who tabled the amendment?

Among the MEPs who have tabled amendments identical to those of another MEP is Anni Podimata from Greece (S&D group). When asked by CEO about the origins of a proposal she had tabled, CEO received the following puzzling response, most likely from an assistant, in Greek:

"What are we going to do? We have to tell her but we have to see how... Because it is 1,000% OK: the content of the amendment is in line with our position in general and with the one of our political group, so there is no problem. But I wonder who is this guy that sends such an email to an MEP. What is this Corporate Europe organization, do we know?"

Bowles and Swinburne

Of the 15 MEPs targeted by the investigation, two stand out. Sharon Bowles MEP (ALDE, UK) and Kay Swinburne MEP (ECR, UK) tabled several amendments that were also tabled by other MEPs and which were probably the result of industry lobbying⁸. Their responses to CEO's enquiries differ widely.

Sharon Bowles' assistant replied at length about how Bowles wanted to "achieve a sensible liberal direction to the directive", but claims that she and her office have lost track of the origins of her amendments. "All papers and suggested amendments are carefully looked at by Ms Bowles," her assistant said, "often comparing different ones pasted in a compilation so she does not actually know the source when looking at them."

Luckily, the office of Tory MEP Kay Swinburne was happier to lay the cards on the table. From its response, it's clear that Swinburne has worked with the UK government's Financial Services Authority (FSA) on many amendments, including five amendments that were also tabled by Bowles. Though the FSA has a laissez-fair approach to financial regulation, compared to similar

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institutions, they seem to have warned Swinburne, according to the letter from Swinburne's office, that a specific idea of hers “would be a large systemic risk” if implemented, and that it needed to be toned down⁹.

The FSA has worked with Swinburne - and apparently with Bowles on other matters, including an attempt to cut down the scope of the regulation to ‘classes of derivatives’ that pose a systemic risk, leaving trades in derivatives that may only cause other kinds of risk, such as risk to food security, with no obligation to central clearing.

Swinburne's political group is the only group in the European Parliament to disclose which lobbyists its MEPs meet with. From their latest report that covers the second half of 2010, it can be seen that Swinburne met with more than 20 lobbyists from the financial sector, including the association of derivatives dealers, the ISDA, AIMA (which represents hedge funds), and the British Banking Association¹⁰.

This hospitality appears to have a bearing on the drafting of amendments. Swinburne's office points to four amendments where they “worked with legal experts from the Investment Management Association (IMA)” (a British hedge fund lobby organisation) on the process¹¹. One of the proposals listed was also tabled by Bowles¹². Swinburne's office also said it has “adapted language from AFME” (Association for Financial Markets in Europe, a lobby organisation dominated by the biggest banks in Europe and the US) in their work on another amendment¹³.

Rollback

Maybe all this shouldn't be a surprise. There's evidence – previously highlighted by Corporate Europe Observatory (CEO) - that this phenomenon is endemic to the procedures in the European Parliament, and such procedures cannot be transformed overnight.

Recent investigations to uncover the authors of amendments have been illuminating. CEO found that some 900 out of 1,600 amendments to the recently adopted rules on hedge funds and private equity funds originated from financial lobbyists¹⁴. Another study estimated that 80 per cent of all amendments tabled in a committee in the European Parliament come from lobbyists in one way or the other¹⁵.

But the scale of the problem does not make it acceptable.

CEO's modest enquiry does not give a complete overview of all the amendments written wholly or partly by financial lobbyists on the derivatives dossier, but the responses clearly show that it's standard practice. That three MEPs were caught taking money to table amendments, while serious in its own right, is the tip of the iceberg in terms of the impact on EU legislation.

Having MEPs table amendments provides the financial sector with a tool to avert strong regulation. In this lies a danger of regulatory capture – and of future financial debacles.

Some MEPs will probably always prefer to work closely with big banks and investment funds. But it might be time for the European Parliament to discuss whether submitting amendments written by

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outside interests, on the current scale, is a healthy way of doing politics. If MEPs feel they lack the expertise or time to draft amendments themselves, then perhaps there is a need for a larger Parliamentary research department with independent experts which MEPs could use as well as more staff and advisors working for each MEP?

Transparency about relations with lobbyists is a prerequisite for understanding the way legislation is handled in the European Parliament, and possibly even for understanding the legislation itself. The name of the sender usually carries a message.

It would be an important step forward if MEPs were to reveal the names of the lobbyists they meet.

Appendix: Overview of MEPs covered by enquiry

Name	Response (y=yes)	Informative (n=no) (y) =partly informative
Sharon Bowles (ALDE, UK)	y	n
Kay Swinburne (ECR, UK)	y	y
Sari Essayah (EPP, Finland)	y	y
Herbert Dorfmann (EPP, Italy)	n	
Markus Ferber (EPP, Germany)	y	(y)
Leonardo Domenici (S&D, Italy)	n	
Alfredo Pallone (EPP, Italy)	n	
Marianne Thyssen (EPP, Belgium)	y	y
Anni Podimata (S&D, Greece)	(n)	
Peter Skinner (S&D, UK)	y	n
Diogo Feio (EPP, Portugal)	n	
Burkhard Balz (EPP, Germany)	n	
Jean-Paul Gauzès (EPP, France)	n	
Sylvie Goulard (ALDE, France)	y	n
Slawomir Witold-Nitras (EPP, Poland)	n	

References:

- ¹ See Corporate Europe Observatory; "Financial Warmongers set EU agenda", April 2010.
<http://www.corporateeurope.org/lobbycracy/content/2010/04/financial-warmongers-set-eu-agenda>
- ² This happened recently in connection with another votes on derivatives, see Corporate Europe Observatory; "Will MEPs vote for amendments written by the derivatives lobby?", March 2011, <http://blog.brusselssunshine.eu/2011/03/will-meps-vote-for-amendments-written.html>.
- ³ All amendments can be found in this list over the documents for a meeting in the ECON committee of the European Parliament (point 9 on the agenda):
http://www.europarl.europa.eu/meetdocs/2009_2014/organes/econ/econ_20110419_1500.htm
- ⁴ This was done by Mary Craig in "Lobbying at the European Parliament –Two legislative cases: F-gases and REACH2, Commissioned by the Greens/EFA in the European Parliament, April 2008.
- ⁵ Amendments no. 240 and 241.
- ⁶ Amendments no. 308 and 315.
- ⁷ Amendment no. 885.
- ⁸ Six with identical wording, four with almost identical wording.
- ⁹ Amendment no. 828.
- ¹⁰ The full list of companies and lobby organisations that Kay Swinburne met with June-December 2010 on this piece of legislation: CBI, Insight Investments, Morgan Stanley, Rolls Royce, British Chamber of Commerce in Belgium, Depository Trust and Clearing Corporation (DTCC), European Property and Real Estate Association, British Banking Association, Scottish and Southern Energy, Freshfields/London Stock Exchange, Prudential, SWIFT, Fleishman Hillard/AFME, Credit Agricole, GE Capital, EFAMA, European Association of Cooperative Banks, Fleishman Hillard/Blackrock, Investment Managers Association, Hume Brophy/LCH Clearnet, Fleishman Hillard/ICAP, Brunswick Group/Wholesale Market Broker Association, Dutch Pension Funds Association, German Association of Banks, APCO Worldwide/DTCC, Hume Brophy/Alternative Investment Managers Association. Source:
<http://www.conservativeeurope.com/media/ResourceCategories/64/Consolidated%20Lobbying%20contact%20lists%201st%20July%20-%2031st%20December.pdf>
- ¹¹ Amendments no. 757, 765, 802 and 822.
- ¹² Amendment no. 822.
- ¹³ Amendment no. 836.
- ¹⁴ See Corporate Europe Observatory; "Regulating Investment Funds - The Power of Filthy Lucre", November 2010, page 10. <http://www.corporateeurope.org/lobbycracy/content/2010/11/regulating-investment-funds>
- ¹⁵ Maria Kluger Rasmussen; "Lobbying the European Parliament – A necessary evil", CEPS Policy Brief no. 242, May 2011, page 2.