

# The Lobbying of the EU

## How to achieve greater transparency

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## Summary

Many special interests are engaged in lobbying the European Union, raising questions over levels of transparency among leading EU figures and within EU institutions and whether the EU has done enough to ensure greater transparency in the lobbying process. This report examines the action taken by the EU to address this issue and assesses some of the options to make the EU more transparent. The contribution of this report is twofold by first looking closely at Scandinavia, a highly regarded region in terms of transparency, for ideas to improve the EU's reputation. Secondly, the report scrutinises some of the recommendations that have been advocated by reformers to achieve this aim.

### Key points

- Lobbying has grown significantly in Brussels since the late 1980s as the EU has assumed greater autonomy over different areas of policy.<sup>1</sup> Today a diverse range of special interests lobby the EU, making the Belgian capital one of the largest centres of lobbying in the world.
- Although lobbying is broadly understood to mean contacting and meeting legislators and other decision-makers in an effort to influence policy decisions, lobbying can also refer to supplying information and expertise to those in power.
- The EU has introduced a voluntary Transparency Register and commissioned reports aimed at monitoring member states' efforts to reduce corruption and improve transparency. However, the former has been criticised by reformers for being non-mandatory and so not going far enough to improve levels of transparency. Further suggestions for reform include requiring outgoing EU officials to serve longer cooling off periods before taking lobbying-related employment, and making correspondence between lobbyists and officials easily accessible online.
- While recognising that no single reform is perfect, this report concludes by advocating the introduction of a mandatory register for lobbyists. An approach to public disclosure of government operations as seen in the Scandinavian countries could also provide a blueprint for EU reform.

- The monitoring of the lobbying process and oversight of the register should be undertaken by an independent agency separate from MEPs or senior EU bureaucrats.
- However if a mandatory register was to be introduced then the legislation would have to include clear guidelines outlining who would be required to register and who qualifies as a 'lobbyist'. Similarly with regards to public disclosure the EU would have to establish what can and cannot be made available in the public domain.

## 1: What is lobbying and can it be distinguished from corruption?

In Brussels today there is a diverse collection of sectors and industries including tobacco, pharmaceutical and technology alongside multiple associations representing doctors, accountants, lawyers, journalists and teachers, all working to ensure that EU institutions pass legislation in their interests and to prevent them from approving laws counter to their interests.<sup>2</sup> It is unclear how many lobbyists are currently employed in the Belgian capital; however, estimates have placed the figure at between 15,000 and 30,000.<sup>3</sup> Brussels is reported to have the second highest concentration of lobbyists in the world after Washington DC.<sup>4</sup>

Lobbying is often defined as the methods used by an individual, group or collection of groups in trying to influence decision makers, most notably elected officials and senior civil servants, into supporting particular causes.<sup>5</sup> The UK Parliament website, for instance, states that lobbying, in the context of the British Parliament, 'is the practice of individuals and organisations trying to influence the opinions of MPs and Lords' and that methods as such can range from sending letters, making presentations, providing briefing material to Members and organised rallies'.<sup>6</sup> A broader definition is provided by the American Association of Government Relations Professionals (AGRP) which observes that lobbying goes beyond communicating with officials and includes analysing and researching legislative proposals in addition to working with other groups and educating government officials, employees and corporate officers about the 'implications of various changes'.<sup>7</sup> Indeed, some observers have argued that lobbying enhances the legislative process as outside groups can provide legislators with important information and expertise, particularly on topics of a more technical and complex nature, which can in turn improve the quality of legislation.<sup>8</sup>

The scale of lobbying at the European level, particularly by corporate interest groups, has led to allegations that lobbying diminishes the transparency of European Union governance and opens the door to the possibility that legislation is being written contrary to, or ambivalent towards, the public interest. Although none of the following bodies define corruption, the OECD, Council of Europe and the United Nations have identified a number of 'corrupt' offences.<sup>9</sup> These include bribing officials and trading in influence, defined by the United Nations as "the solicitation or acceptance by a public official...of an undue advantage for himself or herself...with a view to obtaining from an administration or public authority of the

State Party an undue advantage.”<sup>10</sup> The UN Convention also lists embezzlement, misappropriation of property and the obstruction of justice as practices which constitute corruption.<sup>11</sup>

Corruption is considered an important issue in the European Union, both by officials and ordinary citizens. The EU estimates that the cost of corruption to the European economy amounts to 120 billion euros per year, equivalent to one percent of the EU's GDP. Apart from acting as a deterrent to investors and lowering tax inflow, corruption impacts on business activities by hindering the workings of the internal market as well as acting as a significant cost to taxpayers. Organised crime groups use corruption to commit more serious offences such as the trafficking of drugs and people.<sup>12</sup> The Commission notes that the economic costs of corruption are difficult to calculate and the quoted figure is based on estimates made by a number of institutions and bodies such as the International Chamber of Commerce, Transparency International and the UN Global Compact.<sup>13</sup> Apart from the negative economic impact and alleged cost of corruption, as estimated by the EU, a more significant effect is the undermining of European democracy and legitimacy. In polls conducted by Eurobarometer, the Commission's polling agency, four out of ten businesses questioned cited corruption as an obstacle to doing business in Europe.<sup>14</sup> In 2013 a majority of Europeans claimed that corruption is widespread within political parties and among politicians at national, regional and local levels of government. Large minorities of citizens also claimed that corruption is widespread among public officials and institutions.<sup>15</sup> Eurobarometer surveys conducted over the last decade have revealed that this sentiment has remained constant at a high level over this period.<sup>16</sup>

Whilst lobbying in itself is a traditional method used for influencing political decisions on behalf of the corporate sector and non-governmental organisations (NGOs), the extent to which corruption plays a part is open to debate. It can be argued that all forms of bribery, offers of special favours, procurement without utilisation of a rigorous tendering process could all constitute corruption although the definition may vary from country to country.

Many of the Brussels-based interest groups are not signatories of the non-mandatory Transparency Register, an initiative that was launched in 2011 as one of several reforms designed to make the lobbying process more transparent. The Corporate Europe Observatory (CEO) states that one fifth of private sector groups

lobbying the EU Trade Department have a direct effect on the passage of the *Transatlantic Trade and Investment Partnership* (TTIP), which is a proposed free trade agreement between the EU and the United States, and these groups are absent from the Register. There are uncontested reports, through the media, that meetings between lobbyists and senior officials concerning the transatlantic agreement have taken place behind closed doors without records of proceedings.<sup>17</sup> Reforming the way interest groups lobby the European institutions presents several challenges. Principally, the European Union is a vast, diverse bloc of 28 countries, which makes legislative changes more difficult to implement and enforce. Levels of transparency vary between member states. Transparency International ranks countries depending on how corrupt their public sector is deemed to be. This is determined by a Corruption Perceptions Index (CPI) which draws upon polling data 'collected by a variety of reputable institutions'.<sup>18</sup> Whereas countries in Scandinavia and Western Europe score highly, countries in the Balkans and Eastern Europe lag behind.<sup>19</sup>

## 2: What steps has the EU taken so far in improving transparency?

The European Union has introduced a number of measures with the aim of reforming EU lobbying laws. In July 2003, the EU moved to combat private sector corruption across member states by criminalising active and passive bribery.<sup>20</sup> The former refers to the party who offers or pays the bribe, whereas passive bribery refers to the recipient.<sup>21</sup> An implementation report from 2007 found that member states had done little to apply it.<sup>22</sup> This was followed in 2008 by the EU's accession to the United Nations Convention against Corruption (UNCAC).<sup>23</sup> In 1999 the European Anti-Fraud Office, known as OLAF, a body which focuses on fraud and corruption affecting the EU budget, was established. However it has been questioned whether OLAF's budget (23.5m in 2011) is large enough for it to carry out its job effectively.<sup>24</sup> Dr Janina Berg of Transparency International has argued that its powers need to be extended further because currently OLAF is only empowered to carry out administrative investigations and is therefore ill-equipped to properly investigate other cases of fraud.<sup>25</sup> Two prominent changes that have been enacted by the EU in recent years have been the introduction of the Transparency Register and the Anti-Corruption Report in 2011. The purpose of the register is to provide a record of 'activities carried out with the objective of directly

or indirectly influencing the formation or implementation of policy and the decision-making processes of the EU institutions'.<sup>26</sup> In June 2013 a total of 5,678 organisations representing over 15,000 individuals were registered.<sup>27</sup> However critics, despite welcoming its introduction, have claimed it to be insufficient in its current form as organisations are not compelled to sign up to it. Many Brussels-based interest groups, as mentioned above, are not signatories, however the EU intends to introduce a mandatory register within the next few years. This is a proposal favoured by Commission President Jean-Claude Juncker and the European Parliament has backed the measure by a large majority.<sup>28</sup>

The second mechanism, the EU's Anti-Corruption Report, is designed to provide periodical assessments of individual member states, by presenting a reflection of their 'achievements, vulnerabilities and commitments'. It is hoped that the reports will serve as an 'impetus for member states to tackle corruptions effectively, notably by implementing and enforcing internationally agreed anti-corruption standards'.<sup>29</sup> The Commission states that individual member states should take the lead on this issue as it believes that there is no single solution to reducing corruption within their own borders will trickle up to EU institutions because of a lack of political will to collectively address this issue at EU level. Furthermore, the possibility of creating a general atmosphere of good governance remains a doubtful proposition due to the existence of wide disparities in the levels of transparency between European countries and the lack of EU political will to present a coordinated response in the form of mandatory powers and sanctions.

The first report, published in early 2014, states that although member states had made progress in anti-corruption policies, more action needs to be taken by national governments.<sup>31</sup> As this report was produced just three years after the Anti-Corruption Report initiative was introduced, it is too early to make a proper and fair assessment of the effectiveness of these reports. Given time we will be able to better judge whether they have served as an impetus for member states to take greater steps in improving transparency.

The third mechanism is the imposition of cooling-off periods on outgoing officials to curb the phenomenon known as 'revolving door'. The revolving door is a term used to describe the movement of individuals such as Commissioners, MEPs and diplomats between government and lobbying jobs. After moving from government and becoming a lobbyist, there can be temptation for gamekeepers become the

poachers because the contacts and insider knowledge of the legislative process known by former government employees is valuable to new employers. A 2012 journal article about American private lobbying firms found that between 1998 and 2008, 56 percent of revenue generated by private lobbying firms can be attributed to individuals who had previously worked at some level within the federal government. The same article noted that among a list of influential lobbyists compiled by the *Washingtonian* magazine in 2007, over half had some experience of government employment.<sup>32</sup>

In an effort to curb the revolving door phenomenon, the EU has introduced cooling off periods for outgoing Commissioners and senior civil servants. The rules require individuals vacating their posts to wait 18 months or 12 months respectively before taking on employment in a lobbying capacity.<sup>33</sup> As discussed later in the report, some campaigners believe that the current cooling off periods are insufficient and ought to be extended so as to reduce the revolving door in EU institutions.

### 3: Case Studies

According to methods used by Transparency International, an organisation which monitors corruption worldwide, certain countries are considered more effective at minimising acts of corruption and ensuring higher levels of government transparency.

This section is divided into two parts: it first examines reasons why the Scandinavian countries, which Transparency International considers among the most transparent nations in the world, have maintained high standards of government transparency. It will also suggest how the European Union might adopt some of the practices that have made Scandinavia and Finland, according to the methodology employed by Transparency International, less corrupt and more transparent than other societies.

No one country is, of course, wholly transparent and corruption-free. It should also be noted that trying to apply certain practices and models used in individual countries to a large, continental bloc of 28 diverse countries with a total population of 500 million might not be practical. A common characteristic among higher

performing countries in the index is that they are generally smaller, established democracies.

The second part of this section focuses on two specific special interests lobbying the EU: the tobacco industry and the agribusiness sector, paying attention to the tactics and lobbying practices used by these special interests. These include attempts to build close relationships with MEPs and senior European decision makers by making visits to their offices and through targeted email and social media campaigns. Tobacco lobbyists offer invitations to drinks receptions, dinners, and other social events while agribusiness lobbyists produce research to refute claims made by scientists who warn of the dangers of various agribusiness products or practices, such as the use of particular pesticides.<sup>34</sup> Other tactics used by agribusiness lobbyists include 'name dropping', mentioning companies' connections to powerful, political individuals and blaming farmers for not keeping to the guidelines when using chemicals on their farms.<sup>35</sup>

### The 'Scandinavian Model' – what can the EU learn from it?

A Transparency International blog post from December 2011 posits a similar question to the one in the title of this sub-section – 'What makes New Zealand, Denmark, Finland, Sweden and others "cleaner" than most countries?' The blog identifies some of the characteristics shared by the nations judged to be more transparent by Transparency International: high rates of GDP per capita, low inequality rates and high levels of literacy. These nations have a tradition of prioritising human rights issues such as gender equality and access to information.<sup>36</sup>

In addition, Transparency International observes that Scandinavian countries perform well when it comes to ensuring 'government openness and effectiveness, pointing to Scandinavia's history of civil action, social trust and disclosure of government information. (Sweden, for example, has a principle of public access to official documents dating back to 1766.)<sup>37</sup>

Scandinavia sets standards of government transparency which could provide a guide for other countries. In Denmark civil servants are prohibited from having an input in decisions where they are deemed to have a private interest in some form of another, be it financial or political. Groups who receive material from a government ministry are made public. The Law on Transparency and Public Access to Public Administration of 1985 ensures access to public records, although

many types of documents remain exempt. These exemptions include documents and minutes of Council of State meetings and documents relating to national security.<sup>38</sup> Although Denmark's decision to continue to restrict access to correspondence between authorities and outside experts during the development of legislation may not make the Danish model ideal, the Danish government's overall commitment to opening up its political system could serve as a blueprint for Brussels reform.

Scandinavia's success in delivering more transparent governments can be attributed to its social-democratic tradition. According to OECD figures Scandinavian countries have some of the highest tax burdens in the world, have high levels of public expenditure and have pursued more redistributive family policies by spending more on childcare, early years education and on family services than the Anglo-Saxon and Mediterranean countries.<sup>39</sup> 'The Nordic countries,' write Andersen et al, 'are indeed well-known for their big welfare states and high tax rates. Social insurance and protection systems have a broad coverage and are highly inclusive or "universal."<sup>40</sup> Due to the availability and accessibility of services and higher income levels, citizens of Scandinavian countries may be less likely to take bribes than citizens of other countries.

More transparent nations are also judged to have higher levels of economic and business freedoms. Scandinavian countries are ranked in the upper tier of indices compiled by the Heritage Foundation and the World Bank, which rank countries depending on certain criteria relating to economic and business freedom. These include rule of law, limited government, regulatory efficiency, ease of getting credit and registering property.<sup>41</sup>

These points would make it more difficult to apply the 'Scandinavian Model' to the European Union due to the variation and differences between its member states. Furthermore, the EU institutions, being relatively recent constructs, do not have an established tradition of laws and precedents that might be found in individual member states. Scandinavia's history of social democracy and government intervention might go some way in explaining its performance. However a number of other countries that score highly in Transparency International's rankings, such as Singapore, New Zealand and Switzerland, have lower tax burdens and rates of public expenditure relative to GDP compared to the Scandinavian countries.<sup>42</sup> All these countries have high rates of GDP per capita, another characteristic shared by more transparent nations.

Instead of trying to replicate the Scandinavian system, there are lessons from Sweden's approach to public disclosure which the European Union could consider. Budget information is available through Sweden's Open Budget Index, giving citizens access to the government's management of public funds. Similarly, Denmark's Transparency and Public Access to Public Administration law grants public access to certain government documents. In addition, a legal framework exists which criminalises corruption-related abuses.<sup>43</sup> Although no system can guarantee complete government transparency, the Scandinavian countries offer several options as to how the European Union might look to make governance more transparent.

### Tobacco and agriculture – a look at two industries

The tobacco and agricultural industries are two of the largest and best resourced interest groups involved in lobbying the European Union. Both, and in particular the former, have attracted controversy. References will be made in this section to the agricultural 'industry' and the agricultural 'lobby'. These are both broad terms and in this context, used as umbrella terms to describe a collection of different interests which include farmers, seed producers, livestock breeders and manufacturers of various agrichemical products such as pesticides and insecticides.

The amount of resources that the tobacco and agricultural industries channel into lobbying EU decision-makers place them among the most active special interests engaged in lobbying Brussels. In October 2014, EU news website *Euractiv* reported that tobacco company Philip Morris International spent €5.25m on lobbying the EU in 2013, more than any other company during that year, according to data collected by LobbyFacts.<sup>44</sup>

Commercial agriculture has been an integral part of European life since the Great Depression of the 1930s and grew in the late 1940s as governments sought to increase production following the Second World War. Agriculture constitutes the largest policy area of the EU in budgetary terms.<sup>45</sup> The EU's Common Agricultural Policy (CAP), which mostly consists of direct payments to farmers, is the Union's most expensive scheme, consuming 40 percent of its budget.<sup>46</sup> The programme has been criticised for its cost and for perpetuating an unfair trading system. The Commission has proposed to cap the total subsidy a large farm could receive at €300,000 to prevent large payments going to wealthy landowners and agribusinesses, although this has been opposed by agricultural lobbyists.<sup>47</sup>

The Transparency Register gives an indicator of the scale of lobbying undertaken by agribusiness at the EU level. In 2012, Agribusiness lobbyists outnumbered others by four to one on the register and, being a voluntary register, it is likely that there are many more lobbyists representing various interests in this sector involved in lobbying senior Brussels officials.<sup>48</sup> The Corporate Europe Observatory (CEO) reports that food multinationals, agricultural traders and seed producers have had more contact with the Commission's Trade Department than 'lobbyists from the pharmaceutical, chemical, financial and car industries put together'.<sup>49</sup> The CEO has also reported that agribusiness and the food sector have supported and lobbied to affect the passage of the Transatlantic Trade and Investment Partnership (TTIP).<sup>50</sup> The CEO views this as a troubling development because of the perceived threat to food and environmental safety in Europe, in particular Europe's laws over genetically modified organisms (GMOs), posed by American agribusinesses who believe that these regulations hamper company profits.<sup>51</sup>

The Commission's decision to ban neonicotinoid pesticides in 2012 after research published in the *Science* journal suggested that the European bee population was being damaged by these pesticides provides an insight into the lobbying efforts of the agricultural lobby over a recent issue.<sup>52</sup> Letters sent that year from Bayer AG and Syngenta AG to Commissioners John Dalli, Dacian Cioloş and Máire Geoghegan-Quinn reveal both companies' opposition to the Commission's proposed ban. Writing to Dalli, Bayer asserted that there is 'no reliable data available' to determine that these pesticides posed a threat to the bee population.<sup>53</sup> Syngenta, in a letter addressed to Cioloş and Geoghegan-Quinn, claimed that 'independent analysis' had concluded that a ban would inflict significant damage on European agriculture and the wider economy by €17 billion over the next five years.<sup>54</sup> Different special interests including genetically modified crop manufacturers and the tobacco industry have sought to refute data used by their opponents as part of a strategy to deny that there is a problem or to further their arguments.<sup>55</sup>

The agriculture lobby cites scientific research in advancing its arguments. Critics however claim that the science referred to by the agricultural lobby is in fact 'industry-friendly science' and is used to give credibility to its arguments.<sup>56</sup> This involves, reports the CEO, funding studies to endorse these claims to 'maintain this doubt in the media and [attack] any unwanted evidence as junk science'.<sup>57</sup> In covering the debate over the neonicotinoids the BBC quoted a scientist 'from Bayer' who disagrees with the conclusions made by Whitehorn et al. In the *Science*

journal and instead blamed the varroa mite for the decline in European bees. However due to this scientist's connection to a company who lobbied against the introduction of a ban on these pesticides, we should approach their arguments with caution. According to the *Guardian* this has been a typical tactic employed by lobbyists. The newspaper has cited several other examples of supposedly independent scientists presenting misleading and spurious research in order to muddle or refute counter claims made by their opponents in connection with the BSE, or mad cow, epidemic of the early 1990s and the coalition government's proposed badger cull during the last Parliament.<sup>58</sup>

A letter sent by Syngenta to Commissioner Dalli highlights the company's strategy of building connections with world leaders. However, due to the quantities of correspondence that Commissioners receive on a regular basis, it is difficult to ascertain the nature of Dalli's relationship with Syngenta, and whether any meaningful connection was ever established. The letter claims that the company has met with leaders from the G8 and EU discussing global food security, in particular in Africa, where Syngenta commit to spending over \$500 million over the next ten years.<sup>59</sup> By making reference to this investment Syngenta might be using innuendo or implication to link their investment in Africa with their legislative preferences.

The agricultural lobby arguably occupies a more privileged position among special interest groups due to its 'irreplaceable role in society and the national and international economy'.<sup>60</sup> The salience of agriculture to consumers, retailers, farmers and others employed in the sector in addition to politicians presents the agriculture lobby with an advantage in gaining sympathy from legislators and other decision-makers.

Research carried out by transparency groups illustrates how the tobacco industry has similarly used its vast resources in lobbying the EU. A prime of example of this was the effort to block or dilute the Tobacco Product Directive (TPD) of 2009. This measure sought to revise the original TPD from 2001, by proposing further regulations on tobacco products.<sup>61</sup> These included increasing the size of health warnings on cigarette packets and a prohibition on slim cigarettes, packets of fewer than 20 and flavourings such as menthol, in an effort to prevent more people from taking up smoking.<sup>62</sup> The *Observer* reported on the efforts taken by Philip Morris International in trying to prevent these proposals from becoming European law. The company, it was reported, employed 161 consultants who claimed £1.25m in

expenses for their meetings with MEPs. By late June 2012, 233 MEPs had met with Philip Morris once, some four or five times.<sup>63</sup> The Corporate Europe Observatory asserts that Philip Morris had a 'strong focus' on addressing members in influential positions, in particular those who sat on the three committees dealing with the Directive: Environment, Public Health and Food Safety (ENVI), Internal Market and Consumer Protection (IMCO) and Legal Affairs. Eventually, the European Parliament agreed to watered down proposals.

Scholars from the University of Bath's Tobacco Control Research Group have documented, through Freedom of Information requests further efforts taken by the tobacco industry to delay or block this directive. In total, 581 documents were obtained including '28 leaked Philip Morris International papers; 17 transnational tobacco company documents from the Legacy Tobacco Documents Library (University of California); minutes, meeting reports and press releases from the European Commission, Council of Ministers, and the European Parliament; plus a variety of web content including media coverage and blogs.' In addition, the authors of the study conducted a number of semi-structured interviews with tobacco control experts and members of European Parliament.<sup>64</sup> Third parties with financial links to the tobacco industry were recruited in targeting senior EU officials in the Commission. Lobbying tactics, according to the authors, were deployed on a 'massive scale'. Two significant proposals were subsequently omitted from the Directive; plain packaging and point of sale display ban.<sup>65</sup>

The Council Directive 98/43/EC aimed to curtail all tobacco sponsorship by 2006. Initially proposed back in 1989 and adopted in 1998, the measure was annulled by the European Court of Justice in 2000 amid sustained lobbying by tobacco companies at both the national and a pan-European Union level.<sup>66</sup> Similarly during the late 1990s Brussels sought to introduce additional controls by prohibiting 'light' and 'mild' labels from cigarette packets. The directive, proposed in November 1999, and enacted in 2001 despite lobbying efforts by the tobacco companies, lowered the limits for nicotine and carbon monoxide and introduced larger health warnings on packets.<sup>67</sup>

In lobbying against these sets of measures the tobacco industry used its considerable resources in employing a range of tactics targeting important decision-makers similar to those uncovered by the University of Bath researchers. The authors of a 2002 journal article explored the challenge to Directive 98/43/EC as part of a wider review of the industry's past lobbying activities by reviewing large

collections of industry documents from 1978 and 1994 from Philip Morris, RJ Reynolds and British American Tobacco, made public under the US Master Settlements Act of 1998. These revealed endeavours to enlist the support of figures at the highest level of European politics, including the then German Chancellor Helmut Kohl, former Prime Minister Margaret Thatcher, Cabinet Minister Kenneth Clarke, and European Commissioner Martin Bangemann.<sup>68</sup> In their investigation Neuman and his colleagues discovered that Philip Morris had also pursued strategies specifically aimed at individual member states, namely Britain, Germany, Denmark and the Netherlands. Correspondence between the company and member states showed that Philip Morris was aiming to secure the support from enough member states to form a blocking minority on the Council of Ministers. If achieved this would prevent action being taken by the Council even if favoured by the majority of its members.<sup>69</sup>

In opposing a 2001 directive, the Confederation of European Community Cigarette Manufacturers (CECCM) outlined a programme to influence EU decision-making through creating a 'solid contact network' composed of 'speaking partners' in the Commission, European Parliament and Council of Ministers in addition to the European Economic and Social Committee and the Committee of the Regions.<sup>70</sup> The CECCM also sought to foster privileged relationships with MEPs and with countries holding the six month rotating presidency of the EU.<sup>71</sup> In all these examples of lobbying by the tobacco industry similar steps have been taken in trying to influence the policymaking process: aiming at the senior levels of the EU and across its institutions.

## 4: Recommendations – how could EU lobbying be reformed?

Lobbyists can play an important part in the legislative process by providing relevant expertise and information which can help identify unconsidered consequences of draft legislation. However in a democracy, governments should nonetheless work to ensure transparency.

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

suggested a list of reforms, many of which overlap. This section of the report will explore and review some of these recommendations.

The introduction of a mandatory register for all groups seeking to influence EU decisions is a reform which has attracted support from the organisations listed above. It is argued that in its current state the register is insufficient as special interests are not compelled to be signatories so it does not guarantee the desired level of transparency. ALTER-EU, a coalition of civil society groups, trade unions, academics and public affairs firms, wants to see this information made accessible via an online database.<sup>72</sup> ALTER-EU favours making further records available in what it refers to as ‘improving the code of conduct’. Commission officials would be required to record meetings between officials and lobbyists, and to maintain records of various forms of correspondence, all of which would likewise be available on an online database.<sup>73</sup>

While a mandatory register may improve levels of transparency across EU institutions, it is important that the legislation specifies exactly who must register, as those who want to avoid disclosure insist that they do not meet the registration criteria. It is not sufficient, according to government affairs lobbyist Craig Holman and law professor William Luneberg, ‘to declare that those whose “primary purpose” is to influence legislation must register’.<sup>74</sup> That leaves the judgment largely in the hands of the person whose activities should be subject to scrutiny. A lawyer, for example, may argue that his or her primary purpose is ‘client counselling, not lobbying’.<sup>75</sup> Many entries in the current register are vague, with lobbyists providing only minimal, incomplete or inaccurate details about themselves, their reasons for lobbying the EU and the amount spent on lobbying.<sup>76</sup> A mandatory register with insufficiently precise criteria and requirements will not guarantee that outsiders have a clearer grasp of who is registered than they do at present.

By extension it would be necessary to determine exactly who is a lobbyist. There is a noticeable effort by the ALTER-EU coalition and, as the name suggests, the Corporate Europe Observatory, to highlight the scale of corporate lobbying and to constrain it. While lobbying by large corporations receives much attention there are numerous organisations whose behaviour constitutes engaging in lobbying EU institutions. Surveys of MEPs, EU officials and their national counterparts illustrate this point. Respondents were divided over whether trade associations, public affairs agencies and professional organisations could be considered lobbyists.<sup>77</sup> Under current rules political parties, churches and local, regional and municipal

authorities are not expected to be signatories of the Transparency Register, although there is a case for their compliance with this Register, as they are recipients of EU funding and their projects affect the social fabric of a country or region as well as impacting on lives of individuals.<sup>78</sup>

Maintaining records of correspondence between EU officials and special interest groups may improve transparency and openness yet it also raises several problems. Successfully gathering all forms of contact could be an onerous task in an age where multiple means of communication are available. EU insiders and lobbyists may therefore look to other means of contact to keep communications from going public. Furthermore it would have to be clearly outlined which documents and transcripts could be placed in the public domain on an online database and which documents, like those concerning national security, as is the case in Sweden and other countries, would be kept classified.<sup>79</sup>

As a means to reducing the so-called revolving door phenomenon, which describes the movement of individuals between government and private companies, ALTER-EU favour extending the current cooling off periods which apply to outgoing Commissioners and senior civil servants. This measure is designed to prevent EU officials from going straight from an EU post into a job at a lobby group or an advisory firm and would instead require them to wait for a given period before taking up a new post.<sup>80</sup> At present, there is a cooling off period of 18 months for Commissioners and 12 months for senior civil servants.<sup>81</sup> ALTER-EU has stated that their preference is for a cooling off period of at least two years to be imposed on all EU institution staff.<sup>82</sup> The effectiveness of ALTER-EU's proposal is debatable. Would the extension of a cooling off period by say, several months, make an EU official any less of a potential lobbyist for a particular special interest when they start work for other lobbyists? Thirty-three US states have enacted cooling off periods, usually in force for one or two years after an elected official leaves office.<sup>83</sup> Similar restrictions on out-going legislators have been implemented at the federal level in the United States under the terms of the 2007 Honest Leadership and Open Government Act (HLOGA).<sup>84</sup>

According to the Washington DC-based Sunlight Foundation, ('a national, non-partisan, non-profit organisation committed to making government and politics more accountable and transparent to all'), out of 104 former congressional members and staffers whose cooling off periods were coming to a close in January of this year, almost half were either 'already in government relations, "public affairs"

or serve as counsel at a firm that lobbies' or registered as lobbyists.<sup>85</sup> Moreover, there are loopholes which allow ex-lawmakers to access former colleagues in the Capitol. Sunlight Foundation notes several former senators, none of whom are registered as lobbyists, have been in the employ of organisations engaging in lobbying while serving their cooling off periods. The Washington experience highlights some of the problems that Brussels could face if it extended similar cooling off periods on outgoing officials, MEPs and staff. It shows that further action in the form of longer cooling off periods, which would diminish the value of the potential service to employers, and sanctions for contacting potential employers prior to the termination of periods in office, regulated by oversight from independent scrutineers, is likely to close potential loopholes.

Establishing reforms designed to improve the transparency of EU institutions would necessitate a body to monitor EU lobbying. In the United States this responsibility is undertaken by officers employed directly by Congress. However, to ensure a greater level of independence on the part of those trusted with monitoring levels of transparency it would be preferable to establish an independent agency, argue Holman and Luneberg.<sup>86</sup>

## Conclusion: What action should the EU take?

In a healthy democracy, interest groups and individuals should be free to lobby, and have access to, important decision-makers. While it is important to uphold this right, it is equally important to recognise the rights of others to have access to decisions taken at the pan-European level by making outsiders' contact with EU figures and institutions as transparent as possible so that European citizens can gain a better understanding of who is lobbying Brussels and what their motivations might be for doing so. As the tobacco and agribusiness case studies illustrate, certain well-resourced special interests have gone to great efforts in lobbying EU decision-makers. This highlights the importance of opening up EU governance.

It would be impossible to make lobbying at any level of European politics entirely transparent due to the impracticality of encoding a definition of lobbying acceptable to all participants and the possible infringement of privacy for individuals consulting their elected representatives. However by amending existing legislation and through the adoption of new regulations the EU could make significant strides in improving transparency. This report has examined several possible reforms to make lobbying the EU more transparent. In concluding, it offers several recommendations as to the action the EU could take.

The EU should reform the Transparency Register by making it obligatory for EU lobbyists to sign. In order to ensure a greater level of transparency and to present a broader picture of who is involved in lobbying senior figures and institutions, changing the existing register is an important reform. If a reformed register was to be enacted then it would have to clearly outline who constitutes a lobbyist. An independent body with extensive consultative powers could be established to create the parameters for such a register.

It is questionable whether legislation that would extend cooling off periods for outgoing EU officials, as advocated by the ALTER-EU coalition, would be effective, as former officials would have room to manoeuvre around these regulations in a manner similar to the way in which members of the United States Congress have done, by taking up private sector employment which does not ostensibly entail lobbying. It is also doubtful whether individuals, after cooling off, will not move straight into the lobbying industry and somehow become less of a voice for a particular special interest than before.

The imposition of cooling off periods is nonetheless a positive action taken by the EU. These regulations prevent officials from moving directly from government to private sector employment and are important for establishing separation between outside special interests and the decision-making process.

If the EU is to reform current lobbying laws then the control and oversight should be undertaken by an independent agency and not by elected officials, EU bureaucrats or lobbyists. This would surely be preferable to handing over these responsibilities to EU insiders or officers working on behalf of legislators, as is done in the United States, as these groups may not be acting with transparency in mind.

The availability of records, created by such a reformed system is an essential part in bolstering transparency. As Holman & Luneberg write: 'Public examination of these reports is not only critical to building the public's trust in the governmental process, but it also complements enforcement of it'. By placing this information on the Internet for all to see, the public provides critical backup for monitoring compliance with the law.<sup>87</sup> While expanding public disclosure has its obvious advantages, legislation would have to clearly stipulate what documents and other records can and cannot be added to an online database. Sweden and Denmark's approach to public disclosure, in particular the Swedes' Open Budget Index and the Danish Law on Transparency and Public Access to Public Administration, provide templates on which future reform of EU governance could be based.

While the task of reforming the lobbying culture within the EU in terms of its definition and function may seem insurmountable, given the extensive requirements of vested interest groups, anything from a small charity to a multinational company, the current haphazard system requires attention to address public concerns and need for visible democracy. The creation of a compulsory Transparency Register accompanied by transcripts of the written responses from EU officials to the queries and suggestions of lobbyists would need enforcement by an independent body, possibly based on a Scandinavian model which encourages openness and accountability.

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