



## Crunch time for EU lobbying transparency

ALTER-EU Media Briefing, 20 March 2007

### Commission Communication on European Transparency Initiative (ETI): just window dressing, or a real step forward for transparency in the EU?

On 21 March, European Commission President Barroso and Vice President Kallas are expected to present the second Commission Communication on the European Transparency Initiative (ETI).

In the Communication, the Commission will lay out steps to increase transparency in EU decision-making, including plans for a register and code of conduct for lobbyists. But will these plans really give EU citizens more insight into who is influencing EU policy-making?

Since 2005, the Alliance for Lobbying Transparency and Ethics Regulation in the EU (ALTER-EU) is campaigning for more transparency in EU policy-making. This paper presents ALTER-EU's most important criteria for assessing the lobbying transparency chapter of the ETI Communication.

In summary, ALTER-EU:

- is concerned that, in an enlarged and increasingly powerful EU, the European Commission is only making limited progress towards lobbying transparency;
- criticises the fact that specific, problematic issues of lobby influence on EU policy, such as 'revolving doors' and privileged access, are not being dealt with by the Commission;
- welcomes the fact that, in future, all lobbyists (public interest as well as commercial) will have to disclose financial information (on who is paying them to influence EU decision-making);
- is concerned that the Commission is opting for a voluntary register. It is unlikely that all lobbyists will participate and supply accurate information.

Erik Wesselius (Corporate Europe Observatory) comments:

*"In an enlarged and increasingly powerful EU, the European Commission has a responsibility to make EU decision-making more transparent, including its interactions with lobbyists. The European Transparency Initiative is too limited in scope – it does not give EU citizens the opportunity to scrutinise all aspects of lobbying, and we risk finding that lobbyists continue to have direct influence on EU laws to the detriment of the wider public interest. The requirement for lobbyists to disclose financial information is a step forward. But by proposing only a voluntary system, the Commission is undermining its stated intention: it is very unlikely that, given the choice, all lobbyists will provide accurate and precise financial data about how much they are paid to influence specific EU laws."*

### Background

Commissioner Siim Kallas launched the European Transparency Initiative in March 2005. This triggered a debate over the ethics of public officials employed by the Commission and their interactions with professional lobbyists, as well as transparency standards for the estimated 15,000 lobbyists working in Brussels, the majority of which represent private, commercial interests.

In November 2005, the Commission issued a first Communication on the European Transparency Initiative, followed, in May 2006, by a Green Paper, in which the Commission set out its plans for a voluntary, lobbyist register. Notably, the Commission did not address the problem of revolving doors' where industry lobbyists work temporarily as Commission officials, and vice versa.

The Commission then organised an online stakeholder consultation process, generating many submissions on the issue of lobby transparency.

- The submissions showed a **broad support for mandatory lobbying disclosure**, from diverse stakeholders, including e.g. Danish Mortgage Banks, Österreichische Bundesarbeitskammer, Transparency International, the European Consumers Organisation BEUC and the Danish government.

- Most commercial lobbyists, including trade associations, business lobby groups and consultancy firm coalitions, rejected mandatory lobbying disclosure.
- The Commission's **suggestion that automatic alerts regarding upcoming consultations could be a sufficient incentive to encourage a high rate of compliance with a voluntary lobbying disclosure system was rejected by almost all stakeholders.**
- **Financial transparency proved to be a most controversial issue**, with NGOs generally in favour and most business lobby groups and lobbying consultancies reluctant.
- ALTER-EU highlighted the continuing need for the Commission to address 'revolving door' practices between the EU Commission and companies with direct financial interest in EU decision-making.<sup>1</sup>

It is on the basis of the input to the consultation that the Commission will release on Wednesday 21 March its second Communication on the ETI. In this Communication, the Commission will propose to set up a voluntary register for lobbyists ('interest representatives'), and a minimal code of conduct for lobbyists trying to influence EU policy and legislation. Most likely, the Commission will say that lobbyists that wish to register must provide basic financial information about the clients on whose behalf they are trying to influence EU policy, and the associated lobbying budgets.

### **Will the Communication move the EU towards lobbying transparency?**

*"When lobby groups seek to contribute to EU policy development, it must be clear to the general public which input they provide to the European institutions. It must also be clear who they represent, what their mission is and how they are funded."* (Green Paper on a European Transparency Initiative)<sup>2</sup>

#### **I. Ensuring lobbying transparency – mandatory or voluntary disclosure?**

The European Commission will propose a voluntary register in the hope that this will lead more quickly to results than a mandatory scheme based on EU law. However, academic research and practical experience both show that lobbying transparency can best be achieved through mandatory registration and reporting by all lobbyists. ALTER-EU therefore campaigns for such mandatory registration to apply at EU level, and is highly sceptical that a voluntary approach will present a step forward, for the following reasons:

- In 1992, the Commission already opted for voluntary regulation of the lobbying sector. This did not visibly improve EU lobbying transparency.
- Experience with voluntary and mandatory lobbying registers in North America shows that compliance in a voluntary system will be too low to secure any meaningful lobbying transparency.
- A voluntary registration system is unlikely to attract those lobbyists that are keen to avoid public disclosure of their activities and finances. Neither the Commission nor anyone else knows how many lobbyists actually operate at EU level. This will make it difficult if not impossible to assess the percentage of EU lobbyists that will eventually participate in the voluntary scheme.
- A voluntary system does not include any compliance and verification mechanisms.

#### **II. Need for well-defined transparency criteria in the ETI Communication**

In recent speeches and interviews, Commissioner Kallas has stressed that the lobbying register must contain financial information on lobbyists. This is indeed one of the most important issues at stake. ALTER-EU insists that precise criteria for transparency, in particular with regard to the financing of lobbying, should be included in the ETI Communication. In the United States, lobbyists have had to disclose financial information since the mid-1990s. The Commission's efforts to improve lobbying transparency in the EU would lack credibility if they fell short of similar standards.

1 For a more detailed analysis of the results of the stakeholders consultation, see: [Effective lobbying transparency within reach if European Commission shows leadership and courage](#), ALTER-EU media advisory, Brussels, 16 October 2006.

2 [Green Paper on a European Transparency Initiative](#), European Commission, 3 May 2006.

**ALTER-EU's benchmarks to assess the quality of the forthcoming Commission lobbying transparency requirements:**

For lobbying consultants and firms:

- List all clients; for each client:
  - list the lobbyists representing each client
  - list issues or legislative dossiers lobbied on and EU institutions, including Commission units lobbied
  - disclose the total amount of money received from each client for lobby work/issue

For EU affairs offices of large corporations

- list names of all lobbyists employed directly by the company
- list issues or legislative dossiers lobbied on and EU institutions, including Commission units, lobbied by each lobbyist
- disclose the total budget spent on lobbying/issue

For industry associations, think tanks, NGOs etc.:

- list names of all lobbyists employed directly by the organisation
- list issues or legislative dossiers lobbied on and EU institutions, including Commission units, lobbied by each lobbyist
- disclose the total budget spent on lobbying/issue
- provide detailed information about income sources

### **III. Code of Conduct for Lobbyists**

The Commission has indicated that it will take responsibility for drafting a Code of Conduct for all lobbyists that want to subscribe to the register. A Code of Conduct for lobbyists should go beyond the very general provision of existing voluntary codes. The Commission must also consider and propose effective measures (including sanctions) that will ensure compliance with the Code.

Commissioner Kallas has stated that self-imposed codes of conduct have few signatories and have so far lacked serious sanctions.<sup>3</sup> The recent case of lobbyist David Earnshaw (see appendix) underlines the fact that the Code of Conducts of Public Affairs Associations and self-regulatory complaint mechanisms lack credibility.

If a code of conduct is intended to foster public trust, it needs to be linked to a mandatory registration system, thereby ensuring that *all lobbyists* sign up, and an independent body must monitor compliance.

Besides rules of conduct for lobbyists, ALTER-EU is concerned that the Commission seems to have no intention to improve its own internal code of conduct. This code should urgently be amended to include extended 'cooling off' periods before Commissioners and senior officials can start working for lobby groups or lobbying advisory firms. Following a series of problematic cases of 'revolving doors' between the Commission and companies that have a direct financial interest in EU legislation, the inaction by the European Commission in this area amounts to negligence.<sup>4</sup>

### **IV. Ending privileged access and increasing transparency of advisers**

ALTER-EU calls on the Commission to increase the transparency of its expert groups and to combat privileged access for certain stakeholders.

A few weeks ago, the Commission took an important step in improving transparency on special advisers by releasing a list of 55 names of special advisers to the Commission and making sure that they had no conflicts of interest (see annex).

However, much remains to be done on improving transparency and ensuring a balanced composition of the many expert groups advising the Commission. Regrettably, the Communication on the ETI is not expected to put forward specific proposals in this area.

<sup>3</sup> Speech by Siim Kallas: [Transparency restores confidence in Europe](#), Brussels, 20 October 2005.

<sup>4</sup> For recent cases of 'revolving doors' involving Commission staff, see: [Toxic Lobby: How the chemical industry is trying to kill REACH](#), Greenpeace (May 2006).

## Background information

- [ALTER-EU recommendations](#), 17 January 2006
- [ALTER-EU submission to stakeholder consultation](#), 11 July 2006
- [How the Campaign for Creativity morphed into the Innovation and Creativity Group: habits of deception die hard](#), Corporate Europe Observatory (November 2006)
- [European Commission releases list of special advisers, takes action on conflict of interests and fraud](#), Corporate Europe Observatory (March 2007)
- [Transparency in EU decision making: reality or myth?](#), Friends of the Earth Europe (May 2006)
- [Toxic Lobby: How the chemical industry is trying to kill REACH](#), Greenpeace (May 2006)
- [Corporate Power over EU Trade Policy: Good for Business, Bad for the World](#), Seattle to Brussels Network (October 2006)

## About ALTER-EU

ALTER-EU is a coalition of over 140 civil society groups, trade unions, academics and public affairs firms calling for: “An EU lobbying disclosure legislation; improved code of conduct for European Commission Officials; the European Commission to terminate cases of privileged access and undue influence granted to corporate lobbyists.”

The founding statement of the Alliance for Transparency and Ethics Regulation (ALTER-EU) and a list of signatories are available on [www.alter-eu.org](http://www.alter-eu.org).

## CONTACT information

Erik Wesselius

Corporate Europe Observatory, tel: +31 30 2364422 (direct) or +31 20 6127023 (general office nr.), e-mail: [erik\[at\]corporateeurope.org](mailto:erik[at]corporateeurope.org)

William Dinan

Strathclyde University, tel: +44 141 548 2699, email: [william.dinan\[at\]strath.ac.uk](mailto:william.dinan[at]strath.ac.uk)

Jorgo Riss

Greenpeace European Unit, tel: +32 2 274 1907, email: [jorgo.riss\[at\]diala.greenpeace.org](mailto:jorgo.riss[at]diala.greenpeace.org)

## **ANNEX 1: Cases to highlight the need for lobbying transparency**

### **The Campaign for Creativity/ Making misleading campaigns transparent**

The 'Campaign for Creativity' (C4C), was at the forefront of lobbying for software patents in the political debate around the directive on computer-implemented inventions in 2005. Tactics included sending computer mice to MEPs, handing out free ice creams and conducting eye-catching stunts around the Parliament building in Strasbourg. Throughout its activities, C4C claimed to represent the interest of artists, musicians, designers, engineers and software developers. The campaign intention was to create the impression that "creative communities" supported strong patents for computer-implemented inventions.

However, behind its grassroots mask, the lobby campaign was orchestrated by Simon Gentry of the London based public affairs firm Campbell Gentry. Software giants like Microsoft and SAP as well as the international computer association CompTIA were supporting the lobbying firm. The campaign tried to hide its relations to lobbyists and PR people. It enlisted the support of a few small and medium-size companies. Simon Gentry refused to disclose how C4C was financed. He admitted only that the large corporations did contribute to the campaign, whereas individual supporters did not contribute financially.

A meaningful lobby register would have provided easy access to information about the specific expenditures of Microsoft, SAP or CompTIA for the campaign. It would have provided decision-makers and the public with an immediate and true picture of the campaign, without the research of investigative activists.

### **The case of David Earnshaw**

David Earnshaw is a lobbyist in Brussels who runs his own consultancy, David Earnshaw sprl. He also works for public affairs firm Burson-Marsteller, advising pharmaceutical clients such as Novartis and Pfizer. At the same time, he has been advising the European Parliament's Environment, Public Health and Food Safety (ENVI) Committee on public health issues, as an 'independent expert'.

Both David Earnshaw and Burson-Marsteller affirm that there is no conflict of interest between the two roles. Many would disagree. The fact that Mr Earnshaw advises both the ENVI Committee and pharmaceutical companies on public health issues suggests a conflict of interest. Mr Earnshaw affirms that his clients do not have an interest in the subject of the report he wrote in his role as an 'independent expert' – but all pharmaceutical companies, by their very nature, have an interest in public health issues. The exact interests of the clients are not verifiable: neither David Earnshaw sprl nor Burson-Marsteller provide detailed lists of their clients or the issues on which they lobbied on behalf of these clients. When asked for such a list, Burson-Marsteller refused. How credible is Burson-Marsteller's commitment to transparent lobbying, a commitment which is prominently displayed on its website?

Burson-Marsteller is a founding member of EPACA (European Public Affairs Consultancies' Association). EPACA's Code of Conduct stresses that lobbyists should be careful to avoid any 'appearance of a conflict of interest' between work with public sector institutions and lobbying for private sector clients. A complaint filed to EPACA's Management Committee about Mr Earnshaw was dismissed without providing adequate reasons. EPACA did not even forward the complaint to its Disciplinary Panel, which was allegedly established for this purpose. How credible, then, is EPACA's Code of Conduct and its disciplinary procedure?

### **The case of Rolf Linkohr**

In January 2007, Corporate Europe Observatory sent open letters to the Commission expressing concern about the fact that former MEP Rolf Linkohr "at the same time directs a commercial lobbying consultancy and acts as a special adviser to the Energy Commissioner". Shortly afterwards, Commissioner Kallas announced that he had terminated Mr. Linkohr's contract as special adviser to Energy Commissioner Piebalgs after Mr. Linkohr had failed to declare in writing that he was not in a situation of possible conflict of interest.

In 2005, Mr. Linkohr established the consultancy 'Centre for European Energy Strategy' (C.E.R.E.S.), whose clients are large energy corporations. At the same time he was a special adviser on energy

issues to Energy Commissioner Andris Piebalgs. It is hard to imagine that providing commercial lobbying consultancy services for energy firms can be convincingly combined with providing the Energy Commissioner with unbiased advice. Mr. Linkohr's status as adviser to the Energy Commissioner obviously was one of his major assets and he advertised it whenever he made a public appearance. It was also mentioned prominently on the C.E.R.E.S website.

When Corporate Europe Observatory asked the C.E.R.E.S. secretariat about their main sources of income, they replied that C.E.R.E.S. works for energy firms on a contract basis. "We are not a non profit organisation like other think tanks", they added. However, they refused to specify the names of their clients, saying they are "not obliged to do so".

Indeed, C.E.R.E.S. and other lobbying consultancies are currently not obliged to disclose the names of their clients. C.E.R.E.S. left no doubt that as long as there are no transparency obligations, they will not disclose their clients. In this context, it is to be doubted if C.E.R.E.S. will provide information about their clients if the Commission opts for a voluntary lobbying register.