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WORKING DOCUMENT

on Development of the framework for the activities of interest representatives
(lobbyists) in the European institutions

Committee on Civil Liberties, Justice and Home Affairs

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On the 9th of November 2005 the Commission launched "The European Transparency Initiative" which aims at improving the transparency and accountability of the EU in order to increase its legitimacy. On the 3rd of May 2006 a Green Paper¹ was presented, and after a hearing process, the Commission, on the 21st March 2007, sent out a communication following up on the Green Paper².

In the European Parliament, the Constitutional Affairs Committee is drafting an own-initiative report on the communication with the title "Development of the framework for the activities of interest representatives (lobbyist) in the European Institutions", INI/2007/2115, the Alexander Stubb report. The Committee on Civil Liberties, Justice and Home Affairs has been asked to give its opinion on the topic.

Getting the balance right

The basic purpose of all regulation on the topic and codes of conduct is to bring lobbying into the open and to make sure that lobbyists are treated on an equal basis. Lobbyists recognise that it is not in their interest to be suspected of underhand practices and that good relations with EU institutions are essential for them.

When setting up rules for lobbyists, it is important to strike the right balance between the citizens', the decision-makers' and the media's right to be able to identify and assess the strength of the most important driving forces behind a given lobbying activity - and at the same time maintaining a regulatory environment in which decision-makers and their staff can meet and receive lobbyists.

Thus the objective of the rapporteur is to cover the lobbyists' activities as comprehensively as possible at the current stage. There are several strategies to choose from in reaching this objective.

The current rules in the Parliament and the Commission

The Parliament already has a lobbyists register. However, the information to be found in it is not very thorough; the name of the lobbyist and the organisation he represents is currently the only information for the public to see. Besides that the Parliament has its own 10-point code of conduct on lobbying, set out in Annex IX of the Parliament Rules of Procedure³. This requires lobbyists to refrain from any action designed to obtain information dishonestly and moreover not to claim any formal relationship with Parliament in dealing with third parties.

As regards the European Commission, there is a voluntary register of interest representatives but no formal procedure or administrative rules exist for the accreditation of the interest representatives in the European Commission. Interest representatives need to identify and contact the relevant Commission official and register daily to get into the buildings of the European Commission.

¹ Green Paper on "The European Transparency Initiative" COM (2006) 194 of 03.05.2006

² Communication from the Commission Follow-up to the Green Paper 'European Transparency Initiative' of 21.3.2007 COM(2007) 127

³ Article 3 of Annexe IX of the Rule of Procedures of the European Parliament.

Your rapporteur recognizes the influence of lobbying on EU decision making and therefore the need for regulation. No one is able to come up with an exact figure, but it is estimated that Brussels is the home of some 15.000 lobbyists. The Commission has estimated annual spending on lobbying in Brussels to be 60 - 90 million euros per year¹. However, according to others the figure might be as high as 750 million - 1 billion euros per year. In the light of the development of the number of lobbyists in Brussels, the amount of money spent on lobbying (no one spends large sums of money without expecting something in return) and the growing interest and need for public scrutiny, your rapporteur is of the opinion that the current rules are no longer sufficient and need to be revised.

Items requiring attention

Keeping the complex nature of the topic in question the rapporteur has decided to draft a working document in order to draw attention to a couple of points the rapporteur has identified as important to discuss before tabling an opinion. In doing so the rapporteur has tried to take the feed-back from the different shadow rapporteurs who participated in the first shadow meeting into account.

With the official maximum limits of an opinion to a non-legislative text in mind (1.500 characters), your rapporteur has chosen to focus on creating/changing the register and not so much on the code of conduct, though the rapporteur acknowledges the great importance of this topic too. Many of the questions mentioned below also apply to a code a conduct (should it be compulsory or mandatory to subscribe to it, should there be one single code of conduct for all the institutions etc.).

At this stage your rapporteur wishes to draw attention to the following points;

(1) Compulsory vs. voluntary register?

Although there is still pressure in some quarters in favour of making a register legally binding, others argue that this is not necessary as long as it is consistently enforced. The rapporteur sees both advantages and disadvantages of having a compulsory or voluntary register respectively, some of them being;

(a) By choosing a voluntary register we would;

- Get the acceptance of a broad number of lobbyists.
- Probably be able to agree on stricter rules on financial disclosure than under a compulsory system.
- However one could question the effectiveness and transparency of a system where not all lobbyists are registered.

(b) By choosing a compulsory register we would;

- Get a transparent system for all lobbyists, including those who would never register on a voluntary basis.

¹ The need for a European Transparency Initiative, speech by Commissioner Kallas at the Nottingham Business School in Nottingham, 3 March 2005.

- Get acceptance from the public and some lobbyists.
- However having a compulsory register may very well mean lower standards of the financial disclosure stored in the system.

(2) One common or several register(s) for the EU institutions?

(a) Many of those taking part in the consultation on the Commission's Green Paper back the inter-institutional approach to lobbying meaning having one common register for the EU institutions. The Commission shares this view and believes "one-stop-shop" registration would provide an increased incentive for stakeholders to register.

(b) However, others favour having several registers claiming that people in the Parliament and the Commission are lobbied in different ways and the access to the two places is limited in different ways too (thus making a link to security).

(3) Who should be registered?

This item is closely linked to the definition of lobbyists. The rapporteur wishes to draw attention to two items;

(a) Does it make sense to differ between NGOs and others meaning making a distinction between lobbyists representing commercial and non-commercial interests respectively? The rapporteur would like to draw attention to the fact that corporate front groups and think-tanks run by professional lobbyists are an increasingly common phenomenon in Brussels.

(b) The rapporteur acknowledges the special confidentiality relations between lawyers and their clients. Even though this confidentiality requirement is primarily linked to securing the right of a fair trial, there might be cases where the same agent (law firm) offers to take care of both traditional lobbying activities (influencing the decision-makers) and representing the client at court (against the same decision-makers). However, lawyers should not be able to hide behind client confidentiality when they are lobbying. So it is extremely important to find a solution as to how to make this distinction to make sure that lawyers are treated the same as all other lobbyist when acting as such.

(4) What should be registered?

(a) The rapporteur is of the opinion that financial disclosure is the key element of lobbying transparency. A register with financial disclosure has several objectives the main ones being; (i) citizens, decision-makers and the media can identify and assess the strength of the most important driving forces behind a given lobbying activity, (ii) problematic lobbying practices can be spotted and challenged at an early stage (like the Abramoff scandal in the US), and (iii) it is possible to prevent deception and manipulation through front groups or think-tanks.

(b) The Commission sets up minimum criteria based on an income approach mainly linked to turnover and the relative weight of the clients in this turnover regarding

professional lobbyists, an estimate of the costs associated with the direct lobbying for *"in-house" lobbyists and trade associations* and finally the overall budget and breakdown per main sources of funding when it comes to *NGOs and think-tanks*.

(c) The rapporteur acknowledges the need to strike a balance between the public's and decision-makers' interest in knowledge on one hand and the companies right to keep a certain degree of secrecy when it comes to a client's financial data as it is commercially sensitive on the other hand.

(d) Nevertheless, the rapporteur would like to question whether or not the strategy chosen by the Commission in its communication is far-reaching enough - will it provide enough information to achieve proper transparency? Or would it make sense to also focus on expenditures related to lobbying like in the US where it has since 1995 been compulsory to register not only *income* from clients but also to disclose lobbying *expenditures* along with identification of legislative and regulatory issues lobbied. Furthermore, the lobbying firms have been obliged to file semi-annual reports in the US.

(5) How to monitor a register?

(a) The Commission has chosen a self-regulatory approach where it remains the responsibility of registrants to accurately and objectively calculate and disclose how they are funded.

(b) The rapporteur is of the opinion that we need some kind of scrutinise activity of the information in order to assure its accuracy. Would it be an idea to establish an ad hoc Committee of around 20 senior MEPs to scrutinise activity of lobbyists similar to how Westminster views lobby activity (note there are more restrictions on access in the UK)? Or should the Commission be in charge (if one common register is the outcome)?

(c) The rapporteur would also like to question whether or not sanctions should apply to lobbyists who on several occasions have given unsatisfactory or wrongful information. If yes, what kind of sanctions would be relevant?

(6) Other possible items to be discussed

(a) Should the rules on revolving doors and cooling-off periods for Commissioners and civil servants be reviewed?

(b) Should it be compulsory or voluntary for lobbyists to agree to a (common) code of conduct? Should the current EP code of conduct be revised? If yes, who should draft it?