

MONEY, POLITICS, POWER: CORRUPTION RISKS IN EUROPE

REGIONAL POLICY PAPER #3

LOBBYING IN THE EUROPEAN UNION: LEVELLING THE PLAYING FIELD

OVERVIEW

In Brussels and across Europe, unregulated lobbying and limited controls over parliamentarians' conduct pose serious corruption risks. Despite widespread calls for regulating lobbying activities, opaque rules remain the standard in many countries, causing lobbying activities to be veiled in secrecy. A recent study conducted by Transparency International (TI) in 25 European countries shows that only 6 have some form – in many cases minimal – of regulation over lobbying.¹ Efforts are needed around Europe to lift the shroud off of lobbying through stronger controls and sanctions, mandatory lobbying registers, and regulation of the “revolving door” between the public and private sectors.



I. THE RISKY BUSINESS OF LOBBYING

In politically dynamic systems, lobbying can play an important role in getting different interests and views heard in policy discussions. For example, it is estimated that there are 3,000 lobbying entities in Brussels set up to target and influence European legislation, with the actual number of lobbyists possibly reaching up to 30,000 people.²

However, this influence is only beneficial for the public interest if lobbying is undertaken with integrity and transparency – both by lobbyists and the public officials that are being lobbied. When lobbying is not done this way, it can tilt the balance toward private interests. This is particularly true for lobbying efforts backed by corporations that have vast resources – and perhaps close ties to

parliamentarians – at their disposal. The result can be undue influence over and unfair advantages in key policy decisions that impact the lives of citizens.

At the same time, parliaments – including the European Parliament – have weak safeguards to ensure that its members are not maintaining unethical relationships with lobbyists that could taint the policy-making process. The TI study showed that state measures mandating the disclosure of interests by members of parliament are lacking in over 40 per cent of the countries assessed. As a result, risks of legal corruption – brought on by weak regulations – are high.

Finally, public and private interests can collide through the phenomenon known as the “revolving door.” This is the movement of individuals back and forth between public office and private companies, in order to exploit their period of service to the benefit of their current employer.³ There has been a worrying trend of public officials (whether elected or appointed) who have used their experience and connections in government to secure employment with lobbyists that target their former colleagues. A report on the 30 members of the Organization for Economic Co-operation and Development (OECD), which includes many European countries, concluded that during the financial crisis in 2008 and 2009, numerous individuals moved between positions in lobbying firms and government.

II. EFFORTS AT REGULATION

The regulation of lobbying is new to most countries – Europe included. When regulation is in place it often attempts to set up important integrity safeguards for

the lobbying industry and policy-makers, particularly parliamentarians. The range of measures include mandatory registration and reporting of activities by lobbyists, “cooling-off” periods for those joining or leaving the public sector and codes of conduct.

LOBBYING REGISTERS

Most European countries have yet to put registers in place. Only France, Germany, Lithuania, Poland, Slovenia and the UK have some degree of regulation. Yet these measures must be stronger and better enforced if they are to be effective.

In Lithuania and Poland, where there are broad lobbying laws, regulations have been criticised for failing to ensure that all lobbyists required to register actually do so.

France and Germany only have voluntary lobbying registers. Furthermore, in Germany the register does not cover companies and law firms which often are the most active and well-financed lobbying actors.

Moreover, those that should register are not doing so. In France, a mapping by TI’s national chapter and a partner organisation, Regards Citoyens, found that 9,300 hearings (between ministries and lobbyists) took place, involving nearly 5,000 organisations represented by more than 16,000 people, from July 2007 to July 2010. These numbers differ greatly from the 127 lobbyists registered with the French parliament.

“COOLING-OFF” PERIODS

“Cooling-off” periods have been used to deal with conflicts of interest that may arise after someone leaves his or her job. These are time-defined periods that typically prohibit someone who has held public office or a high-level government position from leaving the public sector to take a private sector job in the same field. Time periods vary and should be proportionate to the degree of corruption risks confronted.

Countries such as Ireland and Poland have introduced a one-year “cooling-off” policy, while the United Kingdom and the Netherlands have a two-year policy.⁴ Most European countries do not even have post-employment restrictions for those exiting government. And where regulations are in place, they have been criticised for being too vague (Ireland and

the Netherlands), weakly enforced (Poland) or voluntary (the UK). Only the measures that Norway adopted in 2005 are considered to have good, effective coverage and enforcement.

CODES OF CONDUCT

Codes of conduct provide an important moral compass guiding the behaviour of public officials and lobbyists. They address areas such as loyalty, impartiality, integrity and fairness and deal with the reporting of gifts and hospitality, assets and interests.⁵ Codes can be voluntary or mandatory and typically include clear monitoring, enforcement and sanctioning provisions.

Codes of conduct are in use in both civil and common law countries and help to organise a body of norms and regulations into a single document. While codes do not replace legislation, they serve to complement existing laws and provide additional clarity on particular issues. Specific codes often exist for different public officials, such as parliamentarians. Only eight countries from TI’s study have codes of conduct in place for parliamentarians (France, Germany, Greece, Ireland, Latvia, Lithuania, Poland and the UK). There have been attempts to pass similar codes in Bulgaria and Slovenia, but these have not been successful to date.

In the case of the European Union, the European Parliament adopted its own code in December 2011 following a string of scandals. Among other provisions, it includes a ban on members of the European Parliament from acting as lobbyists and requires them to disclose in detail their financial interests. However, critics have alleged that the code does not include a “cooling-off” period or outlaw secondary employment on the part of parliament members. They have also argued that the code does not require members to log and report all meetings with interest groups (i.e. a “legislative footprint”) or provide for the adequate monitoring and enforcement of its own stipulations.

III. RECOMMENDATIONS

Measures are needed to implement regulations where they are missing and to close the gaps for laws that are already in place. Success will require action from all countries, the EU, businesses and citizens. TI recommends the following:

- **INTRODUCE MANDATORY REGISTERS OF LOBBYISTS IN ALL COUNTRIES**

For countries that have voluntary registers, these should be made mandatory and accessible online to the public. In the case of the European Union, its “Transparency Register” should be made mandatory for all interest representatives and cover all three institutions – the European Commission, European Parliament and European Council.

- **ADOPT A BROAD DEFINITION OF LOBBYISTS FOR LOBBYING REGULATIONS**

Laws should extend their coverage to include public affairs consultancies, corporate lobbyists, law firms, non-governmental organisations (NGOs) and think-tanks. Such a change is the only way to guarantee the complete listing of individual lobbyists.

- **ADOPT CODES OF CONDUCT FOR LOBBYISTS AND LOBBIED PERSONS (INCLUDING PUBLIC OFFICIALS)**

These should be mandatory and include clear sanctions for failure to adhere to the established lobbying regulations. For public officials, measures should include how to address and prevent conflicts of interest.

- **INSTITUTE “LEGISLATIVE FOOTPRINTS”**

These documents should provide information on the time, person and subject of a legislator’s contact with a lobbyist or stakeholder. This way, citizens will have more complete information about who their representatives are meeting with when drafting legislation. Such “footprints” should be used for parliaments at the national and local level as well as for European institutions.

- **IMPLEMENT “COOLING-OFF” PERIODS**

Measures should be applied in all countries that require reasonable time periods – at least two years – for individuals going through the “revolving door” between the public and private sector. For the European Parliament, its code of conduct should be amended to include a “cooling off” provision to create a firewall between members of parliament and the lobbying industry.

- **MOBILISE GROUPS AND MEDIA WORKING TO TRACK AND DISCLOSE LOBBYING ACTIVITIES**

Such information can help to arm citizens and public interest groups with the knowledge to actively question their representatives and

participate in public debates about how lobbying is influencing the country’s legislation.

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With financial support from the
Prevention of and Fight against Crime Programme of the European Union
European Commission - Directorate-General Home Affairs



1 Note: unless otherwise stated, all information is sourced from: Transparency International, "Money, Politics, Power: Corruption Risks in Europe" (Berlin: TI, 2012). <http://www.transparency.org/enis>

2, Christoph Hasselbach, "Brussels suffers from lobbying excess", Deutsche Welle, 5 September 2012 <http://www.dw.de/brussels-suffers-from-lobbying-excess/a-16220563>.

3 Transparency International, "The Anti-Corruption Plain Language Guide" (Berlin, Germany: TI, July 2009). http://www.transparency.org/whatwedo/pub/the_anti_corruption_plain_language_guide

4 OECD, "Post-Public Employment: Good Practices for Preventing Conflict of Interest", Global Forum on Public Governance, 4-5 May (Paris, France: OECD, 27 April 2009).

5 Craig Fagan, "Codes of Conduct: A tool to clean up government?", blog post, Space for Transparency, Transparency International. <http://blog.transparency.org/2012/07/19/codes-of-conduct-a-tool-to-clean-up-government/>.