

Response to chapter 1 of the Green Paper on the European Transparency Initiative

*Corporate Europe Observatory*¹

The European Transparency Initiative (ETI) is a key element in the wider EU strategy to restore citizens' trust in the EU decision-making process. We note with appreciation that Green Book recognizes widespread concerns about the role of corporate lobbying in European Union decision-making and that it discusses solutions to overcome these concerns. Commissioner Kallas in particular deserves praise for kickstarting an open debate on lobbying transparency and ethics reforms.

Unfortunately, the Green Paper's actual proposals on lobbying transparency and ethics fall short of what is needed and would largely preserve the current intransparent and unregulated practices of EU lobbying. But a Green Paper is not the final word and we trust that the Commission will seriously consider all arguments raised during this stakeholder consultation and improve its current proposal.

As co-founder and active participant in the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), Corporate Europe Observatory fully endorses ALTER-EU's response to the Green Paper, in particular the call for mandatory rules to ensure transparency and ethics in EU lobbying.²

This response presents some additional arguments, derived from our research and campaigning experience of the past decade, for the need to go beyond the proposals made in the Green Paper. What key lessons can be learned from known cases of problematic lobbying practices of the last few years? And what would be the consequences if the ETI fails to ensure effective transparency around EU lobbying?

This response focuses primarily on the lobbying transparency system. While subscribing ALTER-EU's recommendation that the European Commission should take the lead in developing ethics standards as well as ensuring enforcement, Corporate Europe Observatory firmly believes that "sunlight is the best disinfectant". Mandatory lobbying transparency will do more to prevent unethical lobbying practices than codes of conduct similar to those currently in place.

Voluntary rules won't work

One clear conclusion emerges from recent reports on problematic lobbying practices in Brussels published by Corporate Europe Observatory (all available [on our website](#)): so far, voluntary arrangements have not delivered lobbying transparency and there is no reason why this would suddenly be different in the future. Individual corporations, business associations and 'public affairs' consultancy firms tend to disclose very little information on their activities.

The "Campaign for Creativity" became the undisputed winner of the 'Worst EU Lobbying' Award 2005, chosen by a large majority of over 8,000 online voters.³ The Campaign for Creativity aimed at influencing EU decision-making on software patenting issues. It presented

¹ Corporate Europe Observatory (CEO) is an independent, non-profit research and campaign group based in Amsterdam. Founded in 1997, Corporate Europe Observatory aims to ensure that the political activities of corporations and their lobby groups do not harm democratic processes, social justice and the environment. See also: <http://www.corporateeurope.org/about.html>.

² See: [ALTER EU submission to the consultation on the ETI Green Paper – Chapter 1](#), 24 July 2006. and [ALTER EU submission to the consultation on the ETI Green Paper – Chapter 2](#), 24 July 2006.

³ [Europe's debut 'Worst EU Lobbying' Award 2005](#).

itself as a grass-roots campaign of artists, musicians, designers, engineers and software developers but in reality the campaign was centrally run by Campbell Gentry, a London-based consultancy specialized in “European public affairs”.⁴ There are strong indications that the campaign was undertaken on behalf of large (US-based) software corporations, but Campbell Gentry consistently refused to disclose how the Campaign for Creativity was financed, maintaining it was run on a pro deo basis.

As long as there is no obligation for firms like Campbell Gentry to disclose on whose behalf they lobby and on what budgets, how can we ever know for sure who is behind something like the Campaign for Creativity? A voluntary registration system such as proposed in the ETI Green Paper, with weak incentives for compliance, will not stop deceptive lobbying practices like the Campaign for Creativity.

Think tank transparency

We have noticed with interest that the European Commission in the Green Paper has chosen a broad definition of “lobbying” and “lobbyists”, for instance including think-tanks that have “the objective of influencing the policy formation and decision-making processes of the European institutions”.⁵ Corporate Europe Observatory supports including think tanks as lobbying entities. This properly reflects the reality that corporations frequently make use of donations to or membership of think tanks to present policy messages as part of corporate lobbying strategies.

A survey of financial transparency of 15 EU think tanks carried out by Corporate Europe Observatory in the summer of 2005 showed that a large majority of EU think tanks fail to live up to basic standards of transparency.⁶ Only a few EU think tanks did disclose their sources of funding on their websites while most of them were unwilling to provide any information on their finances. A follow-up survey to be published in September 2006 concludes that little has changed since then. Clearly a voluntary register would be inadequate to overcome such unwillingness.

Disclosure of clients and budgets

The unwillingness to disclose budgets is widespread amongst corporate lobbyists. In February 2005, Corporate Europe Observatory conducted a survey among 35 Brussels-based public affairs companies offering services to the chemical industry⁷. These firms were asked to provide “an overview of the clients for which your firm in the last 12 months has provided PA/PR services on the proposed EU system for Registration, Evaluation, Authorisation of Chemicals (REACH), the relevant budget and towards which EU institutions the efforts were directed.” The response rate to the survey was less than 10% and not a single firm was prepared to disclose any of the requested data. In a collective response EPACA, the European Public Affairs Consultancies’ Association wrote that its code of conduct contains no requirements to publish lists of clients and/or lobbying budgets.⁸ But they acknowledged that “there is a legitimate discussion to be had about the appropriate levels of disclosure and registration”. Almost 1 ½ years later, we must conclude that whereas EPACA has dropped its opposition to mandatory registration of lobbyists, it continues to refuse any obligations to disclose clients or lobbying budgets.⁹

⁴ [Watchdogs criticize misleading software patents lobby campaign, call for transparency](#), Corporate Europe Observatory and LobbyControl, Press release 28 June 2005.

⁵ [Green Paper on the European Transparency Initiative](#), European Commission, 3 May 2006, page 5.

⁶ [Transparency unthinkable? Financial secrecy common among EU think tanks](#), Corporate Europe Observatory, July 2005.

⁷ [Bulldozing REACH - the industry offensive to crush EU chemicals regulation](#), Corporate Europe Observatory, March 2005.

⁸ [Letter from EPACA to Corporate Europe Observatory](#), 15 March 2005.

Given such broad unwillingness to voluntarily provide significant transparency, the European Transparency Initiative should contain very specific disclosure requirements. If the register would boil down to merely a list of names and companies there will be no effective lobbying transparency. A glance at the European Parliament's online register of accredited lobbyists is enough to confirm this. Therefore, a future EU lobbying register should include information on issues lobbied on and budgets involved.

Public affairs consultancies

While there is a strong public interest in knowing on whose behalf public affairs consultancies are lobbying and how much they are being paid for influencing EU decision-making, things look differently from the perspective of the consultancies themselves. They face a basic prisoners' dilemma: unilateral disclosure by one firm can create a competitive disadvantage for that firm, as competitors would get insight in client portfolios, fees, etc. without disclosing similar information themselves. Unless all firms are obliged to disclose this type of information, it is very unlikely that individual firms will run the competitive disadvantage risk related to being truly transparent. Representatives of Brussels' law firms, many of which have very profitable lobbying operations and are seen as competitors by the lobbying consultancies, have just like EPACA spoken out against financial disclosure. This is a clear case where the European Commission needs to take its responsibility to defend the wider European public interest and create a level playing field by obliging all commercial lobbying consultancies to disclose their clients, issues lobbied on and the budgets involved.

Corporate 'European affairs' offices

In the debate over EU lobbying transparency individual corporations with European Affairs offices in Brussels have been almost invisible. But the Landmarks Directory 2006 lists over 300 of such corporate European Affairs offices in Brussels. All firms lobbying to influence EU decision-making, whether by in-house staff, by hiring lobbying consultancies or via trade associations, corporate lobby groups or think tanks, must be required to disclose the names of their lobbyists, which issues they are lobbying on and how much they invest in this.

Benefits of financial disclosure

Without financial disclosure included in the future European lobbying transparency system it would remain impossible to make any precise estimates of the total spending on EU lobbying or to extrapolate aggregate trends and shifts. Financial disclosure, on the other hand, would provide the public with the data needed to assess annual lobbying expenditure by particular industry sectors, such as the pharmaceutical or the chemical industry. This would supply decision-makers with a tool to better assess imbalances between different interests. On many issues industry is divided, for example between innovative companies eager to introduce sustainable technologies and laggards trying to prevent change. In the lobbying battle around the EU's REACH regulation, to take one example, an effective EU lobbying disclosure system would have given decision-makers insight into the financial resources pushing competing viewpoints. Such knowledge could have helped EU decision-makers to better weigh the arguments in the debate.

Existing codes of conduct don't work

The Green Paper states that "up to now no cases of misdemeanor have been reported" in the context of the two existing voluntary codes of conduct.¹⁰ It should not be forgotten that these codes of conduct are being monitored by the professional lobbyists' organisations themselves,

⁹ Eamonn Bates, member of the EPACA's Management Committee outlined this position in his article "Seeing clear" in: *Public Affairs News*, July 2006.

¹⁰ [Green Paper on the European Transparency Initiative](#), European Commission, 3 May 2006, page 9.

while there are no mechanisms for NGOs to file complaints.¹¹ Corporate Europe Observatory has revealed several cases of problematic lobbying practices involving firms or individual lobbyists that have signed on to the existing codes of conduct. We have never noticed any interest from the side of the two organizations in scrutinizing whether or not their codes of conduct were violated in these cases. The eagerness to pursue possible malpractice within own circles seems limited, to put it mildly. In fact, when concerns were raised about deceptive lobbying, spokespersons of the organisations maintaining the existing codes reacted with ridicule and repeated the mantra that there are no lobbying scandals in Brussels.

Is an orchestrated pan-European scare-mongering campaign aimed at Members of the European Parliament a violation of these codes of conduct? Apparently not. In October 2005, the European Parliament voted against proposed improvements to the F-gas regulation. According to the European Parliament's rapporteur on the F-Gas dossier, this outcome was "heavily influenced and directed by lobbyists."¹² The rapporteur complained that the F-Gas industry lobby "over-gilded the lily. It was scaremongering." A leaked document shows that this lobbying offensive (targeting MEPs, the Commission and the Member States) was orchestrated by public affairs firm Hill & Knowlton, which runs the European Partners for Energy and the Environment (EPEE) on behalf of corporate clients, most of which are non-EU based firms. While it can be argued that in this case, Hill & Knowlton transgressed the code it subscribes to in several respects, no procedure was started. Nothing happened.

Another public affairs company, Burson-Marsteller, for a long period of time failed to disclose its own central role in the operations of the Bromine Science and Environmental Forum (BSEF). The consultancy firm was also not sufficiently clear about which interests were represented via the BSEF. The members of BSEF are four non-European producers of bromine flame retardants that wanted to prevent an EU ban on some of their products. Since mid 2005, Burson-Marsteller has corrected some of these problems through improving the information on the BSEF website and in press releases. While this is a positive development, it only happened after critical publications by Corporate Europe Observatory and others.

In August 2006, the Swedish newspaper VI published an article revealing that David Earnshaw (managing director at Burson-Marsteller Brussels and specialized in lobbying for the pharmaceutical industry) is employed as an external expert of the European Parliament's influential Committee on Environment, Public Health and Food Safety.¹³ The potential conflict of interest is obvious and the newspaper, rightfully, questions whether Earnshaw can be considered an independent expert. It concludes that his independence cannot be assessed as long as Burson-Marsteller refuses to disclose its industry clients. Earnshaw also refuses to disclose the clients of his lobbying consultancy "David Earnshaw, sprl" which he runs in addition to his work for Burson-Marsteller.

In any of the above cases, the only sustainable and effective solution to expose such questionable practices is to introduce an EU lobbying disclosure system that obliges lobbying consultancy firms to report regularly on which issues they lobby, for which clients and with what budget.

Lessons from the Abramoff scandal

While the scandal around Jack Abramoff – the Washington-based trickster-lobbyist found guilty earlier this year of fraud and corruption on a massive scale – is not mentioned in the Green Paper, Corporate Europe Observatory would like to echo ALTER-EU's comment and express our discomfort with the lessons that Commissioner Kallas seems to draw from this

¹¹ In [a press release dated 31 May 2006](#), EPACA announced a Professional Practices Panel to police its code of conduct. For an analysis of all existing lobbyists code of conduct see: [Transparency in EU decision making: reality or myth?](#), Christine Pohl, Friends of the Earth Europe, May 2006.

¹² [Transcript of the BBC File on 4 documentary "Lobbying the EU"](#), broadcasted on 22 November 2005.

¹³ [Det finns 15 000 lobbyister i Bryssel är det de som styr över EU?](#), Elke Cronenberg, *Vi Tidningen*, Aug 2006.

largest lobbying related scandal in the history of the US. In the US, the Abramoff scandal led to an in-depth debate and a tightening of the 1996 Lobbying Disclosure Act to close some of its loopholes. Presenting the Green Paper on the European Transparency Initiative to the press on May 3rd, however, Commissioner Kallas argued that the Abramoff scandal shows that mandatory lobbying disclosure does not prevent scandals. We beg to disagree with the Commissioner, as this scandal might never have been discovered if it was not for the disclosure obligations in the US Lobbying Disclosure Act. In Brussels, where such transparency obligations are entirely lacking, an Abramoff-style scandal might simply never be discovered.

Obviously some aspects of this scandal are specific to the US situation, for example that Abramoff could use campaign finance donations as an additional lobbying tool to influence legislators. Fortunately, legal restrictions limit the possibilities to use corporate donations to election campaigns for buying access and influence in European Union countries. But apart from this, there is no reason to believe that scandals involving degrees of fraud, financial inducements, nepotism and corruption could not happen in Brussels. In a survey conducted in March 2006, over 40% of a group of 152 Brussels-based professional lobbyists confessed they believed an Abramoff-style scandal could happen in Brussels.¹⁴

Lessons from the US Lobbying Disclosure Act

It should not be forgotten that the US Lobbying Disclosure Act was introduced in response to widespread concerns about excessive corporate control over the US political process. Even though the LDA suffers from a series of major loopholes and is weakly enforced, it has greatly improved transparency of lobbying in the US. Since the launch of the European Transparency Initiative in March 2005, there is now for the first time a serious public debate about the role of (corporate) lobbying in EU decision-making. It would be deeply disappointing if this debate would only lead to a voluntary and thereby necessarily incomplete register. It is particularly ironic that opposition from vested interests seems to have played a role in the Commission's unwillingness to consider even just the degree of transparency obligations that has been in place in the US for over a decade. We would argue that the EU needs mandatory lobbying disclosure even more than the US does. In a political system as complex as the European Union, citizens must be able to see all actors who try to influence EU decision-making.

Representatives of interest groups of the EU lobbying consultancy sector have repeatedly argued that lobbying in Brussels is fundamentally different from Washington D.C., both in numbers and in practices. As the ALTER-EU submission points out, the gap in numbers is narrowing rapidly (one industry insider estimated the annual turnover of corporate EU lobbying to be between 750 million to 1 billion euro). To a large extent, the same lobby firms have offices in Brussels and in Washington DC. The claim that different values and peer pressure inside the Brussels bubble prevent wrongdoing is unconvincing. When such claims are used to argue against obligatory lobbying disclosure, it moreover ignores the fact the Brussels is not a village, but the capital of the European Union, where policies are decided for 450 million citizens, most of whom feel far removed from and uninformed about EU decision-making.

Corporate Social Responsibility in EU Lobbying

The last few years have seen a growing consensus that companies need to ensure that their lobbying activities do not contradict their Corporate Social Responsibility (CSR) strategies. Transparency around lobbying is a pre-condition for independent scrutiny. It discourages mismatches between CSR commitments and lobbying strategies. More specifically, disclosure of the amounts spent by corporations on lobbying to influence specific EU regulations,

¹⁴ [The State of Public Affairs 2006](#), Andrew Hawkins (CommunicateResearch), 7 March 2006.

including on lobbying assistance by public affairs firms, is needed. An effective EU lobbying disclosure system would thus help to increase social and environmental responsibility of European business. A voluntary register, on the other hand, would fail to make any real difference in this respect.