

# Bursting the Brussels Bubble

the battle to expose **corporate lobbying** at the heart of the EU

BRUSSELS

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EU



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## about ALTER-EU

The Alliance for Lobbying Transparency and Ethics Regulation in the EU (ALTER-EU) is a coalition of over 160 civil society groups, trade unions, academics, and public affairs firms concerned with the increasing influence exerted by corporate lobbyists on the political agenda in Europe, the resulting loss of democracy in EU decision-making and the postponement, weakening, and blockage, of urgently needed progress on social, environmental, and consumer-protection reforms.

ALTER-EU is a coalition of organisations, not an organisation in its own right. It does not have its own staff or budget. Organisations on the Steering Committee, together with some other ALTER-EU members, contribute staff time and share the costs for specific activities.

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## the battle for lobbying transparency

William Dinan, Spinwatch

**The European Commission's announcement of the European Transparency Initiative (ETI) pushed the debate on lobbying transparency in Brussels up the agenda. Here, Will Dinan looks at the main protagonists in the lobbying debate, including the roles played by ALTER-EU and by the lobbying industry.**

In March 2005, the European Commission, somewhat unexpectedly, launched the European Transparency Initiative (ETI), kick-starting what is arguably the first comprehensive debate on the role of lobbying and transparency in decision making in the European Union. The ETI presented an ideal opportunity to push for greater transparency and accountability within the EU and in April 2005 the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU) was born.

The origins of ALTER-EU can be traced back to late 2004 when a number of civil society organisations sent an open letter to the European Commission calling for reform of its practice of granting privileged access and influence to corporate lobbies.<sup>1</sup> This was the result of a shared realisation that big business was enjoying disproportionate influence within the Commission to the detriment of other stakeholders, particularly those representing social and environmental causes.

While the open letter to Commission President José Manuel Barroso was destined to have no impact on EU policy, it highlighted a shared critique and experience of the Commission's dealings with outside interests. A workshop on lobbying reform early in 2005 brought together many of the key organisations that would help to develop the ALTER-EU coalition. More than 30 civil society groups took part, emerging with a strong sense of shared purpose that lobbying reform was necessary, desirable, and achievable. All



those involved understood that this would be a long campaign and that the prevailing orthodoxy regarding the legitimacy of secretive lobbying practices would not easily be reversed. The name adopted by the coalition was carefully chosen to reflect the need for change. But it also reflected a shared belief in the European ideal and a collective determination to secure a more democratic and accountable EU.

Key to this campaign was a credible lobbying-disclosure system which participants agreed had to be mandatory, must include detailed financial reporting, and which could be easily accessed and searched by members of the public. This remains ALTER-EU's position and the experience of the Commission's lobby-transparency register to date has reinforced this belief.

### **Enter Commissioner Kallas...**

The debate on lobbying reform was thrown into sharp relief following a landmark speech in 2005 by Commissioner Siim Kallas, responsible for Administrative Affairs, Audit and Anti-Fraud. For the first time on record a serving Commissioner acknowledged some of the serious problems related to EU lobbying:

At the moment there are about 15,000 lobbyists established in Brussels, while around 2,600 interest groups have a permanent office in the capital of Europe. [...] But transparency is lacking. There is no mandatory regulation on reporting or registering lobby activities. Registers provided by lobbyists' organisations in the EU are voluntary and incomprehensive and do not provide much information on the specific interests represented or how it is financed. Self imposed codes of conduct have few signatories and have so far lacked serious sanctions. **Lobbyists can have considerable influence on legislation, in particular on proposals of a technical nature. Their lobby is mainly directed to the Commission and the Parliament. But their transparency is too deficient in comparison to the impact of their activities.** (Emphasis added)<sup>2</sup>

This speech provoked a furious reaction among the lobbying fraternity in Brussels. Clearly many Brussels insiders had not seen this policy coming. Indeed, some Commissioners appeared equally taken aback by what was said.

This created a political opportunity for ALTER-EU. The coalition was formally launched in July 2005 and Kallas attended the inaugural event. He even appeared receptive to some of the arguments put forward by the coalition about the weaknesses of voluntary measures. But he was non-committal in terms of how the ETI might progress, suggesting the Commissioner might be stepping back from his bold opening gambit.

There was indeed something of a backlash against the proposals. Commercial lobbyists sensed a real threat to business as usual and mounted an attack on those supporting transparency and disclosure, including ALTER-EU. John Houston, then chair of the European Public Affairs Consultancies' Association (EPACA) and chief executive of Houston Consulting, repeatedly accused ALTER-EU of having an anti-business agenda and not being transparent about its funding. Such allegations were unfounded, but were designed precisely not to engage with the substance of the transparency debate.

In the face of mounting criticism from the 'usual suspects' in Brussels, particularly on the question of whether any lobbying register should be voluntary or mandatory, Kallas began to shift ground. Statements from his office appeared to be designed to appease the lobbyists. Progress on lobbying reform seemed to hinge on getting the professional consultants to engage, and the Commission tried to ensure their cooperation by offering significant concessions. While the lobbying trade associations, the Society of European Affairs Professionals (SEAP) and EPACA, were denying that the lobby industry had anything to hide, others made no such pretence. Lobbying veteran Daniel Guéguen predicted that: "in the future [...] we will tend to adopt ever tougher lobbying strategies [...] that will probably involve practices such as manipulation, destabilisation or disinformation", neatly exposing why mandatory transparency and disclosure were required.<sup>3</sup>

As the Commission was launching a consultation (following a Green Paper in May 2006) on the ETI, Washington was experiencing a major scandal over the lobbyist Jack Abramoff and his connections, particularly within the Republican Party. Kallas used this triumph for the US lobby disclosure system (without which Abramoff would never have been exposed or convicted) to argue that mandatory disclosure was no guarantee of ethical behavior. This bizarre logic illustrated the pains the Commissioner was prepared to go to in order to keep the Brussels insiders onside with the ETI. It was clear that Kallas had either been reined in or had caved in on the issue of a mandatory and robust register.

What emerged from the consultation responses was a rather mixed picture that failed to deliver a clear mandate for the Commission. There was little agreement among the responses, with many submissions reflecting the interests of the respondents. Everyone of course wanted more transparency – but there were diverging views on how best to achieve this.

The consultation did elicit widespread support for a reporting system that would apply to the Commission, Parliament, and Council and be easily accessed online by the public. There was also support for an independent watchdog to oversee this system, though many also wanted the Commission and Parliament to take responsibility for this. Interestingly, there was much greater support for a mandatory register than one might have anticipated from reading the Brussels lobbying trade press.

### **Lobbying for lobbyists**

The lobbyists' lobbies made up of SEAP and EPACA – who led the charge for a voluntary system – continued to protest. In an attempt to beef up self-regulation, EPACA introduced an expert advisory panel, drawn from senior public-affairs figures, to provide external scrutiny of the organisation's code of conduct and investigatory procedures. This idea was borrowed from the UK, where the lobbyist organisation APPC had created a similar set-up in response to political pressure and public criticism. But this simply underlined the limited transparency and accountability provided by such a model. Indeed EPACA's advisory panel has only dealt with two complaints, with both rejected as unfounded.<sup>4</sup>

While the Commission analysed the consultation replies, a rather surprising split emerged in the lobbying community as EPACA suddenly endorsed a mandatory register in principle, while arguing for limited disclosure within such a framework. In effect the terms of the debate in Brussels had shifted from initial scorn and dismissal of the ETI and lobbying disclosure, to widespread (at the time apparently implacable) resistance to any binding proposals, to a situation where many interested parties were either in favour of a mandatory system, or willing to work within such parameters.

During this period the lobbying industry was working to shape the next phase of the ETI. Kallas heard representations from a number of bodies, including the UK lobbyists' trade association in London. They were concerned by financial disclosure, and the possibility that a lobbying register in Brussels

would lead to similar measures being implemented throughout Europe.<sup>5</sup> EPACA was also keen to influence the Commission's thinking on whether lobbyists should disclose their fees and financial information related to lobbying activities. Houston, the chair of EPACA, tried to position his organisation as being transparent and supporting registration of all lobbyists, but fiercely resisted mandatory publication of "commercially sensitive or confidential financial information".<sup>6</sup>

This issue came to dominate deliberations on how to implement a lobbying register. EPACA lobbied hard for weak financial disclosure and this – as would later become clear – resulted in major concessions from the Commission.

The ETI communication was published in March 2007 with the Commission announcing that a voluntary lobbying register would be launched in 2008, including requirements for financial disclosure. It is clear that the Commission's softly-softly approach had secured the support of key factions of the Brussels lobbying industry. The question remains, at what cost? While the Commission register launched in June 2008 probably signalled the beginning of the end for self-regulation for Brussels lobbyists (including lobbying consultancies, corporate lobby groups, think tanks, law firms, and NGOs), the voluntary nature of the scheme and the limited reporting requirements meant the register could not deliver proper transparency, making scrutiny all but impossible.

Kallas said: "All these groups or bodies are invited to register publicly whom they represent and what their objectives are... to declare funding sources and major clients. This ensures the Commission as well as the public can identify and assess the driving forces behind positions taken and interests presented".<sup>7</sup> The confident announcement belied widespread doubts about how effective this scheme could be. Kallas remained "100 per cent confident" that the register would succeed. But political 'wriggle room' was retained as the Commission pointedly refused to say what precisely the criteria were for judging the success of the voluntary approach.

The requirements for financial disclosure proposed by the Commission were nevertheless objectionable to many lobbyists, some likening transparency to voyeurism. Kallas retorted that "facts on funds invested in lobbying [are a] meaningful indicator of the importance of the issues at stake... Nobody would pay real money for lobby services without expecting something in return – and that 'something' is influence".<sup>8</sup> As discontent among lobbyists continued,

Kallas drew a line in the sand: “There is no point in lobbying against a decision already taken... the profession therefore has two options – the first... is to work against the initiative, in which case self-regulation will prove a failure, leading us towards mandatory registration, for which there is probably sufficient support in both the European Parliament and in the broader public”.<sup>9</sup>

According to internal Commission notes from a meeting held on 13 December 2007, the Commission had already guaranteed to commercial lobbyists that the requirements for financial disclosure would not be expanded. According to the minutes of the meeting with EPACA, “Vice-president Kallas tried to reassure his visitors by underlining that the Commission had no interest at toughening its approach”.<sup>10</sup>

The possibility of more meaningful disclosure increased when in May 2008 the European Parliament voted for a mandatory lobbying register with full financial transparency and including the names of lobbyists. How to reconcile the positions of the Commission and Parliament on this issue still remains an open question and suggests that the shape and scope of an agreed common lobbying register is not yet fully decided.

### **On a roll? How the lobbyist register has registered**

The launch of the Register of Interest Representatives in June 2008 was greeted with mixed reactions. While ALTER-EU remained critical of the voluntary nature of the system, the limited requirements for financial reporting, and the fact that the register excluded the names of lobbyists (memorably likened to a telephone book without any names), the coalition urged all its members to comply with the register. ALTER-EU encouraged full declaration of lobbying expenditures and identification of the people involved in lobbying on behalf of member groups. This was done to demonstrate to the Commission that a more complete lobbying declaration was quite feasible, and give the lie to some of the spurious claims put forward by commercial lobbyists about the bureaucratic burden of such compliance. Many of the lobbying companies complaining about the difficulties of registering detailed financial and personnel information in Brussels had managed to do so in the USA, where such disclosure is mandatory.

Some of the early entries on the Commission’s register provoked dismay. Seasoned lobbyists scoffed at the naïvety of registrants disclosing more information than was required under the scheme. Many Brussels lobbyists

adopted a wait-and-see approach. It soon became clear that the Commission was more concerned with the numbers signing up to the register than with issues of the quality or accuracy of the filings. What emerged was a rather predictable scenario of low compliance and low-quality data. It was also clear that Kallas and his team were committed to calling the register a success and the evaluation was de facto a *fait accompli*.

The Commission could not, however, risk the register falling into disrepute and ridicule. The registrations of fake Italian bankers and Irish cheerleaders, for example, caused some amusement for observers but more serious questions about the reach and reliability of the register also started to emerge. The entry by one of the largest lobbyists in Brussels, CEFIC, the chemical industry trade association, suggested that CEFIC devoted less than €50,000 to lobbying. This was an absurdly low figure and a subsequent complaint (by an ALTER EU member group) was upheld by the Commission. CEFIC was temporarily suspended from the register, but other suspect registrations (like those of BusinessEurope and BAT) were approved by the Commission.

Another cause for concern during the pilot phase of the voluntary register was a de facto boycott by think tanks and law firms. Something of a war of words broke out between Commissioner Kallas and Giles Merritt, secretary general of the Friends of Europe think tank, on whether or not they should be considered as lobbyists (see also Chapter 4).<sup>11</sup> Law firms quietly eschewed the register arguing that they had a privileged status and their clients had a right to confidentiality – even though the work in question was not of a ‘legal’ nature. In effect, this means that secrecy continued to surround this important dimension of public affairs in Brussels. Indeed a perverse effect of the Commission’s transparency drive is that in practice any interest wishing to avoid scrutiny or publicity can simply retain a law firm as a lobbyist, safe in the knowledge that this relationship will not be made public under the current disclosure system.

ALTER-EU closely monitored the pilot phase of the lobby register, hosting an expert workshop on lobbying transparency and publishing a detailed analysis of the register. Sheila Krumholz, executive director of the US Center for Responsive Politics (publishers of the respected [opensecrets.org](http://www.opensecrets.org) website) remarked that “the biggest problem with the EU register was that it was voluntary and that there are problems with the comparability of data”. Krumholz argued that the current EU system gave the public “false confidence” that there was proper transparency and oversight.<sup>12</sup> In June 2009

ALTER-EU published its study of the first year of the register, concluding that less than one in four lobbyists had voluntarily joined the scheme. It found:

The reliability and comparability of the data is fundamentally undermined by the arbitrariness of how lobby expenditure is being calculated. There appears to be significant under-reporting, and mis-reporting. In addition to underestimating in-house lobby expenditure, the register contains a wide range of loopholes that prevents real visibility around the size and nature of the lobbying activities of large firms. Not many registrations offer anything approaching full disclosure of the kind that should reasonably be expected of companies and industry groups engaging in lobbying in Brussels.<sup>13</sup>

### **Conclusions: transparency delayed**

Despite the evident flaws in the trial phase of the lobby register it came as no surprise that the Commission pronounced in October 2009 that the voluntary approach had been a success and would be continued. The Commission offered a few minor sops to its critics, including adjustments to the banding of financial reporting to close some loopholes (but probably opening new ones) and a new category for think tanks. The Commission also pledged to pursue the question of how law firms engaged in lobbying could be brought into the register, and to work with the Parliament on finalising a joint register for both institutions.<sup>14</sup>

It is evident that the Commission's satisfaction with the voluntary register is not universally shared. Some stakeholders and MEPs have criticised the Commission for not sufficiently strengthening the register. A caucus of pro-transparency MEPs was formed in the new parliament elected in June 2009 – although how effective this group can be in shaping the common register remains to be seen. What is clear is that some of the design flaws in the current register are likely to be revealed as unsustainable in the long term.

In reviewing the near five-year debate on lobbying disclosure it is striking that not one decent principled argument has been offered against mandatory registration and disclosure. While there has been plenty of rhetoric about the desirability of voluntary approaches, no one has yet answered the key problem with this approach: what to do about those who do not register – who are most likely to be those with most to conceal? This remains a fundamental weakness

of the system in place. It is also unfortunately the case that the register is not comprehensive, it is not properly audited and checked (so data must be treated with some caution), leaving a weak form of transparency and arguably misplaced confidence that there is now sufficient oversight of lobbying.

It has been a long and often frustrating battle to get even the current disclosure regime in place. Industry opposition is deep-rooted and this clearly had an impact on the ambition of the ETI and the design of the register. There remains a risk that the debate on lobbying disclosure could now drift and even stall – even though the issues surrounding transparency, accountability, and influence in the policy process in Brussels remain. The Commission is convinced that a culture change is underway. Time will tell. Rather than the beginning of the end of lobbying secrecy it is more likely that we are witnessing the end of the beginning of this process. Lobbying in Brussels remains politically significant and is not transparent. As long as a voluntary approach is pursued this will allow lobbyists to choose not to disclose information about their activities. The need for a strong campaign to promote disclosure and accountability is as pressing as ever. ALTER-EU will continue to champion this cause in the hope that transparency delayed does not necessarily mean transparency denied.

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- 3 "PA veteran calls for professional body to scrutinise Brussels lobbyists", Euractiv.com, 3 May 2005.
- 4 See "Complaints & rulings" on the EPACA website.
- 5 According to minutes released on the APCC website. See also: David Gow, "Auto ice man puts the freeze on rivals", Guardian, 21 February 2007.
- 6 Ibid.
- 7 Commissioner Kallas, speech to the Federation of European and International Associations Established in Belgium (FAIB), Brussels, 18 June 2007.
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- 12 "EU voluntary lobby register failing to increase transparency", *The Parliament Magazine* (website), 27 January 2009.
- 13 ALTER-EU, The Commission's Lobby Register One Year On: Success or Failure? (Brussels: 2009), p. 31.
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