Feasibility of establishing a common register for lobbyists in the EU

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1. Lack of common lobbying standards in the EU

Lobbying is not regulated in the European Union (EU) in a uniform or coherent manner. While the European Parliament (EP) has had a registry and code of conduct for lobbyists for a considerable period of time, the European Commission has moved more slowly from the open access policy for lobbyists towards the adoption of regulatory standards for this activity. It recently decided to introduce registration for lobbyists, by which registered parties are held to a code of conduct. The Commission’s register for ‘interest representatives’ (rather than lobbyists) is due to open on 23 June 2008. The Commission established data base CONECCS (Consultation, the European Commission and Civil Society), which was used to ensure that each of the Commissions Directorate Generals (DGs) finds the relevant partners to talk with over policy proposals, is closed. However, the register of stakeholders participating in the civil dialogue with the DG Trade remains fully operational in spite of the fact that the area of its application will also come in the remit of the new Commission register for lobbyists.

The Commission has clearly expressed its preference to develop the register and code of conduct for lobbyists together with the European Parliament, the Committee of Regions and the Economic and Social Committee. The Commission’s intention is, in principle, endorsed by the European Parliament in its latest report on regulation of lobbying (hereafter the 2008 EP resolution on lobbying). By the end of 2008 a joint working group between Commission, Council and Parliament should report on feasibility of establishing common lobbyists’ register. Does this mean that in future there will be ethical standards for lobbyists applicable to all EU institutions?

2. Past Initiatives

Prior to the Commission’s latest programme for setting up an interest representatives’ register, efforts undertaken in the Union aimed at the creation of common European standards for regulating lobbying have not produced encouraging results. The Governance White Paper called on the Commission, the European Parliament and the Council to review their practices and contribute to the general reference framework for consultation by 2004. The June 2003 inter-institutional agreement on the better law-making initiative urged the three institutions to improve the coordination of their preparatory work and to adopt a common methodology for carrying out impact assessments. Furthermore, all three institutions have endorsed the development of the common approach to impact assessment. Despite these initiatives, there is still no common framework for consultation with interested parties which is applicable to all EU institutions. The initiative for the adoption of the Statute for a European Association (EA) as part of a general approach to regulate the establishment of interest associations at the European level failed as well.

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1 An extended version of this Policy Brief is available at the NEWGOV project website, www.eu-newgov.org, in the section of project 24.
3 http://trade.ec.europa.eu/civilsoc/
3. Reasons for the lack of common lobbyists’ rules in the EU

3.1. The autonomy of EU institutions to regulate according to their own operational rules

The lack of common lobbyists’ standards in the EU is primarily attributable to the founding principles of the EU institutional framework, which is based upon the principle of inter-institutional balance. This means that each institution has a degree of autonomy in regulating its operational rules. Consequently, they do not have an obligation to synchronise those conventions among themselves.

3.2. Different roles and tasks assigned to EU institutions

Not all EU institutions are equally attractive or receptive to lobbying activities. Their relations with lobbyists are predominantly determined by the role they play in EU decision making. This is the reason why the rules which are appropriate for the regulation of lobbying activities in one institution might not serve the requirements of another. The European Parliament recognises that institutions have essential differences and might end up with different requirements for lobbyists.\(^5\)

It is very well-documented in the literature that European decisions are most efficiently influenced at the pre-drafting stage, while they are with the Commission. Accordingly, lobbyists are most interested in having unhindered access to this institution. Furthermore, only the Commission holds internet-based public consultations prior to adopting draft proposals. In order for participating parties to have their contributions taken into consideration by the Commission, they must comply with representativeness and accountability criteria, hereafter called the ‘Commission minimum standards for consultation’.\(^6\)

The Commission’s new register of lobby groups is combined with the standard template for internet consultations. It invites lobbyists and interest groups working to influence decisions taken in European Union institutions to subscribe to the public register. If a group declines registration, the Commission will not consider its contributions to the internet-based consultations because it will be seen as having failed to fulfil the criterion of representativeness. The Commission justifies the imposition of those requirements on the grounds that ‘with better involvement comes greater responsibility.’

These are not the circumstances under which lobbying activities take place in the European Parliament (EP) or the Council. For example, the EP created its own civil society constituency called Agora Forum encompassing 500 civil society organisations that meet the EP lobbyists’ requirements. EP members consult these organisations during the preparation of Parliamentary committees’ reports. Thus, since lobbying conditions are not reproducible throughout the complex EU institutional design, it remains questionable whether a single set of rules can govern very different lobbying situations.

3.3. Differences in Commission and EP approaches to regulating lobbying

At present, there are significant differences in the Commission’s and EP’s approaches to regulating lobbying.

The most obvious, but not the most important one, concerns the fact that the EP insists on mandatory registration, while for the Commission voluntary compliance appears to be more appropriate. Since the lobbyists’ access to the EP building and its members is conditional upon their registration, any common registrar of interest representatives in the EU would be de facto mandatory for lobbyists.

A more serious discrepancy between the two institutions lies in how they treat the financial disclosure requirement.

The Commission is of the opinion that interest groups should declare funding sources and major clients. The operationalisation of those requirements should be compatible with the Union legislation on data protection applicable to its institutions, that is to say Regulation 45/2001 which empowers the Commission to make more data available, including those mentioned in its proposed register for lobbyists, when it is necessary for the performance of its tasks in the public interest, provided that lobbyists are informed about this and other relevant circumstances, when their data are collected.

In its 2008 resolution on lobbying, the European Parliament calls for ‘full financial disclosure’

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without indicating the precise meaning of this request. It only asserts that such disclosure requirements should be equally applicable to all registered interest representatives and carried out within meaningful parameters, without having to provide exact figures. Given that the examination of the current Parliamentary rules on lobbying cannot contribute to further clarification of its standing on this matter because they do not require accredited interest representatives to disclose financial information, the Parliament position on disclosure of financial data remains very elusive.

Another issue on which there is no common position concerns the establishment of a body for monitoring the accuracy of information solicited by registrars. Whether EU institutions will be able to establish such a mechanism is debatable. An earlier attempt to set up an Advisory Committee on Standards in Public Life has failed due to the opposition of the EP. The rejected model had no sanctioning powers and also no powers with regard to the management and monitoring of registers of interest of EU officials. Is it now possible to establish a common monitoring structure to manage the new common register for lobbyists when previous efforts to create a public ethics monitoring body with only mild advisory competence proved to be futile? The gravity of the problem is worsened by the fact that both the Commission and the EP insist that sanctions, such as suspension of membership or even removal from the register, be imposed on groups which supply inaccurate information or breach the code of conduct. This sanctioning regime should be, presumably, carried out by the monitoring body overseeing the functioning of the register for lobbyists.

Furthermore, there is no harmony among these EU institutions with regard to how their standards governing conflicts of interest among public officials complement the ethics rules for lobbyists. While there are numerous and very strict rules on the disclosure of the financial interests of the Commissioners, the EP ethics regime is in contrast quite weak, even though, as emphasized in its 2008 resolution on lobbying, it requires EP members to declare their financial interests.

An additional problem arises from the EP’s insistence, in its aforementioned resolution, on the use of a ‘legislative footprint’, i.e. an indicative list, attached to a Parliamentary report or Commission legislative proposals, of registered interest representatives who were consulted and had significant input during the preparation of the report or EU policy initiatives. Although the Commission publishes all contributions submitted during the internet-based consultations prior to the drafting of its proposals, it does not refer specifically, in the explanatory statements accompanying its proposals, to groups whose opinions have made significant influence upon its drafts:

4. Prospects for establishing a common lobbyists’ register in the EU

It is very unlikely that a common lobbyists’ register in the EU will be put into operation anytime soon. Obstacles to such a development are numerous, and include: the autonomy of EU institutions to regulate according to their own operational rules; dissimilarities in lobbying situations

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8 Cf http://ec.europa.eu/yourvoice/consultations/
across different EU institutions; and differences between the Commission’s and EP’s approaches to regulating lobbying which are manifest in the nature of the registration requirement (mandatory or voluntary), the content of the financial disclosure requirement, the scope of competence of a body monitoring the functioning of the register for lobbyists, and the question concerning the indication of groups which have decisively influenced Commission’s proposals or EP reports.

Nevertheless, we would like to point out several factors which could facilitate the adoption of the common lobbyists’ regulation in the EU. For example, the Commission and the EP do agree on the definition of lobbying, the need to sanction non-compliance with the registration requirements, and the need to publish a transparent overview of the experts groups and advisory bodies the Commission has set up to assist in preparing policy initiatives as well as a list of intergroups the EP has established to support its committee work. Finally, although EU institutions have no common approach to the designation of the exact context of the financial disclosure requirement, it should be kept in mind that this requirement is not targeted specifically at interest groups and NGOs active at the EU level, but rather comprises part of the wider EU effort to improve transparency in EU finances. This suggests that EU institutions might be able to adopt the common position on this matter.

However, the most compelling reason to establish common regulatory rules for lobbyists in the EU is the lack of incentives for civil society groups to comply with the enrolment requirements of the Commission’s register of interest representatives. Although lobbyists on the Commission’s register will have the advantage of being alerted to consultations in specific areas, it is feared that this is a relatively weak incentive, particularly for Brussels-based interest groups that follow the Commission’s activities on a daily basis. The Commission thus introduced an additional advantage to registering, whereby it will consider only registered groups to be representative of their sectors during the internet-based public consultations; non-registered groups will not be considered as representative.

It is very questionable whether the mentioned incentives for signing up in the new register can serve their purpose. The automatic alert function will be very difficult to implement, for several reasons. First of all, the application thereof would create a privileged group of recipients of information held by the Commission. Such practices are prohibited by European laws which assure equal and unconditional access to information possessed by EU institutions to all EU citizens and residents, whether groups or individuals. Furthermore, the consultation standards do not require the Commission to provide all interested civil society organisations with individually issued invitations to participate in an EU consultation. At the same time, it is unclear whether those standards allow for designated potential participants to be alerted, while other potentially interested parties are not.

Because interest groups have no compelling reason to sign the Commission’s register of lobbyists, the Commission has called for the establishment of the common EU interest representatives’ register. It is the Commission’s hope that such an initiative will increase mobilisation for registration among civil society organisations.

Further reading

This policy brief is based on research carried out within the NEWGOV project no. 24 on “Democratisation/Participation of Civil Society in New Modes of Governance”. The project is focused on the accountability implications of the participation of interest groups in the new forms of social and economic governance within an enlarged European Union. It analyses whether the involvement of civil society groups in European social and economic governance enhances or hinders accountability / answerability in the Union; identifies new mechanisms for ensuring the accountability / answerability of civic groups engaged in governance; and sets out guidelines for the design of new accountability/answerability mechanisms. Particular emphasis is placed upon the accountability situation of civic groups emerging in the new member states. Further information can be found on the NEWGOV Website in the special section of project no. 24.

9 See http://ec.europa.eu/transparency/regexpert/