

Lobbying the European Parliament: A necessary evil

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Executive summary

Despite the growth of lobbying in the EU over the past two decades, the EU has taken a rather laissez-faire approach to regulating lobbying activity. While the European Parliament (EP) is in many ways more transparent and more accessible than many of the EU's national parliaments, the code of conduct for lobbyists and the Parliament's own rules of procedure are rather vague. As a result of the 'cash for laws' scandal, the EP President, Jerzy Buzek, has established a working group to draw up a new set of rules to govern the access and behaviour of lobbyists and to formulate a code of conduct for Members of the European Parliament (MEPs). The working group is currently considering seven proposals put forward by Jerzy Buzek, including a mandatory lobbying register for all EU institutions; a strengthening of MEPs' declarations of financial interests, with more frequent updates; a code of conduct for MEPs; a 'legislative footprint' for rapporteurs and tougher sanctions for non-compliance with these rules. While the reform proposal, as it stands now, offers a significant improvement of the Parliament's current rules, it does not go far enough, however.

This Policy Brief analyses the shortcomings of the Parliament's current Rules of Procedure and provides suggestions as to how it can improve both its dealings with lobbyists and the rules governing MEPs. It recommends a new code of conduct for MEPs; the

prohibition of any gifts and travel by lobbyists for MEPs; clearer rules regarding MEPs' potential conflicts of interest and disclosure of financial interests; creating an ethics committee and introducing more formalised ways of consulting external stakeholders.

Introduction

The recent 'cash for laws' scandal has brought ethics and transparency reforms back on to the front burner. The lobbying sting involved four MEPs who were accused of agreeing to accept money from Sunday Times journalists, posing as lobbyists, in return for watering down banking reform legislation. Presenting themselves as banking lobbyists, the journalists contacted some 60 MEPs and attempted to bribe them with offers of cash in return for tabling amendments to draft EU legislation. While the allegations against the four MEPs are extremely serious, the number of MEPs who agreed to accept the bribes is rather small, given that around 60 MEPs were initially contacted. Putting aside the individual cases of the four MEPs implicated, the question is how the European Parliament will use the momentum to reform its own Rules of Procedure and dealings with lobbyists. As a result of the scandal, the EP has established a working group, under the leadership of the EP President Jerzy Buzek, to prepare a tighter code of conduct for lobbyists and improve MEPs' declarations.

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A resource-dependent relationship

Lobbying is essential to the functioning of the European Parliament, particularly when MEPs are attempting to gauge the impact of policies on specific sectors. Interest groups' provision of information and technical expertise to MEPs often ensure more informed policy formulation. While theoretically consistent with the ideals of democracy, the influence of interest groups can, in practice, lead to political corruption (as was the case in the 'cash for laws' scandal) and inequality of representation. The recent lobbying scandal is by no means a phenomenon solely confined to the EP, but perhaps bribery is more likely to go unnoticed there than in national parliaments, due to the limited media coverage of MEPs. It is well known that MEPs are not held directly accountable to the public. EP elections are fought on national, rather than European issues. They are often treated as mid-term national beauty contests used as a stick to beat an incumbent government with. There is no EU-wide media, which makes it difficult to reach a large audience. When EU affairs are covered in the national media they are given national frames of interpretation, reaffirming the role of the nation state rather than legitimising the EU. The lack of a direct link between MEPs and their electorates, combined with the low visibility of EU affairs nationally, means that MEPs are not constantly held accountable for their activities to the same extent as national politicians.

Currently, lobbying is not regulated in the EU in any uniform or consistent manner, although the European Commission and the EP are currently working on establishing a joint Transparency Register to be put in place in June 2011. However, as it stands now, the European Commission and the EP have very different ways of consulting interest representatives. The EP's consultation of stakeholders is not institutionalised, as it is to some degree in the European Commission with the social dialogue in employment affairs and its various experts and high-level groups. While the European Commission often spends 3-4 years preparing a proposal with advice from a large number of expert and high-level groups, a rapporteur in the EP has only a few months to prepare a report. Hence, committee rapporteurs and shadow rapporteurs are particularly obvious lobbying targets and often lean heavily on interest groups for information when writing reports. These MEPs are also considered to be the main opinion-shapers of Parliament's stance as a whole. This raises the question of how rapporteurs and other key MEPs gather information and evidence when drafting a committee report.

Much of the Parliament's work involves highly technical issues, where expert knowledge is required. MEPs manage with few assistants and policy

advisors, who are not necessarily experts on the dossier under consideration. MEPs have an extremely busy agenda and spend most of their time living out of a suitcase travelling between Strasbourg, Brussels and their national constituency. Lobbyists are therefore welcome guests in the offices of busy MEPs. Most MEPs, assistants and parliamentary policy advisors cannot imagine doing their work without information provided by lobby groups. Rapporteurs and shadow rapporteurs in particular rely extensively on interest groups to provide them with information and to translate complex and technical information into brief 'digestible' notes. Parliament's extensive workload gives considerable scope for lobbyists to influence MEPs, assistants and policy advisors. As one policy advisor affirmed:

We cannot do our work without the information from interest groups. They send us amendments and voting lists prior to the committee and plenary vote. Sometimes it is very tempting to copy and paste their amendments and voting lists. I mean we are all so busy in Parliament.²

When drafting the committee reports, rapporteurs routinely seek out key interest groups to solicit their views. It is often reported that representatives of European associations have written large parts of the rapporteur's report and the amendments proposed by committee members.³ Informed estimates claim that about 80% of all amendments launched in the committees stem directly from interest representatives and the inspiration behind the last 20% often comes from outside Parliament.⁴ While the tabling of amendments stemming from interest groups does not necessarily ensure their adoption in Parliament, the figures demonstrate that interest groups play an important role in the Parliament's work. Indeed, it is not unusual to see MEPs from different political groups suggesting identical amendments with identical justifications. This highlights the fact that committee amendments are not only subject to intense negotiations between committee members, but also between MEPs and affected interest organisations.

Parliament's current Rules of Procedure and their shortcomings

The EP is the only EU institution with a system of accreditation for lobbyists, consisting of both a

² Interview, EP policy advisor, 1 September 2010.

³ Hix, S. and B. Hoyland (2010), *The Political System of the European Union*, 3rd edition Basingstoke: Palgrave Macmillan.

⁴ Earnshaw, D. and D. Judge (2006), "No simple dichotomies: lobbyists and the European Parliament", *The Journal of Legislative Studies*, 8:4, pp.61-79.

register and a code of conduct. It is limited to the collection of a minimum amount of information from lobbyists in return for an annual pass granting its holder access to the Parliament buildings. An interest group's ability to obtain an EP pass means that it is relatively easy for lobbyists to follow EP meetings and approach MEPs and assistants compared to parliamentary access in some domestic parliaments. As a representative from the British Chamber of Commerce explained:

Westminster is much more antiquated. There are practical differences [between Westminster and the EP]. In the UK, you can't get a pass to Westminster. If you want to enter Westminster's premises, an MP has to get you and walk you around. Here [in the EP], you can get a pass.⁵

The EP has 4051 accredited lobbyists (persons), and 1797 interest organisations listed on its website (as of May 2011). EP pass-holders must conform to a set of rules listed in the EP's Rules of Procedure (Annex X), mainly:

- state the interest or interests they represent in contacts with MEPs, their staff or officials of Parliament;
- refrain from any action designed to obtain information dishonestly;
- not claim any formal relationship with Parliament in any dealings with third parties;
- not circulate for profit to third parties copies of documents obtained from Parliament
- not offer any gifts.

A breach of the code may lead to the withdrawal of the pass. While the EP is the only EU institution to have introduced an accreditation system and a code of conduct for lobbyists, the rules are too broad to be properly enforced. What classifies as 'gifts' is unspecified. Should lobby companies funding and holding public hearings and receptions within the Parliament be considered as gifts? Should MEPs being invited to visit tobacco farms by the tobacco industry, with everything paid for, be considered as gifts? 'Gifts', or special benefits, are not uncommon in the EP. MEPs and their assistants frequently receive gifts from lobbying companies, such as free football tickets, dinners and drinks receptions, conference invitations with everything paid for and free cinema tickets. For instance, Warner Brothers invited MEPs along to a food and wine reception followed by a pre-screening of the latest Harry Potter movie, in November 2010. Before the movie, a

representative of Warner Brothers briefly explained their position on an ongoing directive on copyright rules. While MEPs and assistants are aware that they are being lobbied, they will most likely remember to consult this lobby group when Parliament deals with copyright rules. Raising awareness and visibility is often the purpose behind interest groups giving MEPs gifts. While these lobbying events may be beneficial to MEPs to raise their awareness of particular issues, it becomes a concern when MEPs receive gifts from the companies and associations they are meant to be regulating.

As stated above, under the Parliament's current Rules of Procedure, MEPs and parliamentary assistants are expected to refrain from accepting any gifts or benefits in the performance of their duties. MEPs are required to make a detailed declaration of their professional activities and financial interests. Despite being publicly available on the Parliament's website, these declarations often contain limited and irrelevant information about MEPs' activities. Furthermore, they appear in a rather unprofessional format as they are handwritten by the MEPs and only appear in their own language. Rarely do MEPs declare the small gifts and hospitality they receive from businesses with a vested interest in the work they do as legislators, or give an extensive account of their external parliamentary activities. For instance, the rapporteur on the reduction of CO₂ emissions from light commercial vehicles Directive is also chairing the "Forum for the Automobile and Society", which is a forum run jointly by the European Automobile Manufacturers Association (ACEA), the European Council for Motor Trades & Repairs (CECRA), the European Association of Automotive Suppliers (CLEPA), la Fédération Internationale de l'Automobile (FIA) and the Japan Automobile Manufacturers Association (JAMA). This industry forum is an arena for debate, bringing together motoring organisations and key policymakers from major legislative institutions. Although this information is available on the forum's website, the rapporteur fails to declare this in his parliamentary declaration. In this instance, I would question where a rapporteur chairing an automobile industry forum obtains the bulk of his information, and whether or not there may be a conflict of interests.

While MEPs' active engagement with outside interests (such as board positions or remunerated professional activities), either paid or voluntary, allows them to gain insight into specific policy areas and sectors, it may compromise their impartiality and objectivity inside the EP. This raises the question of whether or not an ethics and transparency reform should prohibit MEPs from doing any paid or voluntary external parliamentary activities that

⁵ Interview, British Chamber of Commerce, 11 November 2010.

involves lobbying or that may lead to a conflict of interests. Should MEPs, for instance, be allowed to sit on the board of a bank or an industry forum, while at the same time being able to take on key parliamentary roles, such as rapporteur or shadow rapporteurships? The question feeds into the heated debate of what constitutes a lobbyist. One could argue that MEPs themselves are, indirectly, acting as lobbyists when they are engaged with specific interests in their external parliamentary activity. Evidently, if MEPs or their assistants sit on the board of a company, they are likely to have an interest in promoting the views of the specific company and to act as its conduit.

Should MEPs not represent the people who voted for them rather than a specific industry, company, NGO or any other interest organisation? The answer is not unequivocal. Politicians are often drawn into politics because they want to fight for the interest of a specific sector. ‘Second jobs’ or other external parliamentary activities also provide MEPs with the opportunity to gain more specialised expertise on specific issues on which they are regulating. However, it becomes problematic when MEPs are too involved with the outside interests they are meant to regulate. One possible solution could be to prohibit MEPs from taking up key posts in Parliament (rapporteur, shadow rapporteur and coordinator) in areas where they are directly engaged with outside interests (e.g. either doing paid or voluntary work for a specific interest). A prerequisite for discovering actual or potential conflicts of interest is of course that the Parliament’s own Rules of Procedure are properly enforced and monitored. As things stand now, some MEPs fail to report the full scale of their external parliamentary activities and financial interests.

Reform suggestions

The shortcomings of Parliament’s current Rules of Procedure demonstrate that there is ample room for improvement. The Parliament’s newly established working group, chaired by Jerzy Buzek, should consider including the following reform suggestions:

Reconsider the definition of a lobbyist

Exactly what constitutes a lobbyist is the subject of heated debate. The definition of a lobbyist matters as it prescribes who and what activity is to be subject to Parliament’s Rules of Procedure (Rule 9, Article 4) as well as the forthcoming common Transparency register between the European Parliament and the European Commission. According to the EP’s Constitutional Affairs’ (AFCO) committee report on the common Transparency Register (adopted by the AFCO committee on 19 April 2011), the scope of the register covers all activities carried out with the

objective of directly or indirectly influencing the policy formulation or implementation and decision-making processes of the European institutions. The following actors and activities are, however, excluded from the scope of the register:

- Activities concerning the provision of legal and other professional advice (such as that provided by lawyers) when they relate to the exercise of a client’s fundamental rights to a fair trial or the right to defence in administrative proceedings.
- Activities of the social partners as actors in the social dialogue when acting within the role assigned to them in the treaties.
- EU member states’ governments, third country governments, international intergovernmental organisations and their diplomatic missions.
- Churches, as well as local, regional and municipal authorities, except their representational offices, legal bodies and networks created to represent them towards the EU institutions.

Excluding national governments, or what could be called ‘institutional lobbyists’, from the scope of the register is not unproblematic, given national governments’ extensive lobbying of MEPs. As an EP policy advisor explained:

People underestimate the amount of contact MEPs have with their permanent representations. The lobbying from the UK permanent representation is massive. They brief us about their position [...]; they have a huge arsenal of civil servants behind them.⁶

National governments often lobby their national MEPs by furnishing them with policy briefings and inviting them to receptions. The British permanent representation is particularly known for lobbying not only their EP national delegations, but also key MEPs (rapporteur, shadows and coordinators) working on a dossier of specific interest to the UK. On the Maternity Leave Directive, for instance, all the key MEPs reported that they had been contacted by the attaché in charge of the dossier at the British permanent representation, who provided them with tailored briefings. Indeed, many permanent representations have a full-time parliamentary attaché employed to follow EP affairs closely and to maintain contact with their national MEPs. Should that be considered as a lobbying activity?

Introduce a code of conduct for MEPs

Unlike European Commissioners, the EP does not have a code of conduct for MEPs. The

⁶ Interview, ALDE policy advisor 29 November 2010.

Commissioners' code of conduct is very detailed and states explicitly that:

- Commissioners may neither engage in any other professional activity, whether paid or unpaid, nor accept any form of payment for delivering speeches or taking part in conferences.
- Commissioners must declare any financial interests or assets which might create a conflict of interests in the performance of their duties.
- To prevent any potential risk of conflict of interests, Commissioners are required to declare their spouses' professional activities and relevant financial holdings.

While European Commissioners are subject to numerous and very strict rules on the disclosure of their financial interests, the EP's Rules of Procedure pales in comparison to that of the Commissioners. While the Commissioners' declaration of interests includes a detailed account of their outside activities (posts held currently and over the previous ten years in foundations and educational institutions), financial interests (shares, stocks and assets) and spouses' professional activities; the information provided by MEPs in their financial declaration is often kept to a minimum and updated only once a year. MEPs should be required to update their declaration of interests whenever their situation changes and disclose the same information as Commissioners.

Prohibit gifts and travel

The EP needs to spell out what is considered as a gift and under what circumstances MEPs are allowed to receive gifts. Gifts, free meals and travel (such as free football tickets, conference invitations with everything paid for, cinema tickets and receptions) are a common lobbyist means of influencing MEPs. Not all interest groups have the budget and staff levels available to fund and arrange such activities, which puts non-governmental organisations at a particular disadvantage compared to businesses.

Unlike the European Parliament, the European Commission and the US Congress have clear rules on the issue of gifts, from which the EP could take inspiration. According to the European Commission's rules, Commissioners are not allowed to accept gifts of a value of more than €150. The rules of the US House of Representatives goes even further by banning lobbyists from giving meals, gifts and trips of any value to politicians and their staff. In the US Congress 'sit-down-meals', sports and entertainment tickets are illegal. The only type of gathering with food and drinks not considered gifts are 'finger food' events which are open to the public, such as a trade union conference. In the US Congress, free travel is

also severely restricted. Lobbyists are allowed to pay for a one-day trip to a congressman if he or she is invited to a conference to make a speech. These trips need to be pre-approved by an ethics committee, and the sponsors, costs and itineraries posted on the Congress website.

While lobbying regulation in the EP and the US Congress is quite different, the lobbying activities are similar, with lobbyists in both Brussels and Washington exchanging drafts of legislation and holding informal conferences and receptions in pleasant locations. Both the Congress and the EP have an elite pluralistic interest group system, where interest groups have to compete for politicians' attention without being subject to any formal hearings. Although MEPs are not dependent on moneyed interests for their re-election, they are dependent on interest groups for information. Much can therefore be learned from the way the US Congress regulates its dealings with lobbyists. As the recent 'cash for law' scandal has demonstrated, it is clearly not sufficient to base lobbying regulation and MEPs' declarations on trust and self-regulation. There needs to be a clear rules and enforcement mechanism backed up by higher penalties for MEPs, EP staff and lobbyists if they fail to comply with the rules.

Prohibit MEPs from taking up key posts if they have a conflict of interest

MEPs should be prohibited from taking up key EP posts (i.e. committee chair, rapporteur, shadow rapporteur and coordinator) when there is a potential conflict of interest. MEPs ought to declare any actual or possible conflict of interest, and cannot become rapporteurs or shadow rapporteurs in areas where they are directly engaged with outside interests affected by the legislation. For instance, it should not be possible for an MEP sitting on the board of a bank to be either a rapporteur or shadow rapporteur on a directive concerning banking regulation.

The current parliamentary rules require MEPs to make a detailed declaration of their professional activities and financial interests. MEPs often fail to provide the necessary information. The EP must therefore ensure that these rules are properly enforced by establishing a body dedicated to monitoring the accuracy of information provided by MEPs, assistants and lobbyists. Furthermore, as Jerzy Buzek has proposed in his recent anti-corruption plan, MEPs should be obliged to update their declarations of interest every time a situation changes rather than just once a year. This declaration must also include the professional activity and financial holdings (financial interests and assets) of MEPs' spouses whenever it may entail a conflict of interests. The declarations

should appear in at least four languages (their own language, plus English, French and German).

Introduce a 'legislative footprint' and 'lobbying contact reports'

The EP must facilitate a system whereby the public can see what interest representatives MEPs consult. This could, for instance, be in the form of what Alexander Stubb (former Finnish MEP) has termed a 'legislative footprint', whereby rapporteurs working on legislative texts must list all individuals and interest groups they have consulted, or from which they have received advice, during the preparation of their report. Furthermore, the British Conservative MEPs' recent introduction of a 'lobbying contact report' could be extended to all MEPs. The Tory MEPs publish a list on their party's website registering any formal prearranged meetings held with lobbyists every month. The information published lists the MEP's name, the meeting date, the name of the lobbyist(s), their organisation (and clients, if applicable) and the issue discussed. The latter only needs to be a one-sentence summary, such as 'food labelling to consumers'. A 'legislative footprint' for rapporteurs and their assistants and a 'lobbying contact report' for all MEPs and their assistants would bring additional transparency to the policy process and make it possible for MEPs' constituents to see which interest groups their MEPs have consulted.

Introduce more formalised ways of consulting stakeholders

There is currently no uniform way of consulting stakeholders in the EP. It is left to individual MEPs to decide how they want to consult relevant stakeholders. While most MEPs are open to meetings with interest groups, some key MEPs (rapporteurs and shadow rapporteurs) sometimes refuse to see certain interest groups. For instance, during the first reading of the regulation on food information to consumers, certain shadow rapporteurs persistently declined to meet with representatives from the food industry. This is problematic as key MEPs (rapporteurs and shadow rapporteurs) should have an obligation to consult affected stakeholders regardless of whether or not they agree with their views from the outset. The devil of EU legislation is in the detail and often interest groups (whether private or public) are able to alert MEPs to aspects of the Commission's proposal they might not previously have been aware of. While it is not possible for MEPs and their assistants to consult all interests affected by a regulation or a directive, key MEPs should have an obligation to at least consult interest groups from both sides of the debate. One suggestion to secure wide consultation of affected stakeholders could be to conduct online consultations.

For instance, the EP could make a folder on each committee's website, where interest groups can upload their position papers, amendments and voting recommendations to MEPs within a given deadline. This deadline could be set three weeks before the rapporteur is due to hand in his or her first draft report, for instance. In order to avoid information overload, interest group position papers could be limited to 1-2 pages, and could follow a format set up by the EP. MEPs and assistants could furthermore upload any emails, amendments or position papers forwarded to them by interest groups. This form of stakeholder consultation would allow MEPs to familiarise themselves with the various stakeholders' positions and for the public to see the issues at stake on specific pieces of legislation.

The above reform suggestions demonstrate that various aspects should be considered when reforming the rules governing lobbyists, MEPs and parliamentary staff. Parliament's current Rules of Procedure are too vague to be properly enforced and do not go far enough in addressing issues such as MEPs' potential conflicts of interest, in defining what constitutes a gift and introducing minimum standards for consulting outside stakeholders.

As Jerzy Buzek expressed in an interview to the EUobserver on 31 March 2011, there is a certain irony in the fact of MEPs examining the European Commission's new Code of Conduct for Commissioners when there is no equivalent for MEPs themselves. While Jerzy Buzek's working group's reform proposals are still to be published in June 2011, the seven-point reform proposal he puts forward is still a long way from addressing the shortcomings of the Parliament's current Rules of Procedure. It is my hope that the working group will also consider the proposals put forward in this Policy Brief.



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