

## **LOBBY AND TRANSPARENCY - MUTUALLY INCLUSIVE FOR THE GREATER GOOD. A study on the Transparency Register of the European Union**

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### **Abstract**

Lobbying is an instrument that seems to be getting focus from time to time, especially when things do not go quite right. But what is the real value of lobbying and is the EU in need of such an instrument? Policymaking in a democratic world requires the input of many, on matters of great variance, and the individual vote would not represent a feasible option. Lobbying takes the spot in all those cases where voting is not an option, but the risk is that personal, hidden interest makes its way in public policy decision-making processes. As such, transparency might be the balance tool to allow for the many to see if their voices are really represented by the few.

In the paper, a short analysis of the current Transparency Register tries to showcase the mutual inclusivity of transparency and lobbying in the European Project. For brevity, it is also offering some short opinions about transparency and lobbying, in respect with the European Union and its main doctrine.

### **Keywords**

Lobby in the EU; lobby and decision-making; lobby and policymaking transparency in lobby; Transparency Register.

## 1.INTRODUCTION

Lobbying, as an instrument in the current economic paradigm, can be defined simply as the activity by which individuals or organizations seek to influence policies or their implementation directly or indirectly (EC 2007, para 2.1.1.), through access to those responsible for them, to obtain a certain desired result. The range of activities pertaining to this particular instrument is very diverse, from direct talks to influencing decision making processes through various reports and analyses, from negating evidence to accepting facts and presenting them in a different light or from various points of view, all in the name of potentially influencing positively public policies, but also having the downside of negatively curving the results. The positive results for public interest were long tied up to the activity itself being transparent, with the ability to protect large businesses, with significant financial capital and strong supporters, small businesses with less leverage and smaller scope, the individuals and their take on public benefits and overall quality of life, as well as the environment, especially in terms of preserving it.

As it stands, transparency becomes the cornerstone of positive results, cross-sectorial benefit bringing lobby activity, or at least this is the consensus of the masses – a questionnaire proposed and analyzed by Democracy International in 2015, to which almost 1700 people responded, had close to 1350 people check the strong necessity that all lobbyist be registered before acting in the EU legislative institutions and some 120 respond with a medium vote, out of 1643 people responding to this particular question. If this figure is to be extrapolated, even given the benefit of the doubt, about 82% of the respondents strongly affirmed lobbyist are to be known and registered when dealing with the EU, while another 7% are demanding this as a medium interest theme. It can be stated that all in all, a strong majority of the EU citizens were, in 2015, behind the idea of evidence of lobbyist in a registered form. Of course, this number might fluctuate, especially when talking about business or other actors involved in the lobbying process, but the number of organizations registered in the now Transparency Register of the EU reached almost 12.000 entries, a number virtually stable for the third year in a row (JSTR 2020a, 1). This could be

interpreted as active interest from the business, think-tank and academia, NGO's, professional consultancies and law firms, or other variously affiliated individuals acting in the lobby area for the idea of transparency in the lobby process, doubling on the citizen level interest already emphasized.

More so, Frans Timmermans, in an opinion article from 2019, the first vice-president of the European Commission, was connecting transparency, lobby and democracy into one single crucible of prosperity for business, communities, and states in the EU. He stated that "Democracy rests on a bond of trust between citizens and those who represent them. Without proper access to information on what politicians do and to whom they speak, there can be no such trust. The EU institutions are sometimes more transparent than national institutions, but they can and must do more." (para 1.) Defining and drawing law requires inputs from many actors and stakeholders, but ultimately, the law reflects on the society itself, onto the citizens and their everyday life. As such, there is natural interest in what politicians do and how influences their decisions. The way Timmermans looks at the lobby agenda reflects the true necessity of transparency in the process. It stands to show if such transparency is truly inclusive and reflected in the current policies of the EU legislative apparatus with its three bodies- the Parliament, the Commission, and the Council. Worth mentioning is also the EU's way of allowing its citizens to participate in shaping its policies through the usage of citizens initiatives - initiatives that get the support of a minimum of 1 million citizens from at least a quarter of the EU Member States are passed to the European Commission to decide upon and to propose legislation in areas that fall within its competence. In fact, a tool that allows citizens to have a say ta curbing EU's policies, in other words, lobbying in the hands of citizens.

## 2. TRANSPARENCY - A CORE VALUE FOR THE EU POLITICAL PROCESS

It is only natural that citizens of the EU demand that the decision-making process at the higher echelons of the EU leadership be as open and as transparent as possible. After all, it is about their lives and their well-being in the short, but especially in the long term. To respond to this demand, the EU adopted the Transparency Register, as an instrument that guards so that the EU level interest is always represented in relation to the wide range of organizations and groups, but also so that the decision-making process allows for scrutiny in a proper manner. More to the point, in the current shape, the Transparency Register also allows for the institutions involved to be made accountable for their actions. In this respect, it becomes a viable question if the Register is an extension of the EU's commitment to improve and regard public access to information as a core pillar, a fundamental structural value of the EU apparatus, in order to generate trust for the European project.

Taking a step back and looking at the Declaration No. 17 to the Final Act of the Treaty of Maastricht on the right of access to information, "transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration" and as such was seen even from 1992 as fundamental (EU 1992). Despite the fact the declaration was rather mild, its adaptation was significant for the commitment of the EU for a transparent and open relation with its citizens. This commitment is reflected in several articles of the Treaty on European Union (TEU), Treaty on the Functioning of the European Union (TFEU), and the Charter of Fundamental Rights of the European Union (the Charter). As it states in Article 10 (3) of the TEU, "decisions shall be taken as openly and as closely as possible to the citizen", and further states in Article 11(2) that "the institutions shall maintain a transparent and regular dialogue" with the community, its citizens and its representatives (EU 2010, C83/20-21). These obligations are general, encompassing the whole process of the EU apparatus and functioning thereof. In the TFEU, Article 15 asserts that "in order to promote good governance and

ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible" (EU 2010, C83/55-56). These official mentions are being fundamentally representative for the legal framework in place concerning transparency in the EU. In relation to this, the Register represents an influential instrument that embodies this fundamental pillar of the European project.

The Charter also stipulates that open access to information is a prerogative of every citizen of the Union, any citizen "has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium" (EU 2010, C83/400). The Register also embodies this second function, of allowing access to information regarding representatives of interest groups, their activity and their interests alike.

As it can be seen, transparency is intricately etched into the very fiber of the European project, as reflected by its governing Treaties and the Charter. It can be safely assumed that transparency is being sought in the functioning of the European Union and the status of core, fundamental structural value is more than noticeable in the doctrine writings of the Union. As such, this value can be traced in different bodies and organisms of the EU, the Transparency Register being no exception to this. Openness and transparency of the Union decision-making process are essential to a system under the rule of law and foundational values of the EU.

### **3.LOBBYING IN THE EU - A NECESSITY?**

The interest groups, formally organized groups that seek to promote the interests of their constituency in the policy decision making process are the main drivers of the activity of lobby. Interest groups provide individuals with a mechanism for delivering information about their preferences about a certain policy or another to the government. This attempt to curve, or to influence the public policies are generally called "lobbying".

But is lobbying a necessity for the normal functioning of the European Union or rather a point of fracture, where private and public interest collide, and one can

win in the detriment of the other? “Modern government requires close cooperation with stakeholders from all sectors of society. Therefore, both civic and producer interests contribute to the perception, presentation, and definition of issues in European Union policymaking” (EP 2003, 1). A multifaceted endeavor as it is the case with the European project needs to consider then needs of the many, albeit individuals or organizations, companies, or academia, to better represent the common interest. Achieving such common interest requires the input of everyone, if possible, but the representation of such input cannot be realistically obtained through personal input, this being from at least a twofold reasoning. First, the apparatus required to allow for everyone to express their own opinion on every matter can be a futile and extraordinary time-consuming activity. As such, organizations are formed to represent the interest of the many, each taking the common shared view on a subject to the decision-makers. The second point of contention would be the balancing of each separate opinion, a task with no end in sight at first glance. Organizations allow for individuals to lean towards some already distilled numbers of views concerning a matter or another. They become representatives for the more specific aspects of a certain policy, but in a more efficient way.

As it can be deduced, the lobbying is an integral part of the policy-making process in the EU, not only from a participative point of view, but rather from a physiological one, being an internal process required by the very nature of the democratic process. The policies made and agreed upon must represent the voices of the many. Lobbying allows, in natural and transparent societies for that. As an internal part of the EU policymaking process, lobbying holds value from several reasons, the most important being consultation of various stakeholders in the crafting of legislative proposal so that it better reflects the real needs, the launch of debates to provide information and to help generate the perception on various matters for the decision makers, and also to allow for the society to be able voice its needs in a more direct way (EP 2003, 1-3). According to the EP (2003), the activities of interest groups can be grouped in four categories, that is they serve four types of functions – service, lobbying, decision-making, and implementation functions. These functions are the specific services the lobby activity provides to the constituencies.

## 4. THE TRANSPARENCY REGISTER - STEPS IN THE RIGHT DIRECTION

Given the fact the Register is embraced by all three legislative bodies of the EU, but not necessarily in the same manner, with the Council still in negotiations to adopt a mandatory stance for the lobbying bodies and individuals on its doorsteps (EC, 2020), when faced with decisions taken by multiple bodies, by the Member States or even by the Council, on authorities based on composite procedures, citizens might find themselves at a loss trying to identify which part of the decisions are relevant to the Union's interest and which is influenced by lobby organisms. They often find it difficult to identify the validity or legality of the 'foreign' components of those final decisions. Can the Register account for these gaps and shortfalls, in its current form and what of its role to promote transparency in the world of EU lobby? Well, the main features of the Register consist of a public database, a code of conduct, a system of watchkeeping in the shape of an "alerts and complaints" section, and a set of guidelines for those the register.

The database is where organizations representing various interests at the EU level register and keep their information updated, especially in what it concerns what are their interests. So, are the close to 12.000 entities registered to date relevant to the transparency vested EU and the quest for more openness? This question can be answered twofold. Once, yes, the Register managed to gather an impressive number of lobbyists under a single "roof". Citizens have the option now to see how and to what purpose different organizations, companies, law firms, representatives, academia, or think-tanks are approaching EU high level decision-makers and can better understand where the lobbyist interest starts to make their appearance in EU's legislative. No, as the Council has yet to adopt a mandatory provision towards its lobbyists that demands registration before being given access to the decision-makers. This is a gap, a shortfall that allows, in theory at least, for unregistered, untraceable corporate or private interest to make its way into EU legislation. This could be a depart from the structural fundamental value of transparency (EU n.a.).

The Code of Conduct represents a general set of rules “for all those who register and establishes the underlying principles for standards of behavior in all relations with the EU institutions” (EU n.a.). The range of obligations interested parties must observe in order to be accepted as interest representatives include identification, up to date information on the database, honesty in the pursuit of information, no disclosure of information granted solely to them, honesty in dealing with EU members and the overall respect to rules, codes and good governance practices established by EU institutions. In other words, this codex generates the framework in which lobbyists should engage the EU decision-making apparatus and its members.

The alerts and complaints section institutes a guard system that any individual can trigger, obviously, respecting the context and the guidelines. The alerts and the complaints can be issues in respect to breach of conduct by the registrants and I a form of control in the hand of all, making for a participative process of signaling out misbehaviors, irregularities, faults or shortcomings in what it concerns interest representatives.

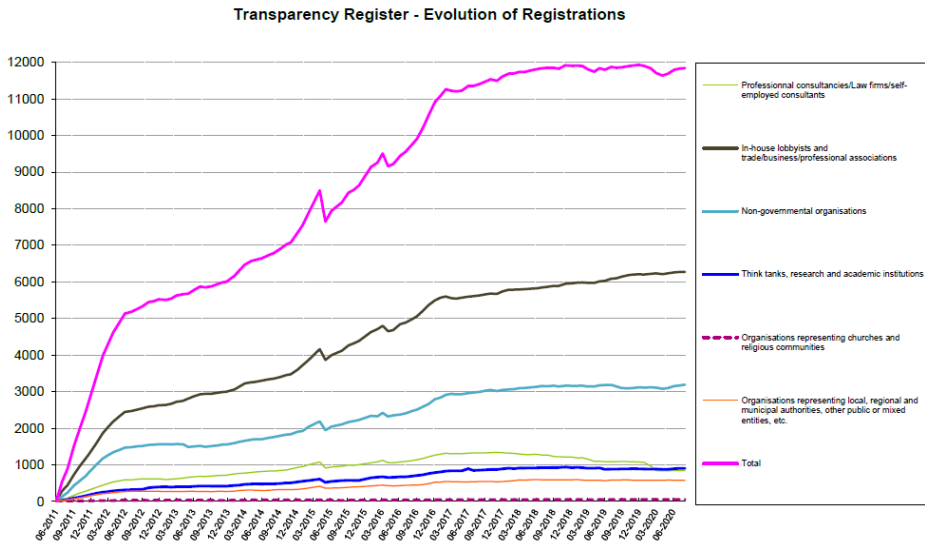
Finally, the set of guidelines are set in place to ease the process of registering and to provide brevity to certain provisions of the Code of conduct and the institutional agreements concerning it. As it stands, a satisfactory entry in the Transparency Register should be transparent – in its purpose, affiliation and goals respective to the registrant, relevant – in respect to the activities reported, accurate – the information provided is clear, consistent, complete and correct, well-structured – posted in good faith, including further reading if relevant, up-to-date – updated frequently, especially in what it concerns activities on EU’s doorsteps, and approved – is endorsed by relevant staff and management.

The Transparency Register of the EU represents a significant step in the right direction to generate the proper transparency framework for the decision-making process at the legislative levels of the EU. The political process is and needs to be curved to better represent the interest of many. The necessity of special interest groups to be registered in order to have access to the political body is a mechanism that allows, on the one side, for citizens to observe the influence spheres and where a certain policy is directed towards, and on the other side, a balance mechanism, allowing for accountability of those involved



when a certain policy is not effecting in a positive way the EU. Corruption at the legislative level or private interest placed before the common, public interest has the potential to generate ripples of negative effects and the diminishing of trust in the general European Project from the citizens. At this moment, the Register is mandatory for the Parliament and the Commission, The Council to date just recommending its special interest groups to be present in the sections of the Transparency Register.

Looking at the data, some 12.000 interest groups and individuals are already in the database, with the number being relatively stable for the third year consecutively. This, in turn could mean that the system of incentives and obligations reached its natural limit in its current form (fig. 1). Out of the total, half is represented by private and corporate special interest groups, with NGO's being the runners-up. It can be extrapolated that the main point of contention in deciding policies in the EU is between corporate and private special interest – as defined the interest of business and in-house lobbyists, and that of the citizens, represented by ONGs, as to say the public interest. Considering the traditional way of financing such groups, it seems the industry has more financial resources, represented by the almost double number of registrants in the Transparency Register, 6325 to the 3237 NGOs.



**Figure 1.** Evolutions of registrations up to June 2020 (JSTR 2020, 2)

Since the start of the Register, the first six years saw two distinct periods of growth, a sharp increase in number of registrants during the first year of existence, then a slower process up to the middle of 2017. The presence of the first 5000 institutions and individuals representing special interests on the Register's ledger can be interpreted as a pledge to transparency, given the fact that in the first years of existence, joining was just a recommendation and the incentives were not particularly substantial. The years 2015 and 2016 represented major steps in the right direction of intrinsically connecting transparency to the lobby in the EU with the new Transparency Register and the mandatory registration at the level of the European Parliament and the Commission. The spikes in the graphic speaks volumes of the changes and their impact, with new incentives and privileges for the registered entities, whilst those not present being limited in scope and possibility.

Starting with 2018, a series of political meetings were aimed at yet another significant change: the inclusion of mandatory provision for the lobby entities

around the Council of the EU, thus making the legislative Triade of the European Union fully pledged to the transparent lobby process, if negotiations are to be successful. Ms. Nikolina Brnjac, on behalf of the Presidency of the Council stated that “The objective of the negotiations should be to strengthen the framework for transparent and ethical interactions between interest representatives and the three institutions, in the interest of European citizens” (Ministry of Foreign and European Affairs of the Republic of Croatia, 2020, para. 4) This step would see, most likely, another sharp increase in registrants and would reiterate the idea that a tri-institutional Transparency Register is beneficial and central even for a transparency culture.

Looking at the visibility of the Transparency Register, in 2019 there were over 330.000 visits on the site, a relative stable number as compared with the year before (JSTR 2020a, p. 9). Interest for transparency in the political process of the EU is a constant and at a level that can be considered high, given the figures presented.

## 5.CONCLUSIONS

In retrospect, lobbying is an activity that cannot be taken out of the EU framework, given the commitment of the European legislative apparatus to deliver specifically tailor policies for its citizens. This requires the input of multiple stakeholders, naturally, everyone trying to curve the trajectory of certain policies towards their invested interest. The question is not, as such, whether lobbying should be allowed, but rather how to control the mechanism so that the EU interest is best served and so that lobbying does not become a syncope, but rather continues to grow into a mutual beneficial dialogue between special interest groups and individuals and the EU representatives. In line with EU doctrine writings, transparency should be regarded as the necessary control mechanism for the lobbying process. The more inclusive of transparency the lobby is, the more it has a chance to represent the true interest of the masses, of the citizens, in relations to EU’s legislative bodies.

A tri-partite agreement could mean a new restart for the institution of the Transparency Register, an instrument that seems to be visible and allowing for a better representation of the special interest groups curving the trajectory of EU's policies. The relative stable number of entities registered for the past 3 years could signal a maturation, the systems of incentives given by the status of registered can be considered to have reached its natural limit. The new talks that prefigure the mandatory implementation of the Register at a tri-partite level could constitute a structural change in the right direction for the continuation of developing the culture of transparency in the EU.

Transparency and lobbying should be interconnected, the lobby mechanism in the EU taking the lead in proving the necessity and the benefits of a transparent process of influencing policy making.

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