

From: Olivier Hoedeman <olivier@corporateeurope.org>
Sent: Friday 7 June 2013 15:37
To: CAB SEFCOVIC
Subject: To the attention of Commissioner Šefčovič
Attachments: Number of Registered Lobbyists in the United States.pdf

Brussels, June 7 2013

Dear Commissioner Šefčovič,

Thank you again for organising the Transparency Register stakeholder meeting earlier this week. It was good to get the opportunity to present ALTER-EU's assessment of the Transparency Register and our proposals for the review. We were also happy to hear that all options are still on the table. We will, in the coming weeks, follow-up on your invitation to send written statements, starting with the study on the legal base for a mandatory register (which will be presented by ALTER-EU on 17 June). We will of course also be happy to contribute to the work of the Inter-Institutional Working Group, when this starts.

There is however one pressing issue I would like to follow-up with you now. Towards the end of the meeting yourself and Mr. Legris, of the Joint Transparency Register Secretariat, made a number of statements about the US lobby transparency system that caused me considerable surprise. Whilst the US lobby register is not perfect, I would like to draw your attention to some elements in your assessments of the US register, made during the meeting, that were not fully accurate. This is of great importance, as these assessments seemed to lead to the implicit conclusion that a mandatory register is not an attractive option, and that the current EU approach of a voluntary system should be continued. In order to provide you with the most helpful and accurate information, I contacted Craig Holman of Public Citizen's Congress Watch, who is a renowned expert on the US lobby disclosure system. I would hereby like to share his feedback with you.

If I understood correctly, you stated that the number of registered lobbyists in the US has decreased from 27,000 to 8,500 after changes were made to strengthen ethics rules, whilst there are around 100,000 people active in lobbying in Washington DC. The EU's Transparency Register, it was stated, covers 25,000 people. According to Craig Holman, and based on reliable US register data, the figures are, in actuality, somewhat different. The number of registered lobbyists in Washington today is 12,300, which is more than at the time of the register's inception in 1998 (10,407), although less than in 2007 when the all-time high of 14,870 registered lobbyists was recorded.

This means there has been only a rather modest decline in the number of registered lobbyists in the US. According to Craig Holman, the main reason has not been lobbyists de-registering because of the new ethics rules, but rather the impact of the economy on the lobbying profession.[1] Thus, whilst some de-registration may have taken place as an initial result of stricter ethics was mainly due to economic reasons. A rebound in lobbying activity is expected in 2013, as the lobbying profession is, to some degree, recovering from economic shrinkage. I have attached charts showing the total number of lobbyists, total lobbying expenditures, and total lobbyist de-registrations.[2] The highest point of de-registrations was in 2001, when there were no new ethics rules adopted, but rather an economic slump. De-registrations since 2007 have fallen to very low rates, which would not be the case if the new ethics rules were the main factor (since all the ethics rules are very much in effect today). According to Craig Holman, the number of registered lobbyists in the US quite closely matches the estimated number of significant influence-peddlers on Capitol Hill. The number of unregistered lobbying entities in Washington DC is very small, to the extent that Public Citizen has only once had to take action to force a lobby firm to register. In contrast, there are hundreds of companies, consultancies, law firms and others engaged in EU lobbying that remain unregistered.

Moreover, the modest decline in lobbyist registrations is not a valid argument against mandatory lobby

transparency, nor is it a valid argument against improved ethics and accountability rules for lobbyists. Rather, the solution to de-registrations lies in reforms that increase disclosure combined with more effective enforcement, as outlined in the study by the American Bar Association.[3]

I would also like to comment on the statement that the Transparency Register covers 25,000 lobbyists, arguably more than the US register. I have not come across the figure of 25,000 people before, but there are certainly not 25,000 names of lobbyists in the EU's Transparency Register, which only discloses the names of those who hold European Parliament access passes (3,574). The US register, in contrast, provides the names of 12,300 lobbyists (and other very relevant information about the activities of these lobbyists, including former public offices held in the previous two years).[4] In terms of providing transparency, the US register currently offers far more.

Mr. Legris argued that the US model is flawed because it only covers those that have direct lobbying contacts, and the rest go unregistered. The US law does not cover "grassroots lobbying" - expenditures for PR campaigns to the general public designed to encourage the public to contact government officials about pending legislation. Transparency groups have tried twice to expand the law to include grassroots lobbying, but have so far lost in Congress, on both occasions. Once again however, this is not a valid argument against mandatory registration and disclosure of direct lobbying activities. The area of grassroots lobbying - which provides important information for getting a full picture of corporate influence over public policy - is theoretically covered in the EU's transparency system due to its broader definition of lobbying, but in practice most of this remains undisclosed because registration is voluntary and disclosure requirements are not sufficiently detailed. This suggests that the EU is in a situation in which it can learn from, and take the best of, the experiences with both systems: mandatory registration combined with a broad definition of lobbying and disclosure requirements that are both comprehensive and precise.

Mr. Legris also criticised the 20% threshold in the US lobby disclosure system (exempting those spending less than 20% of their working hours on lobbying). The effect, according to Mr. Legris, is that lobby firm staff can - and do - divide the lobby work between themselves in order to stay under 20% and therefore remain unregistered. This threshold however is not about lobbying contacts, but about any activity - research, planning, strategising and contacts - that goes into facilitating a lobbying contact. According to Craig Holman, the problem signaled by Mr. Legris is, in practice, barely existent. If a lobby firm were determined to evade the 20% threshold, so that its lobbyists would not have to disclose their activities, the firm would have to hire many more persons for every one lobbyist. Not only would this evasion tactic not be very smart, it would also not be very economical.

In sum, I hope that the information provided above serves to enable you to review the assessment of the US experience, particularly regards the accuracy of numbers of registrants, and especially in light of the conclusions that may have been drawn about a mandatory register not being an attractive option. This certainly does not mean that the US lobby disclosure system is perfect; organisations such as the American Bar Association and Public Citizen's Congress Watch are, with due cause, advocating further improvements. Indeed, both the US and EU lobby transparency registers have been formed and shaped as a result of political debate between transparency advocates and others who are opposed to comprehensive lobby transparency. But there can be no doubt, at this point in time, that the mandatory US model provides far more transparency about lobbying than the EU register does. The review of the register provides an opportunity for the EU not only to catch up, but to over-take.

Should you wish to discuss the issues further, I am at your disposal.

Yours sincerely,

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Notes:

1: "Lobbyists predict big rebound in 2013", The Hill, 15 March 2013; <http://thehill.com/business-a-lobbying/286159-k-st-lobbyists-predict-a-big-rebound-in-2013>

2: Source: Center for Responsive Politics.

3: "Lobbying Law in the Spotlight: Challenges and Proposed Improvements", Report of the Task Force on Federal Lobbying Laws, Section of Administrative Law and Regulatory Practice, American Bar Association, January 2011;

http://www.americanbar.org/content/dam/aba/migrated/2011_build/administrative_law/lobbying_task_force_report_010311.authcheckdam.pdf

4: U.S. Lobbying Disclosure Act of 1995, SEC. 4. REGISTRATION OF LOBBYISTS, (b) CONTENTS OF REGISTRATION, (6), "the name of each employee of the registrant who has acted or whom the registrant expects to act as a lobbyist on behalf of the client and, if any such employee has served as a covered executive branch official or a covered legislative branch official in the 2 years before the date on which such employee first acted (after the date of enactment of this Act) as a lobbyist on behalf of the client, the position in which such employee served." <http://lobbyingdisclosure.house.gov/lda.html>

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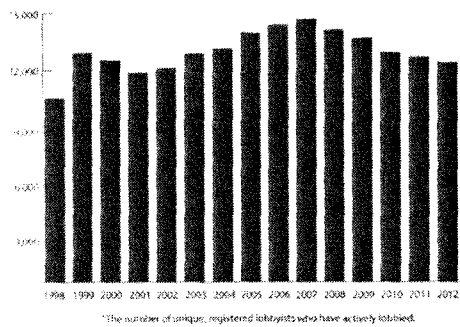
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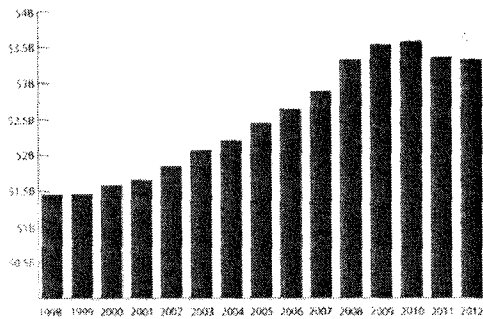
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Number of Registered Lobbyists in the United States, 1998-2012

Number of Lobbyists*



Total Lobbying Spending



Deactivated Lobbyists

