



COMMITTEE ON CONSTITUTIONAL AFFAIRS

Workshop

***organised by Policy Department C,
Citizens' Rights and Constitutional Affairs***

**Session 2: The future of lobbying the European Union –
Concrete Proposals**

Speech by José Lalloum, Chairman of EPACA

Mr. Chairman, members of the European Parliament, ladies and gentlemen, Thank you for inviting me to speak in today's workshop.

EPACA supports the aims of European Transparency. We all share the need to build trust amongst European citizens' in the European democratic process. For that matter, note that the other two chapters of the ETI are equally important. The Commission's minimum standards for consultation as well as disclosure about the beneficiaries of EU funds under shared management need also to be worked on further.

EPACA represents 75% of the European public affairs consultancy market and our aim is to help the European Commission find solutions to make transparency a reality.

EPACA has for several years managed a voluntary system of self-regulation and code of conduct which was initially encouraged by the

Commission, and which has served as a basis for the European Parliament's code for permanent visitors. We have steadily strengthened that system, and we believe that if it continued to enjoy the support of the EU institutions under the umbrella of a common code of conduct this system would be the best way forward. It would provide for means of promoting and enforcing high standards of ethical behaviour and rules on transparency.

Such a voluntary approach would be compatible with a voluntary Commission register which required publication of interests represented i.e. for EPACA members, the appropriate client names. However, the Commission has decided to require financial disclosure of a kind which can not work on a voluntary basis. EPACA has therefore recommended that IF the Commission and other EU institutions are convinced that publication of such financial information is essential, this can only be achieved by a mandatory system.

There has been a lot of confusion and misrepresentation of our position, so let me set the record straight:

EPACA does not oppose financial disclosure IF institutions believe it is needed, IF it is applied to everyone alike across the board and in the same way, against a clearly defined set of criteria and IF issues of commercial and contractual obligations are respected. Given the difficulties of achieving this at this stage via a voluntary system, we believe it would have been better to take an achievable first step, properly consulted on.

EPACA does not want to boycott a voluntary register but how can we possibly recommend to members to sign such a register when we would be in breach of contractual obligations to our clients and when the market would be distorted?

Here are two scenarios which would illustrate how the market can be distorted. If financial disclosure is required on a voluntary basis, some clients will prefer to work with non-registered consultancies, thereby effectively reducing transparency, and going against the Commission's aims. On the other hand, consultancies not able to register may become stigmatized and therefore lose some clients or business opportunities.

These simple scenarios show that an impact assessment of the ETI was justified and necessary. However the Commission chose not to study the impact of financial disclosure on our profession.

What is more, by requiring consultancies to divulge commercially sensitive financial information, the Commission is encouraging them to exchange competitive information, something which undermines competition law. Consultancies are essentially being asked to divulge information which no other profession is required to.

If as we believe, the objective is to build trust, then the ETI should go beyond financial disclosure requirements, and focus on promoting a high quality and universally applicable framework for democratic interaction between interest representatives and the European institutions. And I say institutions for a reason – achieving transparency with the objective of building trust with the citizens will require input not only from the Commission but from the Parliament

too. The European Parliament, as a house that has traditionally been opening to lobbying, has more experience with lobbyists than any other institution. Members of the Parliament should therefore be invited to play their full role in designing a system that will help build trust in citizens in the European project. This is why the Commission's proposal, in our view, will end up having to be re-phrased in the form of a Regulation, which will go through co-decision. This will at least provide opportunities for a full impact assessment – which we have not had, proper consultation on financial disclosure, which has not taken place, and real dialogue with those operating self-regulation systems, on which the Commission position so fundamentally changed a few years ago.

So we are not hanging back - we are quite willing to work towards a mandatory system, with lobbying as a regulated profession if that is what is required to meet the transparency requirements of the institutions.

The voluntary system now proposed by the Commission apparently features a 'carrot' and 'stick'. But the fact that companies who register will be given advance notice of open consultations is worthless and actually just supports the idea of privileged access.

If organizations do not register, their response to consultations will be considered as the response from one individual, regardless of whether that organization represents 5,000 or 50,000 people. This is highly undemocratic and does not really seem to fit with the desire to build trust through transparency.

Finally, a more precise definition of lobbying is needed. Under the current proposal, lobbying is defined as 'all activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions.' According to this wording, too many activities could be classed as lobbying. This seems to be inconsistent with the US definition¹ which is much more precise and focused on actions actually related to lobbying.

To sum up:

- The transparency requirements the Commission wishes to impose are unfortunately incompatible with a voluntary system (which is a priori a more desirable system)
- Financial disclosure of consultancy fees can not be achieved without a mandatory system,
- The loose definitions of lobbying, and the loose definitions of financial disclosure are recipes for a system which fails to reach the objectives which we all share – an effective and framework for the interplay of interests in achieving optimal democratic decisions. With a view to building trust with citizens.

¹ See page 6 for details

Relevant Definitions in US Lobbying Disclosure Act of 1995 as amended:

Lobbying Activities: Lobbying contacts and any efforts in support of such contacts, including preparation or planning activities, research and other background work that is intended, at the time of its preparation, for use in contacts and coordination with the lobbying activities of others.

Lobbying Contact: Any oral, written or electronic communication to a covered official that is made on behalf of a client with regard to the enumerated subjects at 2 U.S.C. § 1602(8)(A). Note the exceptions to the definition at 2 U.S.C. § 1602(8)(B). See Discussion at Section 5 below.

Lobbying Firm: A person or entity consisting of one or more individuals who meet the definition of a lobbyist with respect to a client other than that person or entity. The definition includes a self-employed lobbyist.

Lobbying Registration: An initial registration on Form LD-1 filed pursuant to Section 4 of the Act (2 U.S.C. § 1603).

Lobbying Report: A semiannual report on Form LD-2 filed pursuant to Section 5 of the Act (2 U.S.C. § 1604).

Lobbyist: Any individual who (1) is either employed or retained by a client for financial or other compensation (2) for services that include more than one lobbying contact; and (3) whose "lobbying activities" constitute 20 percent or more of his or her services on behalf of that client during any six-month period.