

The EU and the Lobbyists' Art

Written by Tom Glaser

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TOM GLASER, AUG 9 2013

Lobbying is primarily an Anglo-Saxon art and, in their more impersonal and law-defined world, it seeks to replace the more organic bonds of kinship, trust and obligation more commonly prevalent in much of Europe. To many continental Europeans, the lobbyist is an almost Mephistophelian figure, able to convince honest bureaucrats and naive legislators that black is white and vice versa. Yet the only mass resignation of an entire European Commission in the history of the European Union, that of President Santer in 1999, was not due to the nefarious influence of lobbyists, but rather due to old-fashioned nepotism and corruption on the part of a French Commissioner – a striking example of the weaknesses inherent in the old, organic ways. For those who dislike it, lobbying is the term used to cover three quite separate domains; those of monitoring, of representation and of issue management – of which only the last is the domain of the true lobbyist.

Almost everybody armed with the simplest of tools, even a notepad and pen, can monitor the Commission's business. Law firms and accountants in particular have clients with specialised needs who pay retainers to be kept abreast, or even ahead, of proposed legislation, the state of advancement of a dossier inside the Commission, or the mood of a Parliamentary committee. Because this sort of work can, in fact, lead to a specific response by the law firm or accountancy firm – by seeking changes in the interests of their clients – this *monitoring* is often confused with lobbying. Many firms carrying out this monitoring for their many and varied clients never move from data collection to specific and targeted reaction. Often the work remains confined to a weekly or monthly bulletin, perhaps some more detailed research. This usually is the limit of monitoring and although some cultures believe it to be '*le lobbying*' it really is not.

Nor is the second strand, that of representation. Here, I think, I must go a little into the nature of the EU and the political philosophy of the framers of its constitution. Throughout the architecture of Commission[1], Council[2], Parliament[3], Court of Justice, Court of Auditors, Committee of the Regions, and Economic and Social Committee, there is more than a smack of corporatism. In a desire to fully represent all possible opinions bodies, mostly advisory and not executive, are created to make sure nothing – no profession, no interest group, no geographic region – is overlooked. The Commission does more: being relatively tiny, numbering some 30,600 staff[4] (fewer than that of many Member-State Government Departments), it is dependent upon input in its policy-making from the Member States. Firstly it reflects this in its composition by having one or more Management or Consultative Committees established within each Directorate General. Broadly speaking these Management Committees are comprised of members of each Member States' representation in Brussels dealing with a given subject and are sometimes reinforced by more senior people from the relevant national Ministry. These have the power to approve or block initiatives from the Commission. Consultative Committees representing (mostly) the interests of the people or group interest closest to the work of the Directorate-General usually meet twice or three times a year.

However their views are not binding upon the Commission. Apart from these committees, the Commission's staff are in touch with their opposite numbers in the Member States' civil services on a continuing basis. The Commission is small: only one or two administrators cover any given topic in any depth. As a result that they are dependent on national governments for factual and statistical input even when they draw up plans for Europe-wide regulation. This heavy reliance on national expertise of all kinds has given rise to the multiplicity of representative offices established in Brussels. Some of these are theme-based, such as European federations of dairy farmers or toy manufacturers, who represent their members by giving input to the relevant departments when they are considering legislation.

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Others are pressure groups established on a Europe-wide basis, like naturists, hunters or vegetarians, whose presence in Brussels ensures that their members' viewpoints are taken into account at the various stages of the legislative process. Others represent actual regions – not only to respond to Regional Policy but also because there are a number of Commission programmes which insist upon collaboration between two or more regions from different countries in fields as different as culture, education, science and research. These regional offices take much grinding toil away from national ministries in their interaction with Commission services and put their own regions in the forefront of Commission awareness when new policies are being developed. Although this representation, like monitoring, is similar to lobbying, it is really not quite the same. It deals with the future, and not so much the present.

I would limit a useful definition of lobbying as being about changing a policy *once* it has been launched, however tentatively. It can involve many aspects of public affairs and public relations, mobilisation of the media or the production of material for mass or specialist consumption. During my time at the Commission I experienced several instances of this kind of lobbying. Let me give you an example from the 1980s: Europe at that time imported phosphates for agricultural purposes. Until recently, it then had imported them largely from a small collection of West African countries, linked to the EU through the Lomé Convention with the ACP[5] Group. The imports provided a significant portion of these countries' foreign exchange earnings[6]. Unfortunately the phosphates contained tiny amounts of mercury and a recent Commission regulation had banned the presence of any mercury in agricultural phosphates. As a consequence EU countries were obliged to buy mercury-free phosphates from countries like South Africa (then under the Apartheid regime) or from Soviet Russia – both of which were contrary to EU member states' foreign policy interests at the time.

The importers and the West African countries employed a firm of lobbyists, who embarked on a campaign to convince the Commission that its regulation on mercury was too draconian. It paid for research into incidences of mercury poisoning then it organised a two-day conference in Brussels, to which decision-makers in the Commission, Members of the European Parliament, research scientists in the field, agricultural interests and representatives of the African, Caribbean and Pacific Group were all invited. Over the two days the conference heard evidence that deaths from mercury poisoning were extremely rare, being confined to a few cases in one village in Japan, where there had been high concentrations in locally-caught fish. Neither the research nor the publication of the research would have taken place without the stimulus of the lobbyist, fighting on behalf of his clients. As a result the current Regulation about chemicals in animal foods is (EU 744/2012 of 16 August 2012) seems aware of the interests of food producers and the balance to be struck.

Having looked at the definitions, can we come to a conclusion as to whether lobbying is good or bad? I personally do not subscribe to the theory that lobbyists do the Devil's work by confusing Parliamentarians and blind-siding bureaucrats. Brussels has the second largest Press corps and the second largest concentration of lobbyists (in both cases, second to Washington DC) and I believe that both are signs of a vibrant public sphere. Lobbyists merely continue the work of monitors and representatives into areas which assume that a bad law or regulation has somehow slipped through and needs changing. Pretending that any organisation or representative body deals only on a perfectly just and equitable basis ('The government is always right') or that attempts at improvement are somehow subversive are ultimately self-defeating; as my example regarding agricultural phosphates demonstrated matters can come to light after legislation has been approved and lobbying seeks to take the sting out of a potential U-turn by providing a knowledge-based summary of existing expertise and argument.

Ultimately however the difference between monitoring, representation and pure lobbying as I have sought to define it above is manifested in the different types of firm chosen to do the work. Monitors are almost always law or accountancy firms (e.g. Clifford Chance) while representations are run by regions, trade federations or interest groups and can represent nothing but themselves or their prime clients (e.g. the Rhone-Alpes region of France). Lobbyists are "hired guns" and can work for a country, a region or an interest group (e.g. Fleischman or APCO). They are not interchangeable.

As long as the public affairs of twenty-eight countries and 500 million citizens are tackled in Brussels, even with its many constitutional safeguards and its myriad representations of special interest groups, there will be a place for lobbying. Nothing is sacrosanct for very long in a collection of democracies.

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[1] Initiator of legislation and executive agency

[2] Inter-governmental body represented by National Ministers and which is the ultimate authority of the EU.

[3] Co-decision maker with the Council, with no right of initiating legislation

[4] See http://ec.europa.eu/civil_service/about/figures/

[5] The African Caribbean and Pacific Group of countries, brought together by the Lome Convention in 1975 now represents 79 former European colonies in trade and aid negotiations with the EU. In 2000 the Lome Convention was succeeded by the Cotonou Convention.

[6] The only West African countries now exporting phosphates are Senegal and Togo, but 30 years ago there were several more and they depended, some of them, on the trade for up to 90% of their foreign exchange earnings. Oil, uranium and diamonds have supplanted phosphates to a surprising extent.

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