Well in Theory, Unwell in Practice: EU Corruption Control

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Seventy percent of Europeans see corruption in European institutions, according to Eurobarometer 397. A major Report recently released by Transparency International concurred: the theoretical EU rules and regulations are healthy, however, they lack proper follow up and enforcement.

The loss of trust in the EU due to economic anxiety and Eurosceptic assertions that the EU has become elitist and unaccountable makes the issue of corruption important for the stability and integrity of public decision-making. After all, a non-trivial amount of national legislation in member states originates from EU law: 15.5% in the UK, 14% in Denmark, 10.6% in Austria, up to 27% in France, and 39.1% in Germany (according to a study published by the London School of Economics).

Unsurprisingly, Transparency International (TI) finds pressing problems in the area of EU law making and lobbying, poorly managed conflicts of interests, weak protection of EU whistle-blowers, and lenient sanctions for corruption by companies working with EU funds.

Existing EU transparency rules make the law-making process complex and bureaucratic. For faster work, EU institutions adopted an informal decision-making process at the price of lower scrutiny and increased opacity, the so-called “trilogues.” They are negotiations behind closed doors between EU’s three legislative bodies, the Commission, Parliament, and Council of Ministers. The influence of interest groups and pressure from member states in these meetings is unknown, as no formal minutes are drafted. Over 1,549 trilogue meetings took place during the last legislative term.

Transparency International’s most important recommendation is to record and disclose the “legislative footprints” of the European Parliament, Commission, and Council including the inputs received from lobbyists and interest groups.

Lax Lobbying Rules

Transparency International estimates that about 15,000 lobbyists work in Brussels, but only 6,000 are listed publicly. The current register operates on a voluntary basis and applies only to the Commission and the European Parliament, but not the Council and the permanent representations of member states. Contrary to popular belief, EU legislation is initiated by member states. Thus, lobbyists in Brussels constantly target member state representations. The TI Report calls for strengthened and mandatory lobbying rules for all institutions and permanent representations.

European Commissioners and MEPs are not required to disclose their contacts with lobbyists and third parties, except when their travel/accommodation costs are covered by third parties. Gifts received by MEPs valued over €150 have to be declared and recorded. Only four such entries exist to date!
Weak Document Register

EU legislation requires EU institutions to publish documents online, and most do so. However, there are plenty of exceptions. The Council of Ministers publishes the minutes from the discussions of legislative proposals; but the member state positions are blacked out. Additionally, the Council classifies documents drawn up by and for working party meetings as DS (document de séance) and does not list them in the public register. Statewatch, an NGO, notes that over 117,000 “restricted” documents have been produced by the Council of Ministers since 2001, yet only 13,184 are listed in the Council’s document register.

The Council of Ministers allows live streaming of all the sessions open to the public on its “Open Sessions” webpage. However, only a “relatively small” portion of the Council meetings are open to the public, which calls into question the transparency of the Council’s decision-making.

Responding to an outcry from civil society, the European Commission began publishing some of its positions in important and controversial trade negotiations; however, draft texts are not made public even when chapters are closed.

Outsourcing Expertise to Powerful Interest Groups

“A grave concern to civil society observers” is the European Commission’s practice of using biased advisory expert groups, notes the TI Report.

EU law requires the Commission to carry out broad consultations before proposing laws: it must “consult widely” and maintain “open, transparent and regular dialogue with representative associations and civil society.”

The Commission employs Expert Groups that largely represent corporate interests. Eighty percent of all stakeholders appointed in 2012 to the Commission’s DG Taxation and Customs Union are corporate, while three percent represent small and medium sized enterprises (SMEs) and only one percent trade unions, according to Alter-EU.

In the Secretariat General, over 73% of the “independent” experts are directly linked to big business interests. Tax dodgers advise on tax reform, giant telecom companies dominate the debates on data privacy. The Commission’s response to the financial crisis was led by the De Larosiere Expert Group, chaired by Jaques De Larosiere, a senior banking industry figure. The “High-Level Group on Financial Supervision in the EU” had four of its eight members closely linked to the banks that caused the economic collapse in the first place: Goldman Sachs, Citigroup, Lehman Brothers, and BNP Paribas, writes Alter-EU.

This situation seems to be well known. The European Parliament froze the Commission’s budget for Expert Groups in November 2011 and March 2012; the European Ombudsman also initiated complaints against the Commission over the Expert Groups. As a condition to unfreeze the budget in 2011, the Parliament and the Commission agreed upon four basic conditions for reform of the Expert Groups:

- no corporate dominance
- no lobbyists
- open calls for participation
- full transparency

Yet despite improvements, open calls for members are still neither mandatory nor systematic. An online register of
European Commission Expert Groups started in April 2013 contains limited information, notes Transparency International. Additionally, the Commission remains unwilling to define strictly the concept of “balance” to safeguard against private interests dominating individual groups. Industry experts still outnumber representatives from academia, consumer groups, and trade unions by a ratio of 4:1. Individual members of Expert Groups are not required to submit declarations of interest.

Political pressure from across the EU (including from member states) have resulted in staff cuts at the European Commission that could lead to even more outsourcing of expertise in the future. A formal review of Expert Group rules by the Parliament is not due until 2015. Until then, the Parliament can only freeze the Commission’s expert budget again.

The European Commission must fully disclose membership and documents (reports and minutes) for all advisory groups, recommends Transparency International, and dissolve groups controlled by industry interests or ensure balanced representation.

Unequal Integrity Checks

EU staff members are subjected to strict Staff Regulations and Conditions (SRC) of employment. These are legal obligations that limit outside activities, safeguard independence, and impose an obligation to report fraud and corruption. The European Commission’s Human Resources office handled 1,078 internal SRC queries in 2012 alone.

However, such rules do not apply to national ministers in the Council of the European Union (Council of Ministers) or to heads of state in the European Council. The SRC rules also do not apply to elected MEPs, who are allowed to hold concurrent jobs.

Reuters discovered that some do indeed work as consultants for corporations, which does constitute a conflict of interests. Edward Scicluna (Malta, Labour Party), who sits on the Parliament’s Economic and Monetary Affairs committee and co-wrote hedge funds laws, is one such example. In his “spare” time, he functions as chairman of two investment funds run by HSBC. Another example is Klaus-Heiner Lehne (Germany, CDU), who is a partner in the law firm Taylor Wessing, which advises corporate clients with EU business interests. Ethics training is not provided to MEPs, although “limited” occasional workshops are offered to their assistants, who do have to comply with SRC rules if they serve more than five years.

The British Sunday Times exposed four MEPs who had agreed to table amendments in EU law in exchange for cash payments. Following that scandal, the EU Parliament introduced a Code of Conduct, and MEPs are now required to fill out a “Declaration of Interest.” But the Parliament’s staff verifies only those declarations that are incomplete or illegible. There is no data base to compare declarations historically, or between MEPs. Additionally, there are no internal whistle-blowing guidelines in place for MEPs, assistants, or staff.

EuroPoint: Much remains to be done to improve the integrity of the EU legislative process. Carrying on without reform and enforcement of EU transparency rules and regulations can only put water on the Eurosceptic mills.