

Article

Lobbying Transparency: The Limits of EU Monitory Democracy

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Abstract

This article examines the origins and current operation of the EU's lobbying transparency register and offers a critical review of the drivers and politics associated with lobbying reform in Brussels. The analysis considers the dynamics of political communication in EU institutions and draws on concepts of the fourth estate, the public sphere and monitory democracy to illustrate the particular challenges around lobbying transparency and opening up governance processes to wider scrutiny, and wider participation, at the EU level. This article draws upon interviews, official data and participant observation of some of the deliberations on lobbying transparency dating back to the 2005 ETI. The analysis is brought up to date by examining the data within the Transparency Register itself, both substantively in terms of the kinds of information disclosed and in relation to trends around disclosures and registration, since the register was launched over a decade ago. The article concludes with a critical appraisal of the evolving issue culture relating to lobbying transparency in Brussels as well as recommendations for the development of the Transparency Register itself.

Keywords

accountability; disclosure; lobbying; monitory democracy; political communications; public sphere; transparency

Issue

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1. Introduction

In March 2005, the European Transparency Initiative (ETI) was launched, aimed at addressing concerns about the accountability of EU institutions. One dimension of the ETI was the proposed creation of a register of lobbyists (first called the Register of Interest Representatives, rebranded in 2011 as the Transparency Register) that was intended to shed some light on how influence is brought to bear in EU decision making. One of the concerns expressed in the European Commission's initial Green Paper on the Transparency Initiative centred on a 'lack of information about the lobbyists active at EU level, including the financial resources which they have at their disposal' (European Commission, 2006, p. 6).

The drivers of the ETI were publicly said to be the democratic need for trust and accountability in the EU institutions (themes prominent in public discourse as the EU constitutional referenda was rejected in France and

the Netherlands in 2005). The normative assumptions that underpin the register align with an elite pluralist conception of EU public affairs (Coen, 2007). The logic associated with the EU transparency register is that there can only be accountability in public affairs if there is the possibility of wider knowledge about lobbying. A public register opens up contacts between the institutions and outside interests to scrutiny by media, civil society, and indeed the wider lobbying community. The ETI, which rhetorically at least evokes the wider EU public, must also be seen as part of a response to more local criticism from within the Brussels bubble (emanating from some MEPs, Ombudsmen, civil society watchdog groups as well as some national Eurosceptic media) about transparency and accountability deficits at the heart of European politics and governance.

Nevertheless, the ETI came somewhat out of the blue, and reportedly surprised some senior Barroso Commissioners in respect of its reach and ambition.

Prior to the ETI, debate around lobbying influence in Brussels was confined to the pages of the *European Voice*, reflecting a sporadic dialogue between civil society groups, the lobbying consultant associations and a few MEPs and academics. There were differing views about who might wield lobbying influence, with some observers noting growing corporate power in Brussels (Balanyá, Doherty, Hoedeman, Ma'anit, & Wesselius, 2003; van Apeldoorn, 2005) while others suggesting a lobbying free-for-all where civil society organisations (CSOs) are prominent (Greenwood, 2002). Different figures were bandied about to make the case for and against the need for reform. Estimates of the number of lobbyists active in Brussels before the ETI varied greatly:

There are around 1,400 EU level interest groups formally constituted in law, of which two-thirds are business and one-fifth public interest groups....To these can be added large firms (around 350 are estimated to be active at the EU level), commercial public affairs players, a number of national business interest associations active in engaging EU decision making, and an array of informal network structures...approaching 20,000 interest units which have accepted the need to engage EU politics in some way. (Greenwood, 2002, p. 431)

Included within the estimate of 20,000 interests are national level organisations across Europe with some interest in EU level public affairs. An official estimate produced by the European Parliament identified some 2000 organisations with a presence in downtown Brussels (European Parliament, 2003). Civil society groups suggested some 15,000 active lobbyists in Brussels (Corporate Europe Observatory, 2003, p. 8). The inability to even agree on the broad estimates of the numbers of lobbyists in Brussels was a telling sign of a lack of transparency and intelligibility of EU public affairs (for a detailed discussion of the methodological issues associated with estimating the EU lobbying universe see Berkhout & Lowery, 2008), especially to those outside the Brussels bubble.

2. European Lobbying Transparency: Key Trends, Themes and Tensions

The analysis that follows will focus on the challenges of increasing lobbying transparency in Europe, and the related question of monitory democracy in a European polity that in many senses lacks an organic and engaged *demos*. This relates to the nature of the European public sphere and the difficulties in securing critical publicity, democratic accountability, and reaching wider European public opinion. The argument presented here is that elite lobbying networks in Brussels and their communicative interactions within what might be termed the Brussels bubble can be seen as a significant constituent part of the actually existing European public sphere. This is not

widely recognised in literatures on media and political communication in Europe, nor indeed in literatures discussing disclosure and lobbying transparency.

The Commission has long played an active role in developing and financially supporting various policy communities in its orbit. Indeed, in a landmark statement nearly three decades ago the Commission signalled its receptiveness to outside interests:

The Commission has always been an institution open to outside input. The Commission believes this process to be fundamental to the development of its policies. This dialogue has proved valuable to both the Commission and to interested outside parties. Commission officials acknowledge the need for such outside input and welcome it. (European Commission, 1992)

In the wake of the Single European Act the incentives to lobby Brussels directly increased significantly (see Chari & Kritzinger, 2006). Since the 1990s there has been a burgeoning lobbying sector in Brussels. This crowded and competitive lobbying environment comprises in-house corporate lobbyists, trade and business associations, lobbying consultancies, law firms, think tanks and public relations agencies, as well as civil society networks, individual NGOs and governmental as well as regional representative organisations. In this context outside interests have developed their lobbying strategies to account for the changing terrain in Brussels, and 'have matured into sophisticated interlocutors that often have more awareness of inter institutional differences than the functionaries they lobby' (Coen, 2007, p. 4). Commenting on the expansion of lobbying and advocacy in Brussels, Coen (2007) observes what he terms an elite pluralist arrangement. To achieve good access for direct lobbying of the Commission—the primary focus—large firms were encouraged to develop a broad political profile across a number of issues and to participate in the creation of collective political strategies. Accordingly, the cost of identity building would be discounted against better access to "company specific" issues at a later forum or Committee. As such, 'lobbyist[s] themselves recognised the importance of reputation building as a Brussels lobbying strategy' (Coen, 2007, pp. 7–9). Concerns about reputation and image are not incidental, as they relate to the perceived legitimacy of lobbying and are seen by actors as creating necessary licence to operate and room for manoeuvre in building public affairs coalitions and campaigns that may be needed for lobbying the EU institutions.

The gravitation of different outside interests to Brussels coincided with the Commission's strategic rethink on governance, including how relations with outside interests could best be organised. The White Paper on Governance (2001) addressed lofty concepts like a "citizens' Europe," which in practice would be reflected in increased consultation with civil society and promoting

political participation, as well as the democratisation of expertise and input into planning, regulation and decision making (European Commission, 2001). These themes have run through deliberation and advocacy on lobbying transparency in Brussels ever since. Before the advent of the ETI some influential business organisations were promoting a new system of managing relations between the EU institutions and outside interests, which would effectively debar those organisations and networks funded by the EU institutions from lobbying or having representative status (Greenwood, 2007). This recommendation was widely seen as a direct attack on some of the more critical voices in civil society in Brussels, which had been calling for greater corporate accountability and increased environmental and consumer protections.

However, the question of EU funding and sponsorship of outside organisations does not simply apply to a few high-profile NGOs. Other key stakeholders in the debate around lobbying transparency in Europe are also implicated. Public relations and public affairs agencies are hired by the Commission to execute communication campaigns in various member states, and indeed across the entire EU. These same agencies are also hired by private clients to make representations on their behalf to the Commission. They help draft responses to consultation documents, as well as more precise work drafting specific amendments to legislation. While many non-governmental organizations in Brussels that lobby the Commission on a range of policy issues are also (in part) funded by the Commission, this applies to some of the major think tanks in Brussels as well. Thus, there are multiple commercial and interpersonal connections between political actors that occupy 'premium' communicative space at the centre of decision-making and legislative power in Europe. As such, the ETI proposals to open up some of these connections and contacts to wider public scrutiny unsurprisingly provoked a number of defensive responses from the lobbying industry.

The debate prompted by the launch of the ETI in March 2005 and throughout the official consultation in 2006–2007 quickly brought a number of key issues into focus, centring on who and what should be captured by a lobbying register. The proper disclosure of financial information on lobbying expenditure and information relating to the details of lobbying activity were debated. Law firms and lobbying consultants were initially resistant to disclosure of client information, pleading for some element of client confidentiality to be recognised in the disclosure regime. While it soon became clear that promises of robust self-regulation would be insufficient to assuage the Commission, the lobbying associations continued to fight a rear-guard up to the launch of the register in 2008. A novel feature of the proposed transparency register was the inclusion of think tanks, recognising their significant role in facilitating direct and indirect lobbying in Brussels. In this context indirect lobbying refers to those activities that do not include face-to-face advocacy

and interest representation, and may include lobbying research, intelligence gathering, analysis and the production of opinion pieces that shape wider policy discourse. Some of the long-established Brussels-based think tanks (Bruegel, Centre for European Policy Studies, also often contracting with the EU institutions) had privately considered offering some form of self-regulation of their activities to avoid capture in the lobbying register, but that idea failed to gain any traction and was quietly shelved.

But the status of the register itself, and its legal foundations, are significant. A central theme of debate around lobbying transparency in Brussels has been the issue of mandatory versus voluntary disclosure. Transparency advocates have consistently pushed for an all-encompassing mandatory regime, with detailed financial disclosures, to be placed on a statutory footing. The commercial lobbying sector, and some trade associations and in-house lobbyists have resisted detailed financial disclosure and argued for a self-regulatory system. The Transparency Register launched in 2008 reflected a compromise on these positions: financial disclosures were organised within differential bands for consultancies and private companies (whereas NGOs were required to report overall turnover), and lobbyists did not need to specify the focus or goals of their lobbying activity, but instead were invited to disclose policy areas of interest to lobbyists. All this information was disclosed on a voluntary basis as the register does not have a statutory underpinning.

Civil society groups promoting lobbying disclosure produced an analysis of the lobbying register after its first year in operation. The criticisms in the report (ALTER EU, 2009) point to some loop-holes in the Commission's system, with the coverage and reliability of data in the register questioned. Initially less than 1500 organisations registered, as many of Brussels's largest consultancies, law firms, companies and think tanks declined to disclose any lobbying information. It quickly became apparent that the office managing the Register of Interest Representatives had little resource to check the accuracy of filings, meaning that disclosures were published with effectively no oversight.

Friends of the Earth Europe published an analysis of the corporate declarations in the EU lobbying register in advance of the introduction of a joint Commission and Parliament effort to standardise lobbying transparency. The report compared the disclosures of some of the largest transnational corporations in Europe who were also actively lobbying in the US (where the disclosure system is mandatory and data is more granular than that required in Europe). They concluded 'that EU companies are either failing to declare their lobby spend or underestimating it in the register. Were the register mandatory, it would be far easier to see the true scale of lobbying activities in the EU' (Friends of the Earth Europe, 2010, p. 10).

A data scrape of the Lobbying Register from June 2009 reveals a very mixed picture: 5693 organisations

had registered at this point (a slightly higher figure than some of the literature suggests; see Crepaz, Chari, Hogan, & Murphy, 2019, p. 52), with 3404 identifying themselves as in-house lobbyists; 1472 organisations were categorised as NGO/think tanks, yet on closer inspection there were very few think tanks in this sample, and many trade associations and business associations chose to categorise themselves as NGOs. Only 365 consultancies registered. Moreover, 1807 of the organisations in the database claimed not to be active at the European level.

The first iterations of the EU's lobbying register were owned and designed by the Commission. In what might be termed an experimental early phase of European lobbying registration (2008–2011) the regulatory framework was still in formation, with various outside interests seeking to shape the reach and teeth of the regime. As well as the focus on the legal framework (and the potential for associated sanctions) the question of financial information disclosure recurred. Partly this was a result of advocacy from pro-transparency groups, but the comments of Siim Kallas, the Commissioner who then held the portfolio for lobbying related issues, clearly illustrates the core concerns: 'Nobody would pay real money for lobby services without expecting something in return—and that "something" is influence' (Kallas, 2007). Yet the official recognition of the significance of resources devoted to lobbying would not easily translate into disclosure metrics that might be readily understood by scholars, media, watchdogs or interested publics.

While these debates might seem like a minor historical footnote, they nevertheless helped shape the limits and purposes of the lobbying disclosure system in Europe today. The available literature on interest representation in Europe until relatively recently has been populated by sectoral network analyses, narrowly defined case studies, speculative theorisations, normative best practice reviews or synthesis studies that rely on what would appear to be largely aggregated or unreliable data (Berkhout & Lowery, 2008). The literature that now exists on lobbying regulation specifically (Bunea, 2019; Chalmers, 2013; Chari, Hogan, Murphy, & Crepaz, 2019; Crepaz et al., 2019; Greenwood & Dreger, 2013; Holman & Luneberg, 2012) allows for some agreed metrics to foster comparison between different systems. Such work ranks the EU system as a medium-regulated system.

In 2008, a joint working group between the European Parliament and the Commission began preparations for an inter-institutional agreement (IIA) on lobbying regulation, which passed in 2011 giving birth to the Joint Transparency Register. This voluntary scheme required lobbyists to disclose information about their activities, in much the same manner as the trial register had gathered and included publication of client and network relationships relevant to public affairs. However, the system lacked clear sanctions and continued to be hampered by lack of resources to verify disclosures, and widespread avoidance by many significant lobbying organisations (indeed the reticence of major law firms

active in public affairs and regulatory advice to participate in the register continues to this day). A concerted civil society campaign to secure mandatory lobbying regulation continued, which sought to expose the shortcomings of the IIA approach favoured by the Commission (ALTER EU, 2014). Other analyses judged the Register more kindly, deeming it a qualified success: 'There are now more than 5500 individual entries....We estimate that around three-quarters of business-related organisations active in engaging EU political institutions are in the Register and around 60 percent of NGOs with a European interest are in the Register' (Greenwood & Dreger, 2013, p. 159). By current disclosure data this assessment looks to have underestimated the lobbying universe, but it does recognise the growing reach of the register. A related concern in public affairs circles in Brussels was the trajectory of transparency measures, with concerns being raised about emerging rules to govern conflicts of interest, revolving doors, the composition of expert input on various advisory and regulatory bodies: 'The latter are still evolving in a process of incremental, though lumpy, development, often following the interjection of civil society watchdogs, sometimes with the support of a European Ombudsman' (Greenwood & Dreger, 2013, p. 141).

A new IIA in 2014 created what was termed a de facto mandatory lobbying register. The Commission was under pressure from the European Parliament (and some external stakeholders) to make the Transparency Register mandatory, but resisted that approach, preferring instead to increase pressure on outside organisations to sign up to the register by adopting and publicising a series of soft sanctions. The key incentive to boost compliance was the Juncker Commission pledge to only meet with registered lobbyists and to publish details of contacts with organisations and individuals in bilateral meetings, including disclosing the topics discussed (European Commission, 2015). These policies promoted a notable spike in registrations (see Figure 1), although the commitment appears not to be consistently applied. In essence, without a legislative underpinning the register will also be vulnerable to non-compliance. The soft power efforts to encourage registration have had some impact, but without a robust and consistently applied policy to decline meetings and briefings with outside interests not participating in the transparency scheme the limits of a voluntary approach appear to have been reached. The European Parliament also called on the Commission to submit a legislative proposal to underpin a mandatory lobbying register by the end of 2016. That process appears to have stalled, and both institutions have shown little political appetite to move this forward and deal with the exclusion of the Council from the current arrangements.

A notable aspect of the development and expansion of the current European lobbying transparency system has been the role of civil society in making the case for reform, demonstrating the short-comings of the various

Transparency Register — Evolution of Registrations

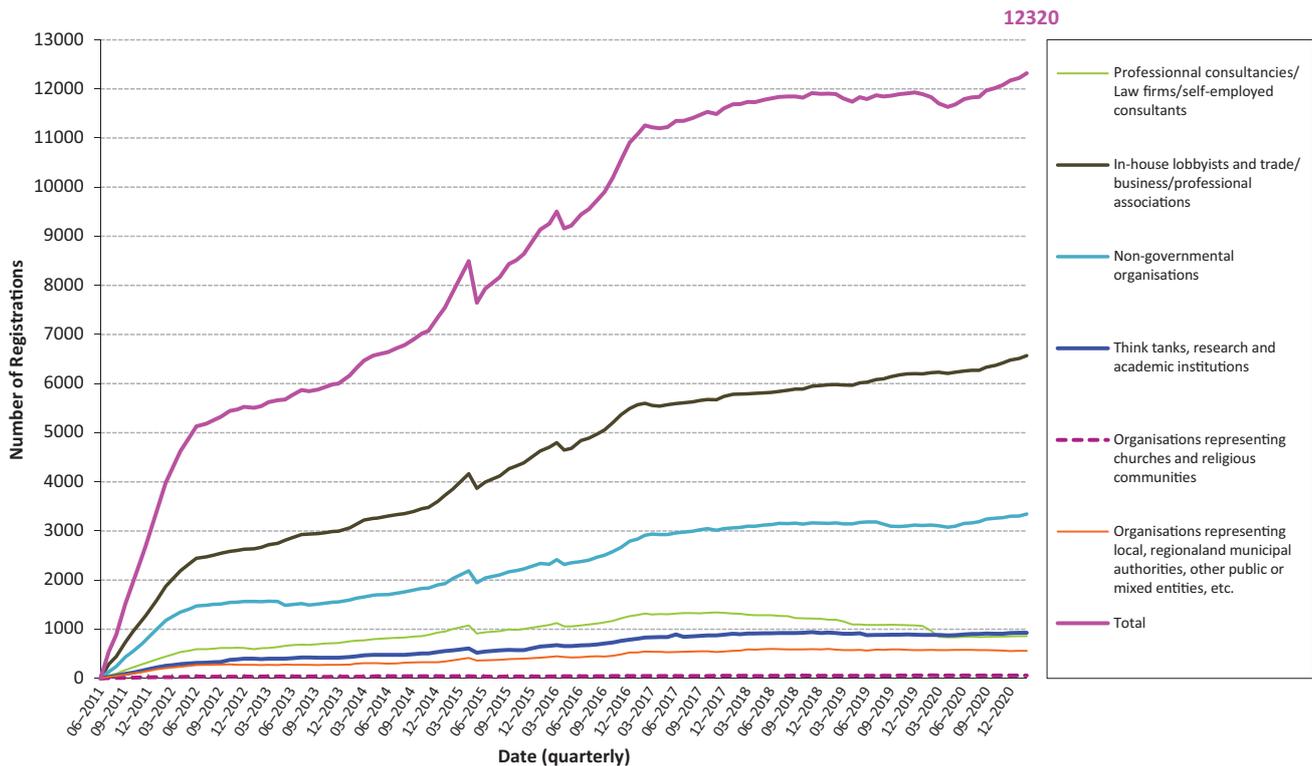


Figure 1. Evolution of transparency registrations. Source: Joint Transparency Register Secretariat (2021).

systems to promote lobbying transparency: ‘Acting as norm entrepreneurs that by default politicise their lobbying, they add to the breadth and participatory character of the decision-making process’ (Coen & Katsaitis, 2019, p. 281). Scholars have identified gaps in knowledge and information relating to ‘under-researched third-party groups that may have an impact on policy outcomes, and [reaffirm] the need to track lobbying footprints at the cycle’s earlier stages’ (Coen, Lehmann, & Katsaitis, 2020, p. 2) and the continuing lack information around professional lobbying advisors:

We note that we know surprisingly little about the activity of the third largest group of interests in the EU, professional consultancies...future research that assesses their activity on a per file basis can offer valuable insight into the EU lobbying universe.’ (Coen & Katsaitis, 2019, p. 289)

One could add to this list the virtual invisibility of law firms engaged in lobbying, and the lobbying dynamics that may impact of the composition and work of expert groups.

The review of the origins and evolution of the current lobbying disclosure system in Brussels offers an informational baseline. Much of the scholarship on lobbying transparency and interest group activity has focused on the governance dimension, and what information is disclosed, or the informational exchanges between stakeholders. There has been a rather striking general lack of

interest or curiosity about how such information can be circulated, communicated and made more widely known via media, networks and platforms (Naurin, 2006, 2007). This missing element is a key factor in assessing the limits of transparency to which we must now turn attention.

3. A European Public Sphere or a Brussels Bubble? The Case of Lobbying

There are strong normative and rationalist ideas that suffuse debate on lobbying transparency. One common line of reasoning is that lobbying transparency makes information publicly available, which aids public understanding of politics, scrutiny of legislative processes and therefore boosts accountability. This logic leans heavily on the media acting as a fourth estate, and also assumes that there is a watching and interested public, or in the European case, publics. It is also a model that is perhaps not easily transposed onto the complicated institutional and decision-making arrangements in Brussels. Another line of argument around lobbying transparency is that it makes the lobbying process more visible to political insiders and that visibility promotes probity and adherence to the rules of the game.

Using the conceptual lens of the public sphere the argument presented here considers how lobbying can be made more transparent and therefore accountable. To do this the discussion first focuses on how the concept of the public sphere is often very media centric. As a corrective to such approaches the Brussels lobbying

scene comprising elite professional networks of communication is discussed. These networks can be considered as part of the European public sphere. They are formally outside of the political institutions but orbit them very closely. The interactions between lobbyists, elected representatives and bureaucrats within these networks are not widely reported on by the news media, and are not easily captured in the Transparency Register, yet these appear to be the very stuff of public affairs and political communication in Brussels and would appear to be virtually unknown to wider European publics.

In respect to the argument around media as fourth estate, the empirical evidence suggests that the media are not much interested in reporting on the European lobbying register. This does not mean that the media are not interested in reporting on lobbying, but that there appears to be little newsworthy in the Transparency Register if coverage of its contents, or acknowledgement of the register as a source for the media, are indicators (see Table 1). This may be a product of the lag in publication of timely information in the register, or indeed the content of the disclosures themselves. A cursory inspection of lobbying disclosures on the Transparency Register would not likely yield front page headlines. Nevertheless, the broad patterns of media coverage of the register are illustrative.

What media coverage there is can be said to be largely Anglophone, largely online, and largely speaking to specialist or niche audiences. The lack of newspaper coverage of the Transparency Register suggests it is not yet perceived as a news-worthy source for media. Of these news items around 20% rely on comments and contextualisation by civil society groups. What is known about media coverage of lobbying is that it is often related to scandals and wrong-doing. The US is perhaps an exception to this, as media coverage of lobbying expenditure is a staple of policy analysis in the quality press and online outlets. This is possible because of a much more robust and granular lobbying disclosure system. So, one of the key limiting factors in media cover-

age of lobbying in Europe is the nature of the regulatory regime and the information that can be made available to the public through official transparency mechanisms. But the role of the media merits some consideration too, especially as it relates to the unique political space that is Brussels.

There has been considerable scholarly and policy interest in the European public sphere over the last two decades (Eriksen, 2005; Fossum & Schlesinger, 2007; Gil de Zúñiga, 2015; Risse, 2015; Walter, 2017). Much of the academic debate on the creation, or indeed very existence, of a European public sphere is loaded with theoretical and normative assumptions about the desirability and possibility of a common European communicative space as a means to nurturing a shared European identity, thereby bolstering a wider political project of European integration (Baisnee, 2007; Schlesinger, 2003; Schlesinger & Kevin, 2000).

The European public sphere can include mass media, but it must also include specialised media (Baisnee, 2007), dealing with discrete policy issues and serving select audiences, including lobbyists. To really capture the dynamics of EU public affairs the perspective must be wider again. To account for communications rather than simply media, one must focus on other places where such communication occurs. Social media platforms are an obvious starting point and are easily accessible to those not based in Brussels. It is not clear if social media data yet offers a useful or reliable form of data to understand EU level lobbying dynamics. It is being used by scholars to try to map public affairs networks and discourses (Hobbs, Della Bosca, Schlosberg, & Sun, 2020).

Research on the shape and functioning of the European public sphere(s) too often takes media (Gripsrud, 2007) and media coverage of EU affairs as synonymous with the European public sphere (Trenz, 2004). A useful corrective to such approaches is to begin to examine the actual functioning of political communication in Europe from the perspective of issue or interest-based networks (Eriksen, 2005), overlapping

Table 1. Media coverage of European Transparency Register, from 1 January 2011 to 1 December 2020.

	Transparency Register (en)	Registre de transparence (fr)	Transparenz-Register (de)
TOTAL	1619	205	82
Newswires & press releases	747	24	7
Web-based publications	505	27	12
Newspapers	212	43	38
Newsletters	33	18	0
Industry trade press	24	26	2
Legal news	16	0	0
Weblinks	13	3	0
Magazines and journals	12	33	7
News transcripts	2	2	15

Source: Author's search of the Nexis news database (<https://advance.lexis.com>), by Europe region, for search terms in quotes, all language publications (high similarity duplicates removed). Some categories of publications removed, e.g., aggregate news sources, video, audio, undefined.

communicative communities and networks (Schlesinger, 2003) or sources rather than media (Davis, 2007; Dinan & Miller, 2009). Much of the existing literature reflects a ‘tendency to present public spheres as free-floating communicative spaces, abstracted from the colonisation of public-political deliberation by state and corporate actors under conditions of neoliberal hegemony’ (Stavinoha, 2020, p. 5).

Shifting the emphasis to communication networks and the sources of political communication, allows actually existing European public spheres to come into focus more clearly. The approach taken here starts by examining the communicative agency of policy actors, particularly elite communicators (those whose business is the business of European public affairs, which would include journalists, lobbyists, and those in expert policy networks, including think tanks), in explaining and understanding the character of political communication and public affairs in the EU. The extent to which lobbyists target mass, or specialist, media or focus more specifically on elite discussion and decision-making fora is an empirical question. In practice it is clear that a model that only considers the public or published forms of political communication in Europe misses large swathes of the actually existing European public sphere, created by the activity of elite communicators acting toward what might be termed “strong publics” (Eriksen & Fossum, 2002), that is the governance networks surrounding the EU institutions.

Baisnee (2007) argues for a new approach to studying political communication in Europe that moves beyond standard research designs based on discourse analyses of media content to a more sophisticated and ethnographically informed understanding of European communicative space:

Anyone who has spent some time in Brussels knows that an incredible amount of political activity occurs, including almost daily demonstrations, public debates, etc. The fact that they do not appear in national newspapers does not mean that they never happened. (Baisnee, 2007, p. 499)

One can readily appreciate that those interested in that range of political activity not well served by mainstream media will usually be a select demographic, a niche within a niche of political anoraks and those whose job it is to follow and be informed about EU affairs. While elite media do serve their audiences with a digest of news about key legislation and policy-making in Brussels (Corcoran & Fahy, 2009; Schlesinger & Kevin, 2000), this is actually still a very small part of political communication in the European public sphere (Hännska & Bauchowitz, 2019; Hepp et al., 2016). Where else should we look? Schlesinger argues one way to move this debate forward is ‘to analyse emergent European communicative spaces’ and if this is accepted then logically ‘the focus needs to shift to the new, supranational arenas

and their constituent publics’ (Schlesinger, 2003, p. 11). Baisnee (2007, p. 501) suggests a focus on ‘the social groups actively involved in the debates over the EU and EU policies.’ The analysis of the European public sphere cannot simply be restricted to news media and must account for the various forms of political communication produced, circulated, contested and consumed by different actors and publics, in different media, fora and networks.

One way to reframe the European public sphere is to compress the space and consider political communication as it exists in the locale of the euro *quartier* in Brussels. This aligns with work championing the spatial turn in communications studies (Falkheimer & Jansson, 2006) that draws attention to the significance of place and space in communicative activity, though many applications of this work are essentially concerned with mediated communications. We can accept the spatial turn and focus on Brussels as a site of elite communication, populated by a variety of political actors, including news media, both general and specialist, Commission officials and spokespersons, elected representatives, lobbyists, public relations professionals, and think tanks, all of whom routinely interact in the daily business of European political communication, and many of whom are directly concerned with lobbying and public affairs.

Davis’ (2007) work on media sources suggests examining ‘the micro and less visible forms of communication at these sites, and on the private actions of powerful individuals’ (Davis, 2007, p. 10). It also suggests that researching the public sphere can become a question of communications and power rather than simply a question of the role of mass media institutions embedded within power relations. The latter fails to account for the submerged but significant political communications activities of lobbyists, think tanks and policy planning organizations.

The routine business of lobbying and public affairs also includes conferences, workshops, EU affairs training events, breakfast briefings, lunchtime seminars and dinner debates, as well as pseudo-events like book launches, and the activities of cross parliamentary groups, all of which create spaces where political communicators come together to discuss policy, to share information, to hear representations and argument, to lobby and negotiate consensus and dissensus. This is the substance of the actually existing European public sphere in Brussels. How are such networks and their impacts to be made visible? This is a challenge for transparency campaigners, media and indeed scholarship. In the case of the latter much work under the banner of political communication defaults to drawing on mass media and more recently social media as data. There is certainly a need for the use of field methods to complement mass and social media, plus analyses of trade publications, websites and data scraping public registers (e.g., in Europe a transparency mosaic could include the Transparency Register, Commission disclosures of high level lobbying meetings,

the Commission database of expert groups, as well as data from national lobbying registers, and national level FOI disclosures; see Miller & Dinan, 2016), to triangulate as many different sources across the public sphere to offer a more complete account of policy deliberation and discussion.

It appears that this European public sphere is formally open and accessible, if you can pay the often pricey entrance fee, to various commercial conferences and events where the business of EU governance is discussed. The “staging” of the public sphere, through conferences, discussion fora, expert meetings, publicity stunts and other events has become something of a lucrative sideline in Brussels for many communications companies and think tanks. The cost of participation should not be underestimated. Maintaining an active presence in Brussels is a real barrier to entry in terms of the aggregation of memberships fees to political groups and trade associations, think tank networks and attending elite commercial policy conferences has arguably created a new bourgeois public sphere. Part of this cost is captured in the lobbying Transparency Register, where organisations are asked to declare their membership of different networks and coalitions. Another feature of this space is that it is almost exclusively occupied by actors who are committed to the European project and are aligned to free market principles. If you want to have any impact and build effective political coalitions in Brussels you must at least be pro-European—this is tacitly understood as a key feature of the culture by all those participating in the “Brussels bubble” (Laurens, 2018). Examining the communicative action of political actors also illuminates the close interrelationships between the Commission and communicators in its orbit. Many actors work on behalf of, and towards, the institutions—they represent and make representations to the very bodies at the centre of legislative power in Europe.

It is therefore useful to conceptualise this environment in terms of a specialised and politicised communicative space, where a range of political communicators (lobbyists, think tanks, journalists, NGOs, advisers, officials and elected representatives) interact and engage in policy dialogue. This public sphere is dominated by sources somewhat removed from an overseeing or over-hearing public and displays some of the disembodied tendencies others have noted in elite communications circuits characterized by ‘professionalized communications, cultures and associated elite networks which exclude journalists’ (Davis, 2007, p. 174). There is weak external scrutiny and little critical publicity (for a related discussion of publicity in EU affairs and role of civil society see Neyer, 2004, pp. 32–33). This shapes the communicative logic of the Brussels bubble and contributes to what has been characterized as its elite pluralism.

Civil society advocacy has been seen to act as a surrogate for the expression of public opinion in Brussels and elected representatives are more likely to articulate public interest arguments on issues where civil society

is active and where the issue has high public salience. ‘The involvement of business lobbyists...seems to be a countervailing force within politicization, constraining the prevalence of public interests in EU policy debates’ (De Bruycker, 2017, p. 616). Politicians appear to be less likely to articulate public interests on issues with low public salience and where business lobbies are active. It is important to note that there is considerable variety and divergence across civil society in Brussels, and CSOs can be located across the political spectrum from left to right. What they have in common, at least in a normative sense, is:

CSOs are reaching out from the grass roots to remote Brussels and thus bring people’s interests into the decision-making process. As a partner in governance, they are expected to voice the diversity of interests and views and to bring the knowledge and down-to-earth experience of citizens into the policy-making process. In other words, they are expected to contribute both to input and output legitimacy. (Kohler-Koch, 2010, p. 106)

The public are largely excluded from this space, which adds weight to the idea that a lobbying register exists to serve an already super-served public—those professionals clustered around the European quarter in Brussels, and those across Europe virtually engaged in public affairs. There is some evidence to suggest that lobbying registers are most keenly monitored by lobbyists and policy-makers themselves, providing increased transparency for those inside the lobbying milieu (Crepaz, 2020; Rush, 1998). Equally, it could be reasonably claimed that the register has failed to make lobbying transparent to the wider public. This sits at odds with the founding rhetoric of lobbying reform in Brussels, which was to boost trust and participation. Participation and popular mobilisation around issues at the EU level is very rare, a recent exception being widespread opposition to TTIP which featured concerns about official secrecy and the lack of transparency associated with the putative negotiation of that trade deal (Coremans, 2017). The TTIP case ‘is reflective of the historically engrained institutional ambivalence towards public political participation in EU affairs’ (Stavinoha, 2020, p. 4) and illustrates some limits to the EU institutions appetite for increasing publicity (Naurin, 2007; Neyer, 2004). Moreover, despite being proclaimed as the most transparent trade deal ever, in practice there was the usual secrecy around the negotiations. Interestingly, Stavinoha’s (2020) analysis of TTIP was in part only possible by using Freedom of Information requests to access documents that would otherwise not have been published.

For the Commission:

Transparency is primarily aimed at fostering citizens’ trust by allowing them to understand what is being negotiated. For CSOs, transparency is just a stepping-

stone that should allow citizens (through CSOs) to meaningfully participate in the negotiations, and only this can bring about trust.’ (Gheyle & De Ville, 2017, pp. 23–24)

The parallels between the TTIP case and the limits to lobbying transparency are quite striking. The issue of lobbying disclosure in Europe would not have been addressed without pressure from civil society. Many involved in this issue simply see lobbying transparency as a necessary first step to developing a more responsive (to wider public opinion) and accountable European polity. The NGOs and campaign groups in Brussels active on the issue of lobbying transparency can be considered as a surrogate for the missing mass media. Civil society groups interested in good governance and disclosure contribute to monitory democracy (Keane, 2018) and form part of a watchdog media matrix around lobbying. They have used web and social media to publicise concerns about privileged access, conflicts of interest, and corporate capture, which are now part of the public lobbying issue culture in Brussels. In some respects, these campaign groups have made the issue of lobbying more visible and more public than it would otherwise be. Their continued activism on this agenda will be a factor in determining the wider public reach and understanding of European lobbying transparency, whatever new mandatory arrangements are agreed by the institutions.

4. Conclusion

The limits of European lobbying transparency are a factor of the interplay of formal and informal drivers of disclosure: the types of information disclosed in the register and the available sanctions for non-disclosure are of course very significant. However, the existing political opportunity structures and the communicative spaces and networks that orbit Brussels politics, and are connected to national capitals and public spheres, are also important.

It is likely that the evolution of the transparency regime in Brussels will be shaped by a combination of political appetite, imagination and pressure from advocates of transparency and good governance. One of the universal lessons on all lobbying disclosure systems is that many lobbyists are not very enthusiastic about increased regulation. The tensions between public and private interests would suggest that with an issue community chronically or constitutionally incapable of self-regulation political pressure is needed to drive reform. Previous best guesses have been shown to under-estimate the population of lobbying organisations active on the EU level. Without being able to accurately identify what actors are engaged in lobbying there is little prospect of meaningful accountability for them, or for those they interact with. A mandatory system may help address this and create a transparent and more robust disclosure system. However, the stalled

inter-institutional process suggests that such a system is not in the offing.

The resources to publish and update a database of lobbying spending and activity, as undertaken by the OpenSecrets project of the Centre for Responsive Politics in the US, is being developed in the EU at present. The LobbyFacts project, which draws on the EU transparency register and data published by the Commission on high level meetings with lobbyists seeks to allow some tracking of lobbying trends and activities in Brussels. Nevertheless, the detail of the data in the LobbyFacts database is comparatively thinner than what is published in OpenSecrets, mainly due to differences in the level of detailed disclosure in Brussels and Washington, with the latter a mandatory system with specific requirements regarding lobbying expenditure disclosure and significant penalties for non-compliance. Therefore, the ability of media to explain EU public affairs and how influence is exerted in Brussels is severely curtailed. The available evidence suggests that watchdog groups are likely to remain key actors in promoting awareness of lobbying transparency and building pressure for reform.

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Conflict of Interests

The author declares no conflict of interests.

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