

GTNF 2016

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Session 4: Transparency for a level playing field

The GTNF breakout session “Transparency for a level playing field,” which was held on the afternoon of Sept. 28, was interestingly timed from an EU perspective, given that it was held within hours of the publication by the EU Commission of a proposal for a mandatory Transparency Register covering all three EU institutions—the European Parliament, the council and the commission. In a press note, the commission said that it had already led by example in making meetings with its decision-makers conditional upon “interest representatives” being publicly listed in a Transparency Register. “Today [Sept. 28] we are calling on the European Parliament and council to follow suit, making the Register mandatory for any interest representatives trying to influence policymaking in Brussels.

“The EU institutions need to work together to win back the trust of our citizens,” Frans Timmermans, first vice president of the European Commission, was quoted as saying. “We must be more open in everything we do. Today's proposals for a mandatory Transparency Register covering the Parliament, council and commission are an important step in the right direction. Citizens have the right to know who tries to influence EU lawmaking. We propose a simple rule: no meeting with decision-makers without prior registration. Through the Register, the public will see who is lobbying, who they represent and how much they spend.”

The timing of the announcement was interesting but not that helpful because nobody at the session had had time properly to read it. In any case, participants were told that the proposals would be the subject of negotiations and might take 1 1/2 years to complete.

It was said also that responsibility for registering meetings would lie not with the lobbyists but with the lobbied, though, in practice, all lobbyists would have to be registered. This was an interesting point because it helped to address questions raised about lobbying in general: What was lobbying? Where did it start and end? Specifically, it was asked whether a policymaker could be seen to have been lobbied if she read a book that influenced the way she voted in relation to a policy proposal, the inference being that the purported lobbyist, the book's author, would have had no way of knowing that he had lobbied—and of course no way of knowing how his words had been interpreted—and therefore no responsibility for declaring his “lobbying.” But with the onus being on the policymaker, the author is all but removed from the equation. The policymaker merely has to cite the book, and the way she votes is an indication of the way she interpreted—“rightly” or “wrongly”—its contents. It is, in other words, a simple citing of sources, though, of course, an unregistered source.

It was asked also whether bending a policymaker's ear down at the pub amounted to lobbying, and again the answer seems to lie with the lobbied person registering the encounter if it influenced her thinking. All of this means putting a lot of trust in the lobbied—in her goodwill and in her conscious memory after a session at the pub.

In the U.S., the position is apparently clear. If you buy a policymaker a cup of coffee and try to influence his view on a policy, that meeting has to be registered. However, a question was raised about the difference between lobbying and the imparting of information, which seems to be problematic. If you “inform” the policymaker that policy A will result in the death of

thousands of small, cute furry creatures whereas policy B won't, are you lobbying? Is emotional blackmail lobbying?

Most of the participants seemed to be in favor of transparency and seemed to take the question extremely seriously, with one lobbyist organization represented describing a strict code of conduct and a requirement for its members to undergo training. So it wasn't surprising that the Conference of the Parties to the World Tobacco Organization's Framework Convention on Tobacco Control came in for much criticism because of its lack of transparency, which was of such a level that there were times when it was not possible independently to confirm that meetings had a quorum. By removing people with a lot to say, transparency was not improved but removed, one participant remarked.

There were counter voices, but these seemed to question not the ideal of transparency but the way that it is interpreted. These voices said that often it was assumed that those involved in lobbying should be transparent in their dealings and scrupulously neutral, whereas the whole idea of lobbying should be concerned with having policymakers listen to all of the differing views on the subject at hand and then make an informed decision. Speaking specifically on the idea of policy aimed at reducing harm, one participant said he wanted regulation that worked within the scope of the powers given to the regulators to improve health overall, not necessarily regulation based on fairness or transparency.

Most participants were in favor, too, of a level playing field, but it was less than clear how this playing field was to be constructed—how, for instance, the man in the street could play with any hope of winning against the representative of the multinational. Indeed, criticism appeared to be aimed at organized responses to consultations where the wording of all of the responses were the same or similar. But such responses seem to be the very essence of transparency. They signal that they have been organized while providing the names of the individuals. More of a case might be made against companies that present a single view without having consulted their employees or shareholders on that view.

And, leading on from this, one of the issues raised was the idea that demanding too much transparency amounted to a vote of no confidence in the mental capacity of the person being lobbied. If the person sitting opposite was wearing a suit—perhaps even a tie—and had proffered a business card with the name of a tobacco manufacturer on it, the person being lobbied should have a pretty good idea of where he was coming from.