



# The Risk of Freedom

## briefing

### The liberty to lobby

Legislators have the duty to establish a 'level playing field' among competitors. However, it often seems as though large firms which can afford to spend millions on professional lobbyists, and which can line the party coffers and even the personal pockets of the political class, are able to buy regulations that will prevent newcomers from challenging their dominant position. \$13 billion was spent on lobbying the American Congress last year, indicating that businesses and pressure groups really do believe that they can bend the law in their own favour.

However there are relevant distinctions to make among those who lobby, and among the methods they use.

### the government must ensure that it is not money that talks . . .

Consultation is a necessary part of the democratic process, and a corrective to unjust decrees. We should therefore distinguish trade associations and industry-wide federations from individual corporations, and accept the legitimate role of the first in lobbying for legislation that reflects a fair view of their business. The difficulty arises when we turn our attention from that innocent case to two others: first, lobbying by individual corporations or cartels; secondly lobbying by self-appointed 'stakeholders', who may have no democratic mandate.

The instinctive response is to say that a corporation is no different from any other citizen, and should be granted no influence over the legislative process apart from that exercised through the votes of its members. In practice, however, it doesn't work like that. A law that made it impossible for Boeing to compete with Airbus would have radical and potentially catastrophic effects on the American economy. In lobbying against such a law, Boeing is bringing the attention of the government to consequences that it is duty-bound to consider.

Still, someone might respond, there have to be safeguards, if the interest of competitors is to be protected. If those competitors are too small to throw money at the politicians, the government must ensure that it is not money that talks. It might limit the access of

lobbyists to legislators, or oblige individual firms to lobby under the banner of their trade associations. It might also restrict the amount of money that can be spent on lobbying, just as it restricts the amount of money that candidates may spend at an election.

A far more serious question is raised, however, by the lobbying of 'stakeholder' interests, which usually promote themselves as altruistic associations for the public good. Organisations campaigning for the environment, public health, equal opportunities etc. can lobby with impunity, seldom prompting the reaction that they are compromising the democratic process. Indeed, the EU is bent on encouraging NGOs to lobby, as counterweights to business interests, without proof that they represent anything other than themselves. Yet they too may be seeking to disadvantage individual corporations or individual industries, they too may have scant respect either for market freedom or for the level playing field. An interesting case was recently presented by the Political Animal Lobby, which lobbied on behalf of the ban on hunting with dogs enacted by the UK Parliament. Entirely self-appointed to its role as guardian of animal welfare, the lobby bought its place at the table with a million-pound donation to the Labour Party. Its expertise in the matter of animal welfare is dubious at best, and its rules of association make it entirely unaccountable to anyone save its directors. Yet, by use of the lobbyist's tools, it ensured a presence for itself or its associates throughout the legislative process.

There is also the possibility that a righteous 'stakeholder' may press for legislation that will generate competitive imbalance as a side-effect. This has happened in the case of advertising controls, such as those imposed on producers of alcoholic drinks by the French Loi Evin. Those controls were tacitly endorsed by the large drink corporations, since they restricted entry to the market. The normal process of lobbying, in which the target industry presents its case against those who seek to restrict it, did not occur.

The growth of bureaucratic legislation, whether through the EC or the American government agencies, has made lobbying more prevalent, more effective and potentially more unfair. Whatever readers think of the material collected in this *Briefing*, the question will occur to them, whether the time has not come to lobby against lobbyists.

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### Lobbying

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## Lobbying in a new democracy — Poland

Marek Matraszek

When I first came to Central Europe in the early 1990s, there was a wave of enthusiasm for attracting foreign investment, with frequent exhortations from local politicians for corporations to come to Poland. When those corporations finally arrived, however they found their interests sabotaged at every turn. Why was that? And what does it mean for professional lobbyists in post-communist countries?

## the old communist forces have remained hugely powerful, exercising significant informal influence

To a large extent, over the years, Central Europe has failed to operate under the basic standards of the interplay between free markets and the rule of law. Despite free-market democratic reforms, the forces of the old communist order have remained hugely powerful, exercising significant informal influence. By the old communist order I do not mean the networks of former secret policemen who still walk free; rather, the business and social structures that communism created and then bequeathed to the democratic state. State industries retain their influence in the governmental bureaucracies. And monopolists remain resistant to break-up. Entire swathes of the population, especially farmers, but also vested interest groups such as pensioners and the employees of the welfare state, retain significant influence through the political process. Trade unions remain powerful, concentrated in smokestack industries and areas of high unemployment. These groups throw their weight around, riding roughshod over weaker interests.

The political system, based in almost every former communist country on proportional representation, operates to advance mediocrities and hangers-on in the parliamentary process, ensuring that laws are made by politicians susceptible to the pressures of concentrated and determined interest groups. By contrast, those interests that are disorganised, weak or dispersed, such as foreign investors, private entrepreneurs, or consumers, remain disadvantaged in the decision-making process, whether in parliament or in the administration. And it is those interests that deserve support, as they are the ones that ultimately drive forward the

economies of post-communist countries. And significantly, it is precisely those disadvantaged groups that use the services of professional lobbyists: domestic industries, especially those owned by the state, are powerful enough to do their own lobbying through their own networks, whilst social groups can rely on trade unions to pressure the authorities.

Most foreign investors choose one of two means to extend their influence in the decision-making process. On the one hand, there are those who fall into the trap of hiring a single influential businessman or ex-politician, in the hope that he can 'do the deal' for them. Sooner or later, such 'influencers' inevitably stoop to corruption, and today one or two of them languish in Polish jails. The problem is self-perpetuating. Central European countries often behave like banana republics, so foreign investors are tempted to treat them as such, thus entrenching the very situation that causes them trouble.

The other route is to hire one of the few professional companies that exist. Poland has about half a dozen serious lobbying companies, with staff, professional lobbyists, and an untarnished reputation. In our case, over the years we have built up a dedicated and loyal staff and clientele, and business is growing. Now the real opportunities are lobbying campaigns conducted in Brussels, among the MEPs and officials from the new accession states.

Lobbying is still treated with great suspicion, however, in large part due to the swathe of public corruption scandals involving the peddling of illicit influence by so-called middlemen. Most Central European countries have legislation pending that will regulate the lobbying industry, on the mistaken assumption that strict regulation will end corruption. Instead, it will push lobbying further into smoke-filled rooms, and stifle the growth of professional companies. Moreover, it will do nothing to eradicate the real cause of corruption, which is the 'middlemen' who escape all controls, since they are protected by officials in high positions, and able to influence the political process directly. When such people belong to, or enjoy the protection of, a ruling party, then they are quite capable of using their position to harass and slander a lobbyist who is attempting to put the case for a competing client. The last few years in Poland have seen many examples where such lobbyists have been able to use the police, judiciary and intelligence services to harass and compromise their legitimate opponents.

Marek Matraszek is director of Central European Consulting in Poland.

## A web of deceit

George Monbiot

In my column in the *Guardian* I've spent some time showing what lobbyists get up to behind the scenes, for example: 'Bivings Group, a PR company contracted to Monsanto, had invented fake citizens to post messages on internet list-servers. These phantoms had launched a campaign to force *Nature* magazine to retract a paper it had published, alleging that native corn in Mexico had been contaminated with GM pollen. But this, it now seems, is just one of hundreds of critical interventions with which PR companies hired by big business have secretly guided the biotech debate over the past few years.

Bivings fiercely denied that it had anything to do with the fake correspondents 'Mary Murphy' and 'Andura Smetacek', who started the smear campaign against the *Nature* paper. So, I checked the email's technical properties. They contained the identity tag 'bw6.bivwood.com'. The message came from the same computer terminal that 'Mary Murphy' has used. New research coordinated by the campaigner Jonathan Matthews appears to have unmasked the fake persuaders: 'Mary Murphy' is being posted by a Bivings web designer, writing from both the office and his home computer in Hyattsville, Maryland; while 'Andura Smetacek' appears to be the company's chief internet marketer.

Bivings is the secret author of several of the websites and bogus citizens' movements which have been coordinating campaigns against environmentalists. One is a fake scientific institute called the 'Centre for Food and Agricultural Research'. Bivings has also set up the 'Alliance for Environmental Technology', a chlorine industry lobby group. Most importantly, Bivings appears to be connected with AgBioWorld, the genuine website run by CS Prakash, a plant geneticist at Tuskegee University, Alabama.

AgBioWorld is perhaps the most influential biotech site on the web. It was here that the fake persuaders invented by Bivings launched their assault on the *Nature* paper. AgBioWorld then drew up a petition to have the paper retracted.

Prakash claims to have no links with Bivings, but an error message on his site suggests that it is or was using the main server of the Bivings Group. Jonathan Matthews commissioned a full technical audit of AgBioWorld and found 11 distinctive technical fingerprints shared by AgBioWorld and Bivings' Alliance for Environmental Technology site. Bivings is just one of several public relations agencies secretly building a parallel world on the web.' Story published 29/5/02

George Monbiot is an environmental campaigner and *Guardian* columnist.

## Lobbying for freedom

Hardy Bouillon

Germany has been treated to a debate about the supposed 'bad guys' of capitalism. This debate has been steered by the SPD Chairman, Franz Muentefering, who baptised British and American investors 'locusts', employing a vocabulary that he formerly dismissed as Nazi verbiage. For some people this debate has been a welcome prelude to the search for more bad guys, and the lobbyists are now being singled out, on account of actions which, though perhaps morally blameworthy, belong nevertheless within the legal rules of the game.

To understand and cast judgement on this game, we must first remember that the investor and the lobbyist play by different rules. The investor might buy corporate conglomerates, take them apart, close factories, keep some and sell others. His critics may (mistakenly) accuse him of destroying skills and jobs, whereas in fact he does nothing else than what the market requires, liquidating what has survived so far because of unfair subsidies and, perhaps, poor management. He is not so much destroying skills and jobs as helping the market to relocate them. He is

performing the needed shakeout: probably a well-paid job, but not one that attracts much public sympathy.

Lobbying probably receives more sympathy, though it hardly deserves it. Recently a well-meaning colleague asked me what free-market think-tanks like

## It is up to politicians to vote as their conscience directs . . .

mine are, if not lobbyists. Like the lobbying companies that work for the corporations, he suggested, we are in the business of supporting or opposing legislation through the back door of influence, rather than the front door of the vote. True, I replied; think-tanks and lobbyists are both trying to influence legislation. But they differ in a decisive respect. Lobbyists aim to change legislation in the interest of a particular group; if they are successful, therefore, they promote discrimination (whether of a positive or a negative kind). Free-market think-tanks have the opposite purpose, which is to promote legislation that does not allow for economic discrimination of any kind at all.

Lobbyists and politicians may coalesce, in order to promote discriminatory legislation. We may find this morally objectionable; but it is both legally permissible and an expected feature of the political process. It is still up to politicians to vote as their conscience directs. Lobbyists can influence the result by providing information and a network of responses, but they do not infringe the privacy or the freedom of the politicians themselves. They are forbidden to coerce or to bribe, and the freedom of the politician to vote as he decides is the tacit premise of the whole arrangement.

'It is worse to condone a crime than to commit it.' Whatever one might think of that proverb, it is true only in its moral interpretation and not as a matter of law. We might disapprove of lobbying on moral grounds, since it condones harmful (i.e. discriminatory) laws and seduces politicians to promote them. However, lobbying has to be accepted as part of the democratic process, and it is for the democratic process to set the rules. If you don't like the result, then lobby to change it.

Hardy Bouillon is Head of Academic Affairs at the Centre for the New Europe, Brussels.

## Are you being lobbied?

### Lobbying by another name?

Trade Associations should not be regarded as disinterested players in the democratic process. When you look at how they are composed, it is clear that sectional corporate interests, directly related to their funders, direct their activity.

Law and Accountancy firms engage in activities that they call 'information gathering'; but there is a case for this to be defined and regulated as lobbying.

### Conflict of interest in the media?

There is overlap between the PR industry and the news service, for instance: global communications conglomerates also own news organisations. E.g., ITN (the news group) and the PR giant Burson Marsteller jointly own Corporate Television News (CTN), which makes corporate videos and video news releases. In the late 1990s there were allegations that the priorities of CTN's clients can affect ITN reporting of public issues such as the role of Shell in Nigeria, Shell being a CTN client.

### Too close for comfort?

That the former Chief of Staff for the White House Council on Environmental Quality toned down environmental reports before a making a career leap to Exxon Mobil calls into question whether there is adequate separation of influence in the US government. Why did the 1 year quarantine rule not apply?.....  
Editorial Summary

## Legal parameters

### Summary of US and EU law:

Lobbying in the USA at the Federal level is on a far greater scale than anywhere else in the world. We have the financial information because lobbyists in the US are bound to register themselves and to declare expenditure under the *The Lobbying Disclosure Act* (1995).

The registration law is applicable not only for attempts to influence politicians but also to influence executive officials and administrative agencies.

Information on the financial estimates of income and expenses of the lobbying activity is required if these exceed \$5,000.

The Register of Lobbyists is maintained by the Secretary of the Senate and the Clerk to the House of Representatives. Updated quarterly and publicly available.

The Act also provides for the 'quarantining' of legislative and executive officials, banning them from becoming lobbyists for one year after leaving office. Details of former employment in any legislative and executive capacity have to be registered for up to two years from the last appointment.

For lobbyists, Codes of Conduct are voluntary, but for those in public office they are mandatory. Transferring the onus to those in office is seen as perhaps the best means of regulating the lobbying process.

The majority of states also have their own legislation. For example the *New York State Lobbying Act* (1999) provides for a Lobbying Commission to ensure the public disclosure of the identities, activities and expenditures of lobbyists. The Commission reports that \$144 million was spent on lobbying in 2004.

### European Union

The European Commission does not have parallel legal reporting requirements. It is therefore more difficult to build an accurate picture of the amount spent on lobbying by whom.

A lobbyist must obtain a visitor's pass and then is free to work. There are currently about 4,500 people registered.

The Commission issued a 'Communication' *Towards a reinforced culture of consultation . . . general principles and minimum standards* in December 2002 (see [www.](http://www.europa.eu.int)). There are also various voluntary Codes of Conduct a lobbyist may sign up to, such as that developed by the Society of European Affairs Professionals (SEAP) or the Association of Accredited Lobbyists to the European Parliament (AALEP).

However, the European Transparency Initiative has recently been introduced by Commissioner Siim Kallas with a view to legislating on registration and transparency. (see [www.](http://www.europa.eu.int), back page)  
Editorial Summary

# A view from Capitol Hill

Gus Edwards

*All those which were his fellows but of late,  
Some better than his value, on the moment  
Follow his strides, his lobbies fill with tendance,  
Rain sacrificial whisperings in his ear,  
Make sacred even his stirrup, and through him  
Drink the free air. Timon of Athens, I, i.*

Cynics would say that lobbying is the second oldest profession, distinguished from the oldest only by a matter of minutes. Indeed, both date from a time whereof the memory of man runneth not to the contrary. Shakespeare appreciated the subtleties of lobbying when he wrote *Timon of Athens*.

It may come as a surprise to some that lobbying serves a critical purpose, and that it's not entirely nefarious. As one who, in Joni Mitchell's words, has looked at (the lobbying) life from both sides now, I can state categorically that lobbying is essential to the responsible and effective functioning of the legislative and regulatory processes.

The right to lobby is enshrined in the words of the First Amendment to the US Constitution, which asserts 'Congress shall make no law... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.' Even a casual observer can see that these rights are vigorously and enthusiastically exercised in the US (see Tocqueville, *Democracy in America*, Ch. 12, 'Political Associations in the United States'). The canard that lobbying

advances the causes only of those who have the money to pay for it or the media clout to capture the public's attention is put to rest by the sheer volume of interests that are represented by lobbying firms, industry associations, trade unions and other advocates throughout the country.

When properly and efficiently carried out, a lobbying program can have a salutary effect on laws and regulations that affect the lives and fortunes of millions of citizens. Lobbying is a highly regulated industry, and every lobbyist—except those representing an elected official or a group of elected officials—must be registered with the US government. The successful lobbyist is a highly principled individual who understands that his facts must be irrefutable; that hyperbole should be used only to illustrate a fine point and that truth trumps chicanery every time. Of course, as in any field, there are those who commit abuses. But the reporting requirements of the laws governing lobbying make it very difficult for the abusers to get away with very much for very long.

A positive aspect of lobbying is that it provides a means of getting information to lawmakers and regulators who otherwise would have very little of substance upon which to base their decisions. With so many demands on their time and attention, they can't possibly know everything. Lobbyists, generally, are experts in their fields, and legislators or bureaucrats rarely have the depth of knowledge a lobbyist can have about the effects of a law or regulation on his special interest. This exchange can only improve the lot of the governed. At the end of the day, lobbying, itself, is an act of freedom. Gus Edwards is a lobbyist working on Capitol Hill.

## How much? Table showing top 15 political donors in US (2002)

Donor Rank	Organisation	Amount	%Dems	%Reps
1	Saban Capital Group	\$9,340,000	100%	-
2	American Fedn of St/Cnty/Munic Employees	\$9,028,955	99%	1%
3	Newsweb Corp	\$7,435,500	100%	-
4	Service Employees International Union	\$6,769,346	96%	3%
5	Shangri-La Entertainment	\$6,756,000	100%	-
6	Carpenters & Joiners Union	\$6,132,249	91%	9%
7	Communications Workers of America	\$5,481,791	100%	-
8	Laborers Union	\$5,128,200	93%	7%
9	American Federation of Teachers	\$5,072,015	99%	1%
10	National Assn of Realtors	\$4,255,373	46%	54%
11	Freddie Mac	\$4,178,424	43%	57%
12	Microsoft Corp	\$4,154,198	40%	60%
13	Philip Morris	\$3,985,675	23%	77%
14	Assn of Trial Lawyers of America	\$3,941,088	92%	8%
15	AT&T	\$3,765,391	46%	54%

Source: 'opensecrets.org'. Check 'big picture' tab for release of 2004 figures.

## What about the tobacco industry?

'The tobacco industry contributed a total of \$54.1 million in individual, PAC and soft money donations from 1989 through last year in US, 75% to Republicans. So far this year, the industry's employees and PACs have contributed \$364,000, of which 76% has gone to the GOP [ie. the Republicans]

As a whole, the industry is far from the most generous campaign contributor in Washington. Lawyers and law firms, for example, have contributed more than \$654 million since 1989.'

Extract from *Smokin* by Steve Weiss, 9/6/05: published on [www.capitaleye.org](http://www.capitaleye.org).

## www. / publications

Official guide to the **Lobbying Disclosure Act (1995) USA** [http://www.senate.gov/pagelayout/legislative/g\\_three\\_sections\\_with\\_teasers/lobbyingdisc.htm](http://www.senate.gov/pagelayout/legislative/g_three_sections_with_teasers/lobbyingdisc.htm). Individual states have their own legislation, for example **The Lobbying Commission for New York**, [www.nylobby.state.ny.us](http://www.nylobby.state.ny.us)

The extent of EU regulation on lobbying is contained in a 'Communication' of Dec 2002 from the Commission [http://europa.eu.int/eur-lex/en/com/cnc/2002/com2002\\_0704en01.pdf](http://europa.eu.int/eur-lex/en/com/cnc/2002/com2002_0704en01.pdf) that outlines minimal standards of consultation of interested parties. The **EU Code of Conduct** on lobbying [http://europa.eu.int/comm/secretariat\\_general/sgc/lobbies/code\\_consultant/codecon\\_en.htm](http://europa.eu.int/comm/secretariat_general/sgc/lobbies/code_consultant/codecon_en.htm). Information on the **European Transparency Initiative** is available from <http://www.eulobby.net/eng/Modul/Abstract/ReadAbstract.aspx?Mid=1457&ItemID=674>

**Transparency International (TI)**. Gives useful account of legislation to achieve transparency in the law-making process globally <http://www.transparency.org/sourcebook/20.html>

**The Center for Responsive Politics** and the sister sites of the **Center for Public Integrity** and **opensecrets.org** provide digests of lobbying money and political donations in the US, [www.publicintegrity.org](http://www.publicintegrity.org) and [www.opensecrets.org](http://www.opensecrets.org) tracks spending and donations with graphs and summaries. Check opensecrets for updates including to above table.

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A comparative analysis of EU and US lobbying practices is available from **EurActive** <http://www.euractiv.com/Article?tcmmuri=tcmm:29-135509-16&type=LinksDossier>. It draws the strange conclusion that the onerous legislation of the US controlling lobbying is proof of the aggressive nature of US lobbying, whereas the lighter regulatory requirement of the EU shows that lobbying in the EU amounts to benign consultation. It points out that the EU mechanism for achieving a balance of influence is to encourage, often with funding, the formation of NGOs to represent the 'citizens' view.

**The Lobbyist Network** <http://www.lobbyists.net/> and **All American League of Lobbyists** <http://www.alldc.org/> associations supporting US lobbyists. **EU Lobby** <http://www.eulobby.net/> providing support for EU lobbyists.

**Lobby Watch** <http://www.lobbywatch.org> investigates the lobbyists. Details such as those reported by George Monbiot (inside) available here.

Summary of legislation in various countries eg. Canada and Australia is laid out in a preamble to an analysis of appropriate legislation for Scotland. [www.scotland.gov.uk/government/devolution/ppdp-06.asp](http://www.scotland.gov.uk/government/devolution/ppdp-06.asp)

*Powerful Medicines: The Benefits, Risks and Costs of Prescription Drugs* by Jerry Avorn, Knopf (2004) considers the link between lobbying by pharmaceuticals, legislative reform and financial reward.