



Friends of the Earth Europe

Confirmatory request for access to documents by Friends of the Earth Europe to the European Commission, Ref. Ares(2011)735456

Re: Request for access to documents under Regulation (EC) No. 1049/2011-GESTDEM 2011/2579

Introduction

This document sets out the observations of Friends of the Earth Europe (FoEE) following the response from the European Commission regarding our access to documents request dated 12 May 2011 (Ref. Ares(2011)735456).

The European Commission was requested to provide us with:

- (1) *“[T]he copies of all the documents related to the exchanges between the European Commission and British Petroleum (BP) regarding the calculation of BP’s lobby registration, including all the correspondences held by the Secretariat General with BP’s representatives, agendas and minutes of every meeting held between the two parties, and in respect to the calculation of BP’s lobby registration and that support the argument that the registration of BP is correct.”*
- (2) *“[T]he copies of all the documents related to the exchanges between the European Commission and Royal Dutch Shell regarding the calculation of Shell’s lobby registration, including all correspondences held by the secretariat General with Shell’s representatives, agendas and minutes of every meeting held between the two parties, and in respect to the calculation of Shell’s lobby registration and that support the argument that the registration of Shell is correct.”*

General observations

These two access for information requests by Friends of the Earth Europe (FoEE) follow two complaints to the European Commission about the declared lobby budgets for BP and Shell in the Commission Register of Interest Representatives. The subsequent investigation of these complaints by the Commission found no violation of the Code of Conduct and therefore ruled that it is impossible to assert that the declared lobby budgets for BP and Shell are incorrect. FoEE sent these two requests for information when appealing this decision by the Commission.

Position of the Commission

Partial disclosure of the requested documents

- (1) ***“[T]he figures communicated by these companies as well as the identification of the beneficiaries of their payments and the personal data elements related to their staff contained in the documents have been blanked out.”***

The Commission argues that *“Putting these figures and information in the public domain would be prejudicial to the commercial interests of Shell and BP”* [...] *“[P]ut them in a more disadvantageous position than the other organisations registered in the Register of Interest Representatives, as it would disclose information which organisations are not obliged to disclose through the registration.”*

In this regard, we would like to make the following submission:

- Stating that the disclosure of specific information and figures related to companies' lobbying activities would disadvantage the registrants is equivalent to stating that the whole registration effort disadvantages registrants. It undermines the aim of transparency to make the register a relevant and reliable tool for information about lobbying activities, actors and dedicated resources. If this argument is followed to its logical conclusion, then there should be no financial information at all in the register, which would therefore become useless.
- Financial disclosure is absolutely fundamental in ensuring that the register is a useful and reliable tool that contributes to more transparent lobbying practices in Brussels. A “Transparency Register” can only live up to its name if it provides accurate information about registrants' lobbying budgets. If the percentages related to the lobbying costs of registrants cannot be disclosed, the register becomes anything but “Transparent”. We would like to refer back to the ruling of the European Ombudsman in a previous case brought by FoEE¹. In this case, the Ombudsman stressed the importance of the quality of the financial information in order for the Register to be reliable:

“The Ombudsman considered that, as the institution which maintains the Register, the Commission must act with sufficient diligence to ensure that the data contained in the Register is not objectively misleading. [...] [T]he Ombudsman took the view that the lack of guidance and how and what kind of lobbying costs should be calculated for the purposes of the Register may indeed jeopardise the very objectives of the Register, namely, to maintain public trust and confidence in the Commission's activities and to reinforce the transparency and coherence of its decision-making process.”

- (2) ***The Commission argues that “the exceptions laid down in article 4(2) first and third indent of Regulation (EC) N°1049/2001 regarding public access to European Parliament, Council and Commission documents prevent disclosure of the elements that have been blanked out.[...] I consider that the value of the figures does not outweigh the need to protect the commercial interests of BP and Shell, as well as the purpose of the investigation regarding the Code of Conduct.”***

¹ Decision of the European Ombudsman closing his enquiry into complaint 3072/2009/MHZ, 5 April 2011



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In this regard, we would like to make the following submission:

- Transparency is an issue of overriding public interest. EU citizens have the right to know who is trying to influence their decision-makers, with which resources, and on which issues. Incomplete disclosure of information and lack of guarantees about the validity of the available information are likely to lead to inaccuracies and give a misleading picture of lobbying in Brussels. As stated by former Commissioner Kallas himself, the driving force behind the European Transparency Initiative, financial disclosure must be part of the transparency effort: *"[I]f the lobbying professionals question that money does brings influence, I wonder why they are in business at all? And why does this business appear to be growing? In fact, if spending money on lobbying gives no influence, I wonder what the lobby professionals say to their clients when they bill them? Nobody would pay real money for lobby without expecting "something" in return – and that "something" is influence! Financial disclosure will be a useful rough indicator of the forces at play."*² This is why we believe that the information that has been blanked out should be disclosed.
- Failure from the Commission to disclose the entirety of the documents raises strong doubts about the Commission's own investigation. The revealed documents regarding the lobby budgets for both BP and Shell mention methodologies to calculate the costs *"related to "direct lobbying of the EU institutions" (e.g. meeting with EU officials)"* and *"costs which are directly related to representing interests to EU institutions"*. The Commission's own guidance documents ("Frequently Asked Questions"³) state that: *"All entities engaged in "activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions" are expected to register. These activities include: contacting members or officials of the EU institutions, preparing, circulating and communicating letters, information material or argumentation and position papers, organising events, meetings or promotional representation. This also includes activities that are part of formal consultations on legislative proposals and other open consultations."* This broad definition of lobbying not only includes direct lobby meetings and efforts, but also indirect lobby costs related to the preparation of these meetings, events and materials. The latter are not accounted for in the current calculations of lobby costs for BP and Shell, yet the Commission deems their argumentation valid and their figures correct. It is strange that the Commission accepts calculations of lobbying costs from Shell and BP which only take

²<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/07/491&format=HTML&aged=0&language=EN&>

³http://ec.europa.eu/transparency/docs/reg/FAQ_en.pdf

into account direct lobbying, when the Commission's own guidelines state that indirect costs for preparation should also be included.

- In addition the Commission seems to rely completely on the companies' own interpretations of lobbying activities, even when they do not match with its own definition of lobbying. The Commission accepts the fact that Shell discounts activities considered to be of *"a non-lobbying"* nature such as *"monitoring and analysis of EU policy issues for the purposes of understanding policy change and ensuring compliance; dissemination of information to Shell's business and functions"*, despite the fact that these fall within the Commission's broad definition of lobbying (indirect lobby costs). The Commission also accepts that activities described by Shell as ways to *"encourage a broader stakeholder debate and promote a better understanding of energy issues"* do not constitute lobbying, when its own definition refers to direct and indirect costs. *"Thus, for Shell, it does not constitute direct interest representation as such"*. This further strengthens the case for full disclosure of the information that has been blanked out by the Commission in the documents related to lobbying budget calculations for Shell and BP.

(3) The Commission argues that *"According to Shell's understanding of the Commission guidance in the "Frequently Asked Questions" and in order to avoid double-counting Shell deducted from total EUL budget the fees paid to industry associations and think tanks"* .

The Commission argues that *"BP developed a percentage for the time and costs related to "direct lobbying of the EU institutions" (e.g. meeting with EU officials) by tagging all the relevant activities. The percentage % of the working time of the entire team) was then applied to the total salary costs, office lease costs, travel and entertainment, as well as the overall administrative budget. BP excluded payments to third parties such as trade associations, think tanks or consultancies which, in their understanding, will be accounted for by the organisations concerned." [...] "[B]y listing ten different bodies they have relationships with and by saying explicitly in their declaration that their estimates do not include payments to third parties such as trade associations, think tanks or consultancies in order to avoid double-counting" [...] "BP's logic behind declaring some memberships and not other (e.g.) was based on whether this was considered a core membership in terms of time and resource commitment. This is a matter of judgment and may be revised from time to time in the light of circumstances."*

In this regard, we would like to make the following submission:

- We note that not only the figures but also information related to the respective memberships of Shell and BP were blanked out. However the Commission fails to justify why this information was deleted. In particular it does not explain to what extent disclosing the memberships (most of which are already available in the public domain) would harm the companies' commercial interests. Here again we refer to the Ombudsman ruling cited above in which *"the Ombudsman regretted that the Commission did not reply to the complainant's*



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claim that it should, as a general matter, provide reasons for its decisions on Register complaints.”⁴

- Regarding BP’s lobbying costs, the argument that membership disclosure should depend on whether it is core or not is not relevant. As mentioned above, the Commission’s own definition of lobbying is broad and includes “*all activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions.*” All efforts to influence EU decision-makers should be declared in the company’s registration. Companies and corporate groups often argue that money and size do not equal influence in Brussels lobbying. If they follow their own reasoning, they should therefore declare and account for every single one of their memberships.
- In addition, the Commission’s own guidelines for the use of the former Commission’s register (Frequently Asked Questions, FAQ⁵) state that: “*[E]very effort should be made to avoid double-counting of reported costs of lobbying. Such double-counting would occur if, for instance, an in-house interest representative had contracted a public affairs consultancy for a certain task, and both registrants included the cost in their disclosure. Similarly, trade associations lobbying on behalf of a group of companies might disclose amounts that were also entered by the individual companies. To avoid such double-counting, registrants are encouraged to agree with their partners and clients who reports what.*” However neither Shell nor BP mention any agreement with the related industry associations and think tanks whereby they decide who out of the company, the consultancies, or other organisations, should disclose which costs. As most of the think tanks in which BP and Shell are members are not signed up to the Commission’s Register, the Commission cannot expect them to disclose information and figures related to the companies’ memberships. Other organisations that BP and Shell are members of do not provide specific details regarding the companies’ membership fees, nor do they mention any agreement with them regarding the reporting of lobbying expenses.

CONCLUSION

Based on the aforementioned arguments we maintain our request for access to documents and we ask the European Commission to provide us with access to all of the information that has not been

⁴ Decision of the European Ombudsman closing his enquiry into complaint 3072/2009/MHZ, 5 April 2011

⁵ http://ec.europa.eu/transparency/docs/reg/FAQ_en.pdf

disclosed yet, or to provide us with sufficient justification for non disclosure. We look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Natacha Cingotti', written over a horizontal line.

Natacha Cingotti

Corporate campaigner, Friends of the Earth Europe

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