



Corporate Europe Observatory

Brussels, 3 July 2019

Jeppe Tranholm-Mikkelsen
Secretary-General - Council of the European Union

Dear Mr Tranholm-Mikkelsen,

I am writing to make a complaint about the way in which business lobbies are invited to participate in Council working party meetings.

In a letter dated 29 October 2018 (Ref. 18/1793-rh/mf) the General Secretariat told me:

“Attendance to working party meetings is limited to representatives of Member States. There is also a standing invitation for the European Commission to designate representatives to attend. In addition, in specific and limited cases, representatives of specialised EU agencies and bodies, or of UN bodies, may be invited by the Presidency, with the approval of a simple majority of the members of the working party, to attend parts of the meetings for which their presence is deemed of interest to the Council.”

The letter also said:

“No attendance lists are formally kept for any meeting except for the Council meetings themselves, as regards ministers (and these are public on the website for each Council meeting).”

On 8 February 2019 I was further told, by email, by the Public Information Service:

“It is the Presidency who decides, either because they have made a study relevant for the Working Party and they are invited to present their findings, or because of their expertise, which the Presidency considers that could give a different perspective to MS. They only attend the part of the meeting they are invited for. They do not stay during the discussion of other items.”

In the light of these statements, I have the following concerns.

1. Business lobby groups have been invited to present and debate with members of Council working parties.

I am aware that business lobby groups have attended the following recent meetings of the Working Party on Competitiveness and Growth:

5 October 2018: BusinessEurope. Two representatives made a presentation on the theme of “Stocktaking of Better Regulation approach - priorities from industry” and then there was an “exchange of views”. BusinessEurope’s presentation was subsequently circulated as WK 12040/2018 INIT. BusinessEurope has publicly [reported](#) that its presentation “was well-received by many members of the Working Party and stimulated a constructive exchange of views”. Additionally BusinessEurope presented its view on REFIT, which is related to Better Regulation, at the 19 March 2019 meeting of the working party.

18 January 2019: The agenda for this meeting of the working party states that discussion will be based on “Position papers on Artificial Intelligence, robotics and automation – Presentation by stakeholders – Exchange of views”. The agenda does not specify which stakeholders were involved but on 17 January 2019, BusinessEurope papers on “robotics and animation” and on “artificial intelligence” were circulated to the working party as WK 742/2019 INIT and WK 743/2019 INIT.

17 September 2018: The agenda for this meeting states that there will be discussion on “REACH Review in the light of Competitiveness – Presentation by the Commission (DG ENV and DG GROW) – Presentation by external speakers – Exchange of views”. The agenda does not specify which external speakers attended but a CEFIC powerpoint presentation was circulated to working group members as WK 10672/2018 INIT.

12 October 2018: The agenda for this meeting contains two relevant items: “Strategic value chains: The Strategic Action Plan for Batteries – Presentation by Commission – Presentation by an external speaker – Exchange of views” and “Climate and Energy policy in the light of industrial competitiveness: mainstreaming debate – Presentation by external speakers – Exchange of views”. The agenda does not make clear which external speakers attended.

1 February 2019: The agenda for this meeting shows that Bitkom was invited to make a presentation and answer questions on the theme of “Better digital policy-making: Paving the way for European leadership on innovation”.

8 March 2019: The agenda for this meeting shows that DigitalEurope was invited to make a presentation and answer questions on the theme of “Successful Indicators by 2025 for a stronger Digital Europe”. Also at this meeting BusinessEurope presented on the Single Market.

8 April 2019 and 6 March 2019: The agendas for these meetings show that “stakeholders” addressed the working party on the topic of “the importance of tourism for the EU”. The agenda does not make clear which organisations attended.

6 May 2019: The agenda for this meeting shows that industry representatives from the “automotive industry” and “the EU chemicals industry” made presentations and exchanged views. The agenda does not make clear which organisations attended.

There are other examples too, just from the past year alone. This pattern of inviting industry speakers to working party meetings is problematic for the following reasons:

A. It appears to contradict the General Secretariat’s letter of 29 October 2018 as these industry speakers are not: representatives of member states; European Commission designated representatives;

representatives of specialised EU agencies and bodies, nor of UN bodies as specified in the letter of 29 October 2018.

The publication “Comments on the Council’s Rules of Procedure” says that there could be the “occasional presence of representatives of third States or of international organisations, who are sometimes invited as observers to attend certain Council meetings or meetings of Council preparatory bodies concerning a specific item.” This appears to be consistent with the letter of 29 October 2018 which defines what these “international organisations” might be. Industry lobby groups are not included in the list.

B. The Council’s 8 February 2019 email appears to contradict the letter of 29 October 2018 in that it seeks to explain why some third parties are invited to attend working party meetings. In the light of this confusion, it is unclear what precise rules and regulations exist regarding the attendance of industry bodies at working party meetings.

C. These industry bodies are in fact lobby groups with a keen interest in influencing EU policy-making. BusinessEurope declares spending at least €4 million each year lobbying EU institutions, while CEFIC is the largest lobby group in the EU (according to its declared EU lobby spending of €12 million per year). DigitalEurope declares spending €1,050,425 each year on EU lobbying. They are all major lobbyists with a keen interest in influencing EU policy-making, including on the issues of better regulation, REACH, artificial intelligence, the digital agenda, or other topics. Their large lobby budgets enable them to have the capacity and resources to run sophisticated and extensive lobbying campaigns, across the EU institutions, and on multiple issues. But their positions are controversial and extremely partial, and are often heavily disputed by NGOs, trade unions, and other public-interest focussed voices.

D. There is little evidence that the working party has actively sought to balance the interests that it hears from. BusinessEurope alone has addressed this working party at least four times in the past year. NGOs and trade unions do not appear to receive similar invitations. An academic’s presentation relating to a working party meeting on 31 October 2018 on “Key Enabling Technologies” was circulated to the working party as WK 13270/2018 INIT but it appears to be consistent with industry interests. A representative of the CEPS think-tank addressed the working party on 24 May 2019 on the topic of “Regulation and emerging technologies” but the content of his presentation is not known. The Council’s 8 February 2019 email justifies the invitations using the rationale that invitees have “made a study relevant for the Working Party” or “because of their expertise”. This ignores the fact that invitations are being made to lobbyists with commercial interests in the outcome of the Council’s deliberations. It also ignores the point that many NGOs and trade unions have studied these issues and also have relevant expertise. It is not clear why these invitations so often favour large lobby groups representing big business.

E. Industry inputs to the working party seem to come at an important time for Council deliberations on the matters concerned. At the working party meeting of 18 January 2019, the agenda item with stakeholders on artificial intelligence, was followed by an “Examination of the revised Presidency proposal” on the exact same topic. At the working party meeting of 18 March 2019, presentations by stakeholders on “EU Industrial Policy” were followed by an examination of a Presidency proposal on that topic. It is fair to assume that the inputs from “stakeholders” could well have influenced the follow-up discussions on those topics in the same meeting.

To summarise: I consider that the Working Party on Competitiveness and Growth's repeated invitations to industry lobbies to attend and provide inputs into its deliberations is deeply problematic. There appear to be no clear, formal rules either permitting or regulating such presentations; there appears to be no reflection within the General Secretariat about the impact of inviting select lobbyists to present to working parties on the integrity of Council policy-making; invitations appear biased towards the interests of big business offering them privileged access to decision-makers not available to others; and lobbyists' inputs and member state discussions to develop a Council position on the same topic often appear to happen at the same meeting.

2. The Council does not actively monitor the presence of lobbyists at working group meetings.

A. The Council's failure to keep attendance lists at working group meetings is problematic because this makes it impossible to assess how widespread the problem of lobbyists attending such meetings is. It is not clear whether it occurs in other working parties beyond that on Competitiveness and Growth.

B. The published agendas for these meetings often only refer to "stakeholders" making it unclear who is invited.

C. The Council's failure to draft and publish minutes for working party meetings provides a further hurdle to understanding how widespread the practice of inviting lobbyists is.

D. "Comments on the Council's Rules of Procedure" says "The presence of observers must be authorised by the Council for a specific item on the agenda. In this case, the Presidency must warn the Council members of this fact in advance. In respect of this item, the Council (or the relevant preparatory body) implicitly decides, by simple majority, to set aside the professional secrecy provided for in Article 6(1)." Can the General Secretariat confirm that each time an external stakeholder is invited to attend a working group meeting, that this has been approved by a vote? How can an informed vote take place if an agenda only describes those to attend as "stakeholders"?

To summarise: I consider that the Council's failure to keep adequate attendance lists, full agendas, and minutes of working group meetings means that it is impossible to know the extent to which lobbyists are invited to attend working group meetings. If there are no proper records, either for the Working Party for Competitiveness and Growth, or any other working party, then that surely compromises the *European Code of Good Administrative Behaviour* which states that:

"[Officials] should keep proper records and welcome public scrutiny of their conduct, including their compliance with these public service principles."

I look forward to hearing from you.

Yours sincerely,



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