

Ethical lobbying in a post-COVID world - Global Public Affairs Forum, Paris

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Good morning ladies and gentlemen.

I am delighted to have been invited to speak to you this morning and, on the assumption that not all of you know what I do and what exactly what I do has to do with what you do, let me briefly explain.

The European Ombudsman's Office, created through the 1993 Maastricht Treaty, is an entity intended to increase the democratic accountability of the EU. We deal with complaints from the public, journalists, civil society, business and others against the EU administration and we carry out investigations on our own initiative.

Our mandate spans the entire administration from the Commission, the European Central and Investment Banks, the various regulatory agencies such as the European Medicines agency, the external border agency Frontex, and the Council.

Recent cases have included the Commission decision to award a contract relating to banking regulation to the BlackRock investment management company; the decision by the European Banking Authority to allow an executive director to join a major financial lobbying firm; the failure by the Commission to undertake a sustainability impact report on the EU-Mercosur trade deal and a major investigation into the transparency and other aspects of the work of the European Centre for Disease Prevention and Control.

I have also carried out investigations into the transparency of the Council - the EU's co-legislator alongside the Parliament – and we are currently investigating how the Commission handled the moves by senior officials into the private sector over the last few years. That includes an inspection of 100 case files from some of the more relevant DGs, such as Trade and Competition.

The common thread through many of those cases is 'influence'. Most EU citizens have no idea how EU laws are made until a deal is done. My work has therefore focused on allowing greater insight into how that regulatory machine works, who influences it, and whether that influence is transparent and ethical.



The work that you do is both critical and often valuable in the development of EU laws. Despite its depiction as a bloated bureaucratic monstrosity, the EU administration is a relatively small one and needs external advice and expertise to operate. The challenge lies in the balancing the legitimate commercial and other interests of the external influencers with the interests of the public. EU citizens have limited access to the levers of influence and depend on an ethical EU administration and ethical lobbying to protect them.

Everyone in this room will recognise the two game changing events in the very recent past which will significantly impact how, in the future, we consider the issue of influence and of ethical lobbying. I speak of the pandemic, of course, but also of the taste many of us in Europe got this summer of the sharp end of climate change.

COVID-19 has been a global disruptor of our private, public and business lives. It will be a long time before we fully analyse the responses of our respective governments, but one thing was very clear from the start: individual state reactions to the pandemic were products of that state's individual culture and politics.

We saw it in the United States, when the wearing of masks became a political signifier, and the pandemic deepened its polarised political culture; we saw it in the UK, where Boris Johnson's libertarian instincts battled with the need to restrict certain freedoms – very nearly killing him in the process; and we saw it in New Zealand and Australia, where the deeply embedded impulse to defend its borders from any biological threat to its agriculture or to its people led to exceptionally long and sustained periods of lockdowns.

When the crisis did begin to ease governments came under pressure to re-open particular sectors, air travel, entertainment, sporting events, and hospitality, even as their health experts warned about the dangers.

These were desperately difficult decisions to make, decisions with life or death consequences. What knowing trade-offs were made between the economy and public health, and how they were influenced? The inevitable public inquiries may tell a lot.

Within the EU administration, COVID-19 was both a major disruptor and an accelerator of profound change.

A Recovery and Resilience Fund of unprecedented size was agreed to and created by the Member States, the Parliament and the Commission.

Massive vaccine procurement was undertaken and EU policies introduced at record speed, such as the SURE funds to protect employment.

Inadequacies were also revealed, such as the ECDC's lack of real power to prevent or deal with a pandemic, largely because of Member States' longstanding refusal to share competencies in the area of public health.



Shortcuts were taken: Council transparency rules were not followed for several months.

On the lobbying front, we witnessed a pivot to video-conferencing and to telephoning, which was largely away from the public eye.

At Member State level COVID-19 produced its own scandals. In Germany, for example, some politicians personally profited from government deals on mask procurement while a Transparency International survey showed that corruption had increased in the EU, noting the high level of bribes paid to secure treatments or to skip the vaccine queue.

In uncertain, febrile times, standards can slip, norms can change, oversight can lapse and we wait to see what long term impact COVID-19 will have on how governments behave and, indeed, how you and the entities that you represent will approach this changed world.

In the short to medium term, how **the Member States' recovery plans** play out will be instructive. The plans involve huge sums of money and consequently major lobbying of national governments.

The public may well expect significant resources to be dedicated to health services, to pandemic prevention, to education and to social supports. But some reports already point to significant funding, following significant lobbying, for projects that go counter to the EU's drive, for example, to combat climate change.

The EU administration is also coming under huge lobbying pressure over **the Digital Services Act and Digital Markets Act**.

The EU is seeking to regulate how big digital players behave, and this initiative is unsurprisingly also subject to massive lobbying.

The aim is to ensure greater democratic control over tech companies that often yield more influence than governments themselves. So, we shall see to what extent lobbying will impact the shape of the final regulations.

A recent study showed that 612 companies, groups and business associations are currently lobbying the EU's digital economy policies. Together, they spend over €97 million annually lobbying the EU institutions, making **tech the biggest lobby sector in the EU by spending levels**. In relation to proposals for a Digital Services pack, high-level Commission officials held a total of 271 meetings, 75 percent of them with industry lobbyists.

The use of artificial intelligence has also accelerated through the pandemic and the challenge lies in ensuring accountability in a digital and technological landscape that is developing at warp speed.

I have watched the heads of tech companies being 'grilled' by politicians both in the US and the EU, and there really was no contest when it came to even basic awareness of the granular



detail of the tech world.

Against this backdrop, how can uninformed citizens and administrations hope to achieve genuine democratic oversight across the sector if the playing field is not evened out between private and public interests?

But these issues pale in comparison to climate change, which affects everyone on the planet and which, to various degrees, features in many of the major policy issues that you or your colleagues attempt to influence.

And, just as the trajectory of the pandemic was significantly determined by political decisions and influence, so too will be the future of this overheating earth.

In a recent address to the corporate world and its responsibility to the planet, Environmental Defense Fund president Fred Krupp, called on it to “unleash the most powerful tool you have to fight climate change: your political influence”.

I don't know to what extent this is a topic of discussion among you, but the time has now passed when either personally or professionally we can afford to be passive, neutral actors in this climate crisis.

Ethical lobbying can perhaps no longer comprise simply of transparency and ethical personal behaviour, but may also involve a moral evaluation of the work you're being asked to do, work which seemed reasonable, normal, standard, a few decades ago but which now - perhaps - does not.

Can what some lobbyists do ever be considered ethically neutral if it is knowingly directed at watering down regulations designed to tackle the climate crisis?

This is not a new dilemma but certainly it is one that is increasingly central in our globalised and interconnected world. The major issues that many lobbyists are dealing directly with affect the wellbeing, even survival, it is no exaggeration to say, of humanity as a whole.

The second game changer that I mentioned earlier is not climate change per se, but the fact that the western and developed world is increasingly subject to its horror.

This year alone: catastrophic fires in California, in Siberia, in Greece; catastrophic flooding and at least 196 deaths in Germany and Belgium in July. Record temperatures in Sicily this summer. Record temperatures recorded in the Arctic last year. Rivers drying up. New deserts forming. Glaciers melting. Sea levels rising.

Humans are **unequivocally** to blame and some of the changes are irreversible, the latest UN report has said. And environmental catastrophe is no longer just happening 'somewhere else' or 'over there'.



It is said that, to date, most of us have watched those disasters through recordings sent by other people's phones. But one day it may well be our own phones doing the recording and for many people in Europe this year that moment arrived. The image that sticks in my head is that of footage taken by ferry passengers fleeing Evia in Greece, the darkness of the skies obliterated by mammoth fires that evoked nothing less than a vision of hell.

This latest UN report forces us to confront an unbearable future. I find myself wondering about the lives of my own children and future grandchildren. Will they live lives unaffected by climate disaster?

Certain things are changing: reality is dawning to some degree and the issue has come from the media and civil society margins to centre stage.

But, at a fundamental, systemic level, some things remain the same.

Yes, the corporate and commercial world has woken up to at least the growing business case for a change in direction, but many public affairs websites in Brussels and elsewhere highlight the business-as-usual approach. Environment and energy are among the key areas they advise on.

They offer solutions to "legislative challenges"; they gather "regulatory intelligence"; they help business "respond" to climate change; their clients are often global companies.

The same dynamic is at play at political level. Long-term, vital, environmental gains are sacrificed for short-term rewards at the ballot box. In a different context, former EU Commission President Juncker once said in relation to politicians, "we know what the right thing to do is, but will we get re-elected if we do it?"

Certain Member States are heavily vested in the coal industry, others in the gas industry, others in the farming industry and the one we are in now, the nuclear industry. I recently listened to a politician in a country I know well arguing that there are different ways of measuring methane gas emissions. It was clear to me that that the farm lobby arguments had landed well.

I fully understand that all of those industries support economies, support jobs, support communities, support families and I appreciate the political challenges and complexities involved in developing alternative economic models but that is precisely what governments and corporations are called upon to do if this planet is to survive for the next generation of workers, communities and families.

Thanks to skilled lobbyists and receptive politicians, EU environmental law often emerges weaker than their initial draft. Just Google EU environmental law and 'watered down' and you will find a graveyard of failed ambition.

One environmental commentator wrote: *"No government, even the most progressive, is yet prepared to contemplate the transformation we need: a global programme that places the*



survival of humanity and the rest of life on Earth above all other issues. We need not just new policy, but a new ethics."

Many of you sitting in this room or your colleagues work for key players in this saga, whether it be tech companies, energy companies, transport companies or similar.

And because of your expertise and your skills, you successfully influence policy making to the benefit of those companies, and you are therefore not just another cog in the wheel. You are in fact the wheel.

I fully appreciate that these companies are not 'evil', they are, rather, innovators, wealth creators, job suppliers, and many produce goods and delivered services that mitigated some of the worst elements of the pandemic. I doubt that the vaccines could have been developed and supplied in such a short time frame without the brilliance of some of the people working in those companies.

But perhaps your role now lies in influencing the conversation around how best to encourage and enable those companies to pivot even more and even faster towards climate friendly commerce, to pivot before it's too late.

A recent OECD report said:

"The central role that lobbying and other influence practices play in shaping how these challenges are addressed remains largely unacknowledged. Depending on how they are conducted, lobbying activities can greatly advance or block progress on these global challenges."

Speaking about specific policy areas, it later notes:

"It has also been shown that lobbying has had a profound impact on the progress (or lack thereof) of climate policies to reduce greenhouse gas emissions. A similar situation has arisen in the health and obesity policy area, as well as food and agricultural policies."

As European Ombudsman, I raise awareness within the EU administration about how lobbying is carried out, from the clever use of public consultations, to lobbying by law firms and think tanks, to social media pressure, revolving doors and standard meetings with key people in the institutions. Public affairs companies often itemise on their websites the myriad ways in which they can help their client exert influence, methods that most citizens would not be aware of.

Let me mention some details of **the BlackRock case** I referred to earlier. The contract BlackRock was awarded concerned a study into the integration of environmental, social and governance (ESG) risks and objectives into the EU banking supervision system.

The study area was one of obvious regulatory interest to BlackRock. Companies carrying out such studies have discretion about the evidence they use and the best practices they identify.



The details of this case included that:

- There were nine bidders for the contract.
- BlackRock's financial offer to do the study was just over half of the estimated maximum value of the contract.
- BlackRock told the Commission it would put an information barrier between its advisory arm, BlackRock Financial Markets Advisory, and the rest of the business.
- BlackRock manages investments in large fossil fuel companies and systemically important banks - both of which could be impacted by ESG rules at EU level.
- Our inquiry found that BlackRock had **already tried to influence policy making in the area of environmental, social and governance objectives for banks through other channels, and that the Commission should have assessed the potential of a conflict of interest more rigorously.** This is not about singling out a particular company; it is simply a good illustration of how influencing can work in various ways. The question that wasn't asked by the Commission is why exactly a company like BlackRock would have sought such a contract, tiny in financial terms but also, arguably, a pathway towards even further influence.

I appreciate that you might consider it easy for me to stand here and talk about moral responsibilities. What you do is your job: it's how you make your living and how you support your families. But the fact is that the strongest emotion all of us should be feeling in this room right now is terror. We should be terrified not just for ourselves but for our children and our families.

I raise these issues not because I expect you to resign en masse from any company with climate-damaging potential but, rather, because as a Forum I believe it is something you really need to discuss. Your professional gifts are those of influencers, so how can you use those gifts positively to engage in this literally existential challenge for all of humanity?

You are sitting in this room because you are excellent communicators; you are persuasive, you can distil complex ideas into easy messages, you are well connected and you know how the regulatory systems work.

However you are not just 'going about your job' in isolation. What you do matters to all of us.

If enough people want to change an approach, want to redefine ethical lobbying in a post-COVID-19, climate-challenged world, then change can happen.

We cannot return to business as usual. We must join the dots between what we do and the impact of our actions or inactions on our increasingly fragile planet.

We are all agents of change. You, especially, are agents of change as you have the ear both of the companies you represent and the people who make decisions that affect us all so profoundly.

