



## Current trends and major development in ethics, lobbying and revolving doors practices- keynote address to Georgetown University, Washington

Speech - **City** Washington D.C. - **Country** United States - **Date** 27/09/2022

Good afternoon everyone,

Thank you very much for the invitation to speak to you. The last time I was in Washington was in December 2018 and I'm using these few days - as I did then - to meet largely with people and organisations whose work focuses on the protection and maintenance of high ethical standards in your public institutions.

A lot has happened in the four years since 2018 including the assault on the Capitol in January 2021, the aftershocks of which are still being felt not just in this country but also, as you know, in the wider democratic world.

That assault forced many of us to question how strong our own democracies are; could they too be undermined, weakened, polarised by the force of will of a populist leader and whatever other forces - visible or invisible - that are also at play.

January 6th was a brutal reminder of how quickly the pillars of democracies - even deeply rooted ones - can be put under pressure. As the investigation into that event continues alongside other investigations concerning the activities of the former President we wait to see whether the checks and balances intended to form a protective web around a democracy will in fact successfully carry out that checking and that balancing.

We have not had in any member state in Europe a January 6th moment but the handprints of right wing populism are visible in parts of the Union nonetheless. Just this week a coalition of right wing parties won the Italian general election and the next Prime Minister is expected to be Giorgia Meloni, leader of a party that in English is called the Brothers of Italy, and whose historical links reach back to Mussolini's fascists.

For many years, the EU has also sought to deal with rule of law breaches in certain other member states, breaches that include among others the undermining of the judiciary, threats to media freedom and civil society organisations and the targeting of minority groups including migrants and members of the LGBT community. The right to abortion has also been further restricted in some member states so while the EU has yet to replicate the force and drama of recent events in the US, that overlay of democratic fragility, even democratic decay, is shared on both sides of the Atlantic.



But the erosion of democratic values and norms does not happen overnight. Over time a combination of complacency and the belief that someone, somewhere will always emerge to fix a crisis leads to their hollowing out. We ignore the warning bells, overlook the small lapses, indulge the anti democratic capriciousness of those we at first judge to be outliers until it's too late.

Observe the pandemic, the multiple warnings of the possibility of such an event that were ignored or minimised, observe indeed the climate crisis, the multiple small acts of omission and commission over decades that now directly threaten our planet.

Over time those small acts combine to become much bigger and more lethal to our democracies. Left alone, the tiny holes that appear in the fabric of the democratic and institutional cloth may eventually rip it apart.

My work as European Ombudsman, charged with oversight of the EU administration, is precisely to identify and attempt to mend those small holes before the fabric rips.

The crises of the past years have given all of this a renewed focus. As those crises demand both new responses from public administrations, an examination of their origins, and a need to ensure that crisis led decisions are made with the public interest front and centre.

The COVID-19 pandemic, for example, gave rise to centralised vaccine procurement; record-speed legislation to help people stay in their jobs, and the largest ever multi-annual EU budget to boost post-COVID recovery in an environmentally sustainable manner.

Russia's brutal invasion of Ukraine and the terror and suffering it unleashed on the Ukrainian population promoted a lot of soul searching and transformation in the EU. It led to the first-ever activation of the 'temporary protection' law, giving Ukrainian refugees immediate access to the workplace, to schools and to the healthcare system in the Member States they fled to. Money from the EU's budget was used for the purchase and delivery of weapons to Ukraine - a move described in Germany as a 'watershed moment' and wide-ranging sanctions have also been imposed on Russia.

The current spiralling energy prices across Europe - driven by the massive hike in gas prices - has led to proposals for windfall tax on energy companies and a solidarity mechanism to redirect the money to struggling households and companies.

Meanwhile the climate crisis, which became even more distressingly evident over the summer amid widespread drought, forest fires, melting mountain glaciers and shrinking river levels, has also unleashed a rash of policy-making and decisions.

All crises therefore bring opportunities but also opportunists. New policy paths and new spending options create or cement business interests for somebody somewhere.

Some companies, for example, with their bottom lines previously under threat by certain



elements of the EU's climate crisis legislation, have been quick to adjust their lobbying pitches to appeal to those concerned about the new energy security crisis. The political choices are unenviable but full and transparent accountability for all decisions is absolutely vital.

A theme of much of my work concerns the wielding of influence within the EU administration. Whose voices are being listened to, what impact for good or for bad do those voices have? Who is guarding the public interest? How can ordinary people make their voices heard?

After Washington, Brussels is the biggest lobbying centre of the world given the global impact of much of its regulation. The European Commission proposes regulations, the European Parliament and the Council then debate the proposals either accepting them rejecting them or amending them through compromise. That point between proposal and agreement is where the lobbyists seek to influence, a process often unseen by the public.

And that is why the recent release of the so called Uber Files, an expose by investigative journalists of that company's lobbying tactics as it sought to break into EU markets should provide regulators with a masterclass of what they are up against.

The methods reportedly ranged from backroom meetings with high-level politicians, the use of 'stealth technology' to block scrutiny, the paying of academics for flattering analyses of their product, to the actual flouting of certain laws.

While some aspects of the methods used by Uber are new, what is remarkable is how similar the lobbying playbook has remained over the years. The fossil fuel industry has practised them for decades. The book *Empire of Pain* shows how one pharmaceutical company's use of influence, networks, conflicts of interests, revolving doors, and deliberate obfuscation about the effects of a pain-relief drug contributed to today's devastating opioid crisis in the US.

In Europe, successive and successful waves of lobbying have seen rules watered down in several areas related to environmental and consumer rights, from the regulation of medical devices, to the curbing of car emissions to clearer food labelling and a myriad other issues. Superficially minor amendments to key pieces of legislation reveal their true and at times damaging intent only much later in the day.

*Effective* lobbyists are able to open doors at federal and regional level, and at both management and expert level. Access means you can pitch your ideas directly to the people who are making the key decisions.

The means of access also change over time with text messages and similar now routinely used by corporate and political decision makers and the nature of this instant messaging can challenge conventional accountability.

In his recent book *Moonshot*, which recounts the race to produce a COVID vaccine, Pfizer CEO Albert Bourla notes that he built up a close relationship with the President of the European



Commission “ *through texts and phonecalls about the vaccine, virus variants, and manufacturing*”.

The Commission President herself referred to the text messages in an interview with the New York Times and it was largely thanks to these initial and vital contacts that the EU signed a major vaccine deal with Pfizer in May 2021, undoubtedly saving the lives of countless people.

An issue of such high public interest should normally be subject to public scrutiny.

Yet despite a document access request that eventually was investigated by my office, the content of these text messages remains unclear. I have since published guidelines for the EU institutions on the treatment of work-related text messages and I continue to point out that less than adequate transparency creates public mistrust and ultimately damages the capacity of administrations to get buy in for difficult decisions they may wish to implement.

### **Brussels and Washington**

The phenomenon of ‘revolving doors’ also exerts at times a damaging distorting force on democracy through the sidelining of the public interest in favour of the private.

Both Brussels and Washington are centres of power, and therefore highly attractive for those wanting to influence that power - six US companies, for example, are among the top ten lobbying spenders in the EU.

The public administrations in both of these cities are subject to ethics rules in a variety of areas to curb revolving doors, to regulate lobbying and to prevent conflicts of interests.

Yet significant challenges remain. A recent US headline for example read: *Amazon hires senior Senate aide, boosting efforts to stymie new tech bill.*

While a recent Brussels headline read: *EU ramps up Big Tech clampdown without 3 top antitrust investigators.*

The three investigators in question had left to join law firms representing major tech companies.

‘Revolving doors’ is becoming an increasingly significant issue in Brussels. While there are rules to prevent it happening, they are not always implemented with rigour and the potential for the corruption of the public space remains strong.

### **Joining the dots**

Public administrations must consider the totality of their actions, and join the dots between small administrative actions and their potential long term consequences.

My office has worked to improve the EU’s lobbyist register, to tighten the implementation of revolving door rules, to see that potential conflicts of interest situations are acted upon, and ensure that EU decision making is done in a transparent and accountable manner. It is a constant work in progress, to see that rules are upheld, new rules are made when needed,



and, not least, to anticipate where future problems might lie.

For example, I am currently looking into whether there is sufficient transparency about how the multi-billion EU recovery fund I mentioned earlier will be spent in individual Member States, and how these funding decisions were reached. Without transparency, without knowing the final destination of those funds, the potential for corruption is obvious.

We should also be asking whether proper conflict of interest vetting is carried out when contracts are being awarded to private consultancies by the administration.

I carried out an inquiry into the European Commission's decision to award BlackRock - one of the world's largest asset management companies - a contract to carry out a study on the integration of environmental objectives into the EU banking supervision system. BlackRock manages investments in large fossil fuel companies and systemically important banks - both of which could be impacted by rules in this area.

Companies carrying out such studies for the Commission have discretion about the evidence they use and the best practices they identify.

Our inquiry found that BlackRock had already tried to influence policy making in the area of environmental objectives for banks through other channels, and that the Commission should have assessed the potential of a conflict of interest more rigorously.

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 and at a time when the EU was attempting an ambitious climate policy agenda.

#### **A new ethical framework?**

A slow build-up of weak or unethical decision making — even in relation to superficially minor issues — leads over time to crises that can inflict an enormous human and financial cost.

The financial crisis, which caused such suffering here and globally, was the result of overly-close relationships between commercial interests and governments, a regulatory system that appeared to be captured, and a reluctance properly to resource some independent accountability mechanisms.

Equally many of the seeds of the current crises were sown many years ago even decades ago. Revolving doors laxity enabled networks and connections that helped to create energy dependency on Putin's Russia. Lax lobbying rules enabled the flourishing of companies that were knowingly polluting the environment. Series of small unremarkable events that have led to something that is neither.

It is no exaggeration to say that proper enforcement of administrative rules related to ethics standards saves lives. But because the link is usually not so direct and because the negative effects of poorly imposed rules are incremental, it is easy for an overall degradation in



standards to happen without anyone really noticing or to those that do notice to be ignored. And then suddenly we are in crisis.

I was struck by the recent Ethicist column in the New York Times where an anonymous law student asked whether it was ok to work for a law firm that defends polluting companies, given that it was a high-paying job that would allow them to pay off their student loans and support their family. The student asks: *Will defending polluters, even for a short time in a junior position, be a permanent black mark on my life?* The title of the piece was: *Is It OK to Take a Law-Firm Job Defending Climate Villains?*

The columnist, while acknowledging that climate change is a real problem, sets out several justifications for why it could be acceptable to defend a company that is knowingly damaging the environment.

I presume a lobbyist working for such a company could ask a similar question.

The dilemma put to the Ethicist is an interesting one because it is essentially asking what we consider to be moral behaviour. Where and when do we say something is unacceptable, and to what extent do we leave it to others to act in an ethical manner

The task of my office is always to ask where the line is drawn and to make public institutions continually ask what is acceptable behaviour, behaviour that is clearly and unambiguously in the public interest.

The next short while will let us know if the fabric of our western democracy is still intact. If we get through these crises, we can simply hope that lessons will have been learnt, that lapses in democratic values will be called and checked as they happen, and not allowed to go unremarked. We can take nothing for granted not least the elements of open, transparent and democratic societies that exist to protect not just our livelihoods but our very lives and those of our families.