BRIEFING

European Parliament

Revolving doors in the EU and US

SUMMARY

The flow of officials and politicians between the public and private sector has in the past few years given rise to calls for more transparency and accountability. In order to mitigate the reputational damage to public institutions by problematic use of the 'revolving door', this phenomenon is increasingly being regulated at national level. In the United States, President Trump recently changed the rules put in place by his predecessor to slow the revolving door. As shown by press coverage, the US public remains unconvinced. Scepticism may be fuelled by new exceptions made to the rules – retroactive ethics pledge waivers – and the refusal of the White House to disclose the numbers or beneficiaries of said waivers. Watchdog organisations argue that not only has the Trump administration so far failed to 'drain the swamp', it has ended up doing quite the opposite.

In the EU, where revolving door cases are increasingly being covered in the media, both the European Parliament and Commission have adopted Codes of Conduct, regulating the activities of current and former Members, Commissioners, and even staff. The European Ombudsman, Emily O'Reilly, has on numerous occasions spoken out in favour of further measures, such as 'cooling-off periods', and has carried out several inquiries into potentially problematic revolving door cases. Following calls from Parliament, the Juncker Commission adopted a new and stronger Code of Conduct for Commissioners early in 2018. Even so, no one single Code can hope to bring an end to the debate.

In this Briefing

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Authors: Marie Thiel and Elisabeth Bauer with Paul Ioan Runcan
Transparency Unit, Directorate-General for the Presidency

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What is the Revolving Door?

In our contemporary democratic society, exchanges between legislators and those affected by the legislation are to be expected. Such exchanges can take place on different levels. One type of exchange is known as the revolving door, which is generally used to describe the movement of experts or expertise from one position to another, between the public and private sectors.

Given the numerous policy areas, and often their complexity, any one person cannot be expected to have expertise in every field. As such, it is natural for decision-makers to listen to experts, stakeholders or those representing an interest as they make up their minds on how to legislate. In the EU Treaties, open exchange with civil society is upheld, and the EU Transparency Register shows there are at least eleven thousand entities working to influence EU decision-makers shaping EU policies. In order to make this dialogue as transparent as possible, and even to stimulate the diversity of interest representation, many countries the world over have regulations and lobby registers in place, including the EU.[1] Moreover, it is not uncommon to find the names of former Members of the European Parliament on the EU's Transparency Register. Similarly, former interest representatives may end up as politicians or as staff of the EU institutions. Indeed, such a person would be well acquainted with the legislative procedures, have a network and expertise in certain policy areas.

What is the Revolving Door?

According to the *Oxford English Dictionary*, a revolving door system is 'something characterised by repetition of the same events, problems, people, etc., in a continuous cycle'. In the field of lobbying however, the term is used to describe the movement of persons between the public and the private sectors, i.e. politicians or decision-makers in the public sector becoming interest representatives, and likewise the movement of lobbyists who get elected or appointed to public posts.

Do we need to keep it in check?

Were a former politician or decision-maker to be employed to lobby on issues they covered while in office, this may make them appear biased or, worse, breach rules on conflicts of interest. Politicians face a certain level of public scrutiny and need to abide by the rules that come with public office. For lobbyists, it is less clear whether professional codes can prevent similar conflicts of interest. In addition, there seems to be growing public scrutiny with regard to revolving door situations: While in office, did the politician appear to represent the interests of his new employer? After leaving public office, is the politician using personal networks to influence policymakers on behalf of the new employer? As most lobbyists would acknowledge, these are common scenarios: personal networks and connections are often considered the most valuable forms of currency in lobbying.[2] Where would such a scenario become a conflict of interest? And what about the inverse situation, i.e. when someone entering the public sector from the private works on the same issues they were previously paid to represent? Are they still in contact with their former employer? Often scrutinised in detail are financial issues, since someone from the public sector may benefit from transitional financial arrangements after they leave, much as someone in the private sector may have received a severance package.[3] These types of scenarios are what typically lead to public calls for closing the revolving door. The more responsibility the persons involved have, the louder the call.[4] They are also the reason certain safeguards are deemed necessary, not only to protect the integrity of the decision-makers while in office, but also the accountability of public institutions.

The issue is not limited geographically speaking. Indeed, the revolving door appears to be a recurrent issue in most democratic states. This briefing compares the different approaches in the EU and US systems.

Looking back – Revolving doors before the Trump administration

The issue has long existed in the United States, even before President Trump announced he would 'drain the swamp'.

Lobbying is a regulated business in the United States. As such, it is only natural for revolving doors to be regulated as well. Post-employment restrictions for Members of Congress and certain senior staff were first introduced by the Ethics Reform Act of 1989 and amended in 2007 by the Honest Leadership and Open Government Act. Under the provisions of this new act, a 'cooling off' period was introduced, stating that former Members of the House of Representatives were prohibited from lobbying current Members of Congress for one year after ending their term. For Senators, the 'cooling off' period extends to two years. Additionally, senior staff members are prohibited from contacting their former colleagues for advocacy purposes for one year after leaving. Finally, both former Members and senior staff cannot represent foreign interests or take part in certain treaty negotiations for one year.

US - Ethics pledges

Prior to 2017, three Presidents of the United States issued Executive Orders and created ethics pledges for administration appointees. During the Clinton administration, in 1993, President Clinton issued his order on Ethics Commitments by Executive Branch Appointees. It included a five-year ban for former federal officials on lobbying any officer or employee of the agency in which they served, a five-year ban for employees of the presidency from lobbying the President's Office and a lifetime ban on representing foreign interests. President Clinton revoked the order in 2000.

In 2009 President Obama issued an executive order on Ethics Commitments by Executive branch Personnel, which banned staff from accepting gifts from registered lobbyists, set in place a two-year ban on working on issues involving a former employer, and a ban on lobbying the administration a staff member had been part of. While authorising the Attorney General to enforce the executive order, it also allowed the White House – in consultation with the Counsel of the President – to issue ethics pledge waivers,[5] if it could be proven that it was in the public interest to grant such a waiver. Under the Obama administration, the White House issued 17 such ethics pledge waivers.[6] In tackling the revolving doors, the ethics pledge also prohibited lobbyists entering employment in government from participating in any matter on which they had lobbied previously, or from being employed by an executive agency which they had previously lobbied, for two years after the date of appointment.

Looking forward – Revolving doors under the Trump administration

During his presidential campaign, President Trump pledged to 'drain the swamp' in Washington DC to reduce the influence lobbyists held in the city, which he claimed was hurting the interests of US citizens. In fact it would seem that the exact opposite is taking place,[7] with statistics pointing towards a lobbying boom since the investiture of the new President: lobby spending and numbers of individual lobbyists registered are on the rise compared with 2016.[8]

Shortly after taking office, President Trump issued an executive order on Ethics Commitments by Executive Branch Appointees. It revoked the previous order from 2009 and created a new ethics pledge.

US lobbying declaration

According to the Lobbying Disclosure Act of 1995 which created the lobbying register of the United States (a platform similar to the EU Transparency Register), a registered lobbyist is expected to disclose the name of each employee who has acted or who is expected to act as a lobbyist on behalf of a client. It is obligatory to declare the former position of any employee who has served in the executive or as an official or was a Member of Congress in the two years before becoming a lobbyist. Enforcement of the provisions of the Lobbying Disclosure Act falls to the Secretary of the Senate or the Clerk of the House of Representatives. Failure to comply with these provisions is punishable by a civil fine of up to US$50 000.

The US public seemingly remains unconvinced by the ever-changing legislation.[9] Media outlets and watchdog organisations[10] argue that the 'Trump lobbying ban' only weakens the legislation introduced by the previous administration. Although the current executive order institutes a five-year ban on lobbying for former government employees, it only does so with regard to the agency in which they served, and allows them to lobby other agencies or branches of government. Furthermore, registered lobbyists are permitted to enter government, as long as they do not work on issues on which they had lobbied for two years, while under the previous administration, a lobbyist was prohibited from accepting any government employment if they had lobbied in the preceding year.

Turning to the legislative branch, it is worth noting that not all contacts or communications by former Members with sitting Members of Congress (or their employees) are barred within the one-year cooling-off period. The prohibition applies only to advocacy-type communications, that is, communications 'with the intent to influence' a Member or officer or employee of the legislative branch concerning 'any matter on which such person seeks official action' by that Member, officer or employee, or by either House of Congress. It is also worth noting that, just as in the European Parliament, former Members retain the right of access to Congressional premises after their term expires. As such, while according to the law, former Members are prohibited from contacting current Representatives or Senators, they cannot be prevented from contacting Members of either House or members of staff in a personal capacity.

The Executive Order issued by President Trump also included an ethics pledge waiver, just as the previous Order had. However, what set it apart was the removal of the disclosure provision and the introduction of retroactive ethics pledge waivers, something unheard of before the current administration. Although the White House has since decided to comply with requests to disclose waivers,[11] the issue has sparked criticism from watchdog organisations and several media outlets, and has called into question the transparency of the Trump Administration.[12] The criticism was further fuelled by a White House release of records in May 2017, after intense disputes with the Office of Government Ethics.

In this context, certain efforts are being made to tighten rules regarding foreign lobbyists. Early in 2018 the House Judiciary Committee approved a bill intended to tighten oversight on lobbyists who serve foreign governments or companies. The bill, if adopted, would give the Department of Justice additional powers to enforce the registration of lobbyists covered by the Foreign Agents Registration Act.

It is with regard to the latter[13] that, in February 2018, a case of potentially transatlantic proportions surfaced as part of a US-internal probe into the 2016 presidential elections.[14] This case named former members of European governments and the EU institutions in

US disclosure requirements

White House records released in 2017 detailed waivers issued by the Office of the President, granting dispensation to staff members to work on policy matters, which they had handled while employed as lobbyists. The issue with the waivers was the retroactive waiver issued for the President's chief strategist, Stephen Bannon. Walter Schaub, director of the Office of Government Ethics, commented on the issue and questioned the validity of such a document. He went on the record during an interview: 'There is no such thing as a retroactive waiver. If you need a retroactive waiver, you have violated a rule.'

connection with lobbying on behalf of third countries, further fuelling[15] the transparency debate both sides of 'the pond'.

Looking in the mirror – Revolving doors in the EU institutions

Many democratic states seem to be facing growing concerns about the revolving doors phenomenon, and the EU is no different. Aside from the obvious exchange of expertise, the revolving door also surfaces when former MEPs or former EU Commissioners take up new jobs, predictably using their considerable networks. To increase transparency in this area, the Commission communicates on activities of senior officials after leaving the service,[16] where future employment would also entail lobbying or advocacy. But this would not seem to be sufficient for the public watchdogs[17] who, among others, point to the case of former Commission President Barroso, appointed non-executive chair and Brexit advisor at Goldman Sachs after leaving the European Commission. Scenarios like these only serve to fuel the ever-increasing distrust[18] in politicians, and may even call into question the integrity of the EU,[19] or of public decision-makers in general.

Does the EU regulate revolving doors? Yes it does.

In 2017, the European Parliament adopted a report on transparency, accountability and integrity in the EU institutions,[20] recognising that the revolving door effect can be detrimental to relations between institutions and interest representatives, which was strongly supported by the EP.[21] The European Parliament is in favour of stronger rules although a number of former MEPs are currently employed in lobbying organisations. According to a POLITICO article, citing a report published in 2017 by transparency watchdog Transparency International, 51 MEPs who left office at the 2014 European Parliament elections are now employed by organisations registered with the EU Transparency Register; 26 of whom directly lobby EU institutions. This tendency is not strictly limited to MEPs only however, as 15 former Commissioners are also working with organisations on the register, according to the same report.

Provisions exist separately for both the European Parliament and the Commission. Article 6 of the Code of Conduct for Members of the European Parliament (MEPs), referring to the activities of former Members, states that any former MEP who engages in professional lobbying or interest representation directly linked to the EU decision-making process may not benefit from the facilities granted to former MEPs.

The European Commission also has a series of instruments in place to prevent problematic use of the revolving door. The new Code of Conduct for Commissioners,[22] which came into force in February 2018, limits the activities of former Commissioners for the first two years after ending their term by imposing the obligation to consult the Commission on any professional activities they intend to undertake. Should the Commission conclude that the activity is related to the portfolio the former Commissioner had, an independent ethics committee is presented with the case and the former Commissioner is barred from accepting employment until the committee settles the issue. Even stricter limits have been imposed on former Commission Presidents, as their cooling off period is extended to three years. According to the Commission Decision,[23] which created the ethics committee, the Commissioner concerned must cooperate fully. The committee is

Commission Code of Conduct

The new Code prohibits former Members of the Commission from performing any activity falling under the scope of the EU Transparency Register for two years. This provision applies as long as the person lobbied is a Member or staff of the institution and on behalf of their own business, that of their employer, or client, on matters for which they were responsible within their portfolio. However, as far as the committee is concerned, once the cooling-off period ends, the former Commissioner must be free to seek employment in the private sector.

composed of three members who serve renewable terms of three years, and their sole purpose is to safeguard against problematic use of the revolving door.

Both the European Parliament and the European Commission have provisions in place aimed at staff. Former Commission staff require authorisation from the Commission before accepting any employment during the two years after leaving office. If however, their future work is related to that carried out while in office within the past three years, the Commission may forbid it, should it risk conflicting with the legitimate interests of the Commission. Senior officials are also prohibited from engaging in lobbying or other advocacy vis-à-vis the Commission for twelve months after leaving the Commission, if the lobbying activity would be regarding matters for which they were responsible within the last three years of service. Regarding the European Parliament, former officials seeking employment within two years after leaving the service are required to inform Parliament before accepting any form of employment. If the occupation is related to duties formerly performed by the said official during the last three years of service and found to conflict with the legitimate interests of the institution, Parliament may prohibit the pursuit of such employment, or if possible, subject it to appropriate conditions.

Conclusion

The exchange of expertise between the public and private sector, as well as with civil society as a whole, is invaluable for the European Institutions. Aside from the revolving door, there are many forums for such exchange such as EP intergroups and industry forums or Commission expert groups, which bring together experts from the private sector and from civil society with decision-makers in the public sector. The European Ombudsman, Emily O'Reilly, has increasingly referred to the revolving door, since the case of former President Barroso.[24] She has even started a campaign to push for tightening provisions on revolving doors,[25] but clearly welcomed President Juncker's proposal to amend the Code of Conduct for Commissioners in 2018[26] and extend the cooling-off period for former Commissioners. When it comes to revolving doors, Codes of Conduct and similar instruments, such as declarations of interest and gift registers are put in place in order to create a healthy framework in which former Members and staff may exchange expertise with interest groups. Codes of Conduct are not intended to prevent the revolving door phenomenon however, but rather provide a transparent framework in order to build trust between the public and private sectors and provide increasing accountability to the public in this area of growing interest.

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