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Joan Claybrook, President

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President Jose Manuel Barroso
Vice President Siim Kallas
European Commission
1049 Brussels, Belgium

RE: European Transparency Initiative

Despite a great deal of effort and optimism offered by Commissioner Siim Kallas for meaningful transparency of those who lobby the European Commission, the disclosure model that has been taking shape over the last several months falls far short of the objective. Though the Lobbying Disclosure Act (LDA) in the United States is certainly not an ideal model, it highlights many of the grave weaknesses of the European Transparency Initiative (ETI).

Briefly, these weaknesses include:

1. Meaningful disclosure must be mandatory.

Common sense alone speaks to this point. Voluntary reporting, as proposed in ETI, will not work. If revealing the identity of the special interest lobbying for a government contract will be counter-productive to that lobbying drive, it would be irresponsible to the client for a professional lobbyist to voluntarily reveal that information to the public. If a lobbyist is involved in laundering of money or other illegal activity, which occurs on rare occasions, it would be downright foolhardy to reveal that financial activity to the public. Yet, this is the very information that a system of lobbying transparency seeks to uncover. Mandatory disclosure, of course, is the bedrock of LDA.

2. The identities of lobbyists, lobbying firms and organizations, and their clients must be disclosed.

If the identities of lobbyists or their clients are not disclosed to the public, it becomes unnecessarily difficult to monitor compliance to the law. Who represents whom becomes largely a matter of faith in the disclosure reports of the over-arching lobbying firm or organization. The occasional corrupt activities of individual lobbyists, acting illegally on their own without notifying their firm, will go undetected. Cloaking the identities of individual lobbyists also casts a dark and

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suspicious pall over the entire profession. In the United States, all individual lobbyists, including myself, report who we are and for whom we are employed, and the identities of our paying clients.

3. Definitions of reportable lobbying activity must be made as clear and non-subjective as possible.

Earlier disclosure laws in the United States failed miserably because of inadequate definitions. The common sense requirement that anyone whose “principal purpose” is to influence legislation must register and disclose was a fatal flaw of the early laws. Only about 30% of those lobbying Congress decided that lobbying was their principal purpose and thus registered. Of these, 60% reported no financial activity and 90% reported no salaries or wages. Because of such loose definitions, disclosure was essentially optional, and routinely ignored.

Definitions of reportable lobbying activity should minimize subjectivity, establishing firm financial thresholds, time thresholds and numbers of lobbying contacts within a specified time period as a means of defining who must register and what information need be reported.

4. Lawyers must disclose their lobbying activity on behalf of any particular client, but not their legal work on behalf of clients who are not attempting to influence government.

Lawyers comprise one of the largest single blocs of professional lobbyists. To exempt lawyers from the registration and reporting requirements is to exempt a huge segment of the professional lobbying community. At the same time, the public has no interest in the normal legal work performed by lawyers for non-lobbying clients.

In the United States the “lawyer problem” is adequately addressed by requiring disclosure by any lawyer who performs 20% or more of his or her work time conducting lobbying activities on behalf of a specific client, but only of those lobbying activities on behalf of that specific client. Legal work by the same lawyer for all other clients is non-reportable.

5. Reportable financial activity must be done in “good faith” and within reasonable levels of accuracy.

Reportable lobbying activity should require a minimum threshold before disclosure is required – in the United States, that threshold is expenditures of \$10,000 or more in a three-month period – in order to avoid registration requirements imposed on those who are simply exercising their right to petition government. Once registration is required, it is reasonable to mandate that financial activity be reported in rounded amounts, in order to ease the burden of reporting. But those rounded amounts must reflect the realities of spending and not be so loose as to hide significant lobbying

expenditures. In the United States, lobbyists round off their expenditures to the nearest \$10,000 (€7,500) in each three-month period

Proposals by the European Commission that reports be rounded to the very high threshold of the nearest \$75,000 (€50,000) fail to reflect the reality of lobbying activity. To make matters worse, registrants would only report their activity that falls within “tiers” of expenditures, such as €0 to €50,00. Such an inaccurate reporting system will grossly hide, or grossly exaggerate, actual lobbying expenditures, depending on how one wants to interpret the value of the financial tier. And all this masking of lobbying financial activity does not even make the reporting requirement any easier on lobbyists.

The additional proposal that financial activity may be reported instead according to “percentage bands” (e.g., 0% to 10%) of income demonstrates that the European Commission is not serious about transparency. The concept of overly-broad financial tiers is egregious offense enough to the principle of disclosure. But also to allow no actual financial disclosure at all, other than a percentage of income, is to mix apples and oranges in the transparency basket, which can serve no logical purpose other than to befuddle the public.

It is disappointing that the European Commission is choosing to retreat from its earlier commitment to transparency. The Commission had been leading the way to implement openness in government so critical to gaining the trust of the public. But the implementation of ETI that is now unfolding betrays that trust.

Respectfully submitted,



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